

estate herein before devised to him, for cash or upon credit as he shall think proper, without being in any manner responsible for any insolvencies or losses which may happen upon such his sales. Item, at the expiration of seven years after my death, that the property so devised as herein before mentioned to my brother *Francis*, be divided among my brothers as follows: after all my debts are paid; *first*, on account of the great trouble which he will have in the execution of this my will; I give to my brother *Francis Deakins*, and his heirs for ever, one-half of the said estate; the residue I devise to my brothers *Leonard Marbury Deakins* and *Paul Hoye*, and their heirs forever, equally to be divided between them as tenants in common, and not as joint tenants. And *lastly*, I hereby constitute and appoint my said brother *Francis Deakins*, whole and sole executor of this my last will and testament, hereby revoking all others. Given under my hand and seal, this 2d March, 1798.'

This will was proved before the Orphans Court, of Montgomery county, on the 12th of March, 1798.

26th September, 1817.—KILTY, Chancellor.—This petition with the exhibits, has been before me for some time. I was under the impression, that a sale had heretofore been decreed or made under some authority, but I do not find that it has been the case. A great many years have elapsed since the death of *W. Deakins*. The complainant might have proceeded under another part of the act of 1785; nevertheless he may have a right to proceed under the fourth section; but an affidavit will be required, that no part has been received from *W. Deakins*, or *F. Deakins*, or *J. Hoye*, the present administrator, who may have assets, for which purpose exhibit C may be withdrawn. And if the decree is passed, it will be for the sale of only a part of the real estate.

On the 15th of October, 1817, the petitioner *Thomas* filed his affidavit, in which he averred that he had not received any part of the money mentioned in the judgment he had recovered against *Hoye*, the administrator *de bonis non*, from *John Hoye*, *W. Deakins*, *F. Deakins*, or any other person, and that the money was then due and owing to him.

16th October, 1817.—KILTY, Chancellor.—No other creditors having applied, it is unnecessary to sell the whole of the real estate; and it is to be understood, that no more is to be sold than will pay the complainant's debt with interest and costs, and the costs of this suit, and commissions and expenses as near as it can be effected.