

on the 7th of April 1810, conveyed certain real and personal estate to the defendant *Mullikin* and *Benjamin Harwood*, who is since dead, and to the survivor of them, in trust for the purposes therein mentioned; and that afterwards, on the 13th of March 1817, the defendant *Harwood* mortgaged the same property to the plaintiff, which mortgage debt was then due and unpaid: whereupon it was prayed, that the mortgaged property might be sold, &c. The defendants put in their answers; and, on the 2d of May 1825, a decree was passed ordering the mortgaged estate to be sold, &c.

On the 25th of August 1828, the defendant *Mullikin* filed his petition, on oath, setting forth particularly all the circumstances of his case: upon which he prayed for leave to file a bill of review, &c.

27th August, 1828.—BLAND, *Chancellor*.—Ordered, that the matter of the foregoing petition stand for hearing on the thirteenth day of September next; and each party is authorized to take testimony, before any justice of the peace, to be read at the hearing, on giving to the opposite party three days notice as usual. Provided that a copy of this order, together with a copy of the said petition, be served on the complainant on or before the fifth day of September next.

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Under this order testimony was taken and returned; sundry documents were filed in relation to the matter of the petition; and the case was thus brought before the court.

10th October, 1828.—BLAND, *Chancellor*.—The matter of the petition of the defendant *Mullikin* standing ready for hearing, and the solicitors of the parties having been fully heard, the proceedings were read and considered.

It appears, that the defendant *Thomas Harwood* was indebted to the State, and also to several individuals; for the payment of which debts, the late *Benjamin Harwood* and the defendant *Mullikin*, had become bound, by bond or by promissory notes, as his sureties; and that, for the purpose of saving harmless these his sureties, he executed a deed, on the 7th of April 1810, by which he conveyed certain real and personal property to them, and the survivor of them, in trust for the payment of those specified debts for which they or either of them were bound as his surety: and, in case either of those debts were not paid, within five years from that day, with power to sell the whole, or so much thereof as might be necessary to satisfy them. After the execution of this deed of trust, this *Thomas Harwood* being indebted to the plaintiff *Hodges*,