

24th November, 1824.—BLAND, Chancellor.—The arguments of counsel having been heard, the proceedings were read and considered.

This case has been brought before this court by two separate and original proceedings, which have now become intimately and necessarily blended. The *ex parte* petition of *Edward Thomas* brought in the first part of it; and the bill of *John Hoyer* introduced the second part. These two distinct proceedings, moving separately, and apparently having entirely different objects, were shewn to have an intimate connection with each other by the petition of *Hoyer*; and were linked together by the order of the 2d of July, made on that petition. Looking then into all the proceedings and exhibits, the case as it now stands before the court is this:

*William Deakins* being seized of certain real estate, made his will disposing of the whole, and died. He gave a part of his real estate to his wife *Jane*; and the rest he devised to his brother *Francis Deakins*, who he appointed his executor, in trust, in the first place, to be sold for the payment of his debts. In May, 1804, *Edward Thomas* obtained a judgment against *Francis*, the executor of *William*, for a large sum of money, with interest and costs. *Francis* died without having sold the real estate of his testator for the purpose of executing the trusts reposed in him; and administration *de bonis non* was granted to *John Hoyer*. After which, by a written agreement between *John Hoyer* and *Edward Thomas*, it was stipulated, that in consideration of certain lands in Virginia being conveyed to *Edward*, he should assign over all his right to the judgment he had obtained against *Francis*, to *John Hoyer*. After which *Edward Thomas* filed his petition here; upon, and subsequent to which the before mentioned proceedings were had.

Had *Francis*, the testamentary trustee, attempted to sell the real estate devised to *Jane*, he might have been restrained by an injunction; or if he had made a sale, it would have been deemed void. And if he had attempted to sell that real estate which was actually devised to him to be sold for the payment of the testator's debts, under the pretence of paying debts, when in fact and truth there were no debts really due, those interested in the estate might have had their interests protected by an injunction. I conceive there could have been no doubt of the propriety of the exercise of such an authority in restraint of the testamentary trustee *Francis Deakins*, were he living.

*Edward Thomas* expressly founds his petition upon the act of