

executors of *Edward Thomas*, deceased, until the final hearing of this case, or further order.

After which a commission was issued, by virtue of which testimony was taken in this case under the name of *Hoye* against *King* and *Hebb*; and the whole matter was again brought before the court.

14th December, 1827.—BLAND, Chancellor.—This case standing ready for hearing, the solicitors of the parties were heard, and the proceeding read and considered.

The late *Edward Thomas*, in the year 1804, obtained a judgment against *Francis Deakins*, executor of the late *William Deakins*, for the sum of \$3,390 50, with interest from the 1st of November, 1797, and costs. After which, *Francis Deakins* died, and administration *de bonis non* upon the estate of the late *William*, was granted to the plaintiff *Hoye*. On the 26th of March, 1805, soon after *Hoye* had thus obtained letters of administration, he entered into an agreement with *Edward Thomas* to let him have certain lands, as therein described, in Randolph, Hampshire, or Hardy county, in Virginia, to be shewn by *Hoye*, when called upon, to the value of \$3,050 65, in full satisfaction of *Thomas*' claim against the estate of the late *William Deakins*. In consideration of which *Thomas* agreed to assign his judgment to *Hoye*. And in case *Thomas* should neglect to designate the lands, and have them valued, in the manner specified, before the 1st day of July then next, *Hoye* was to have so much of certain lands laid off and conveyed, as, at five shillings per acre, would amount to the sum of \$3,050 65. And then *Hoye* stipulates to have the conveyance made and the deed ready for *Thomas* by the last day of July then next.

A few days prior to the 7th day of December, 1805, *Elijah Butler* surveyed 4,576 acres of land, as he says in his letter to the plaintiff, for *Edward Thomas*; but there is no proof that *Thomas* ever knew of, or assented to this survey, much less, that he accepted of the land thus laid off. On the contrary, it appears, by a letter of *Edward Thomas*, dated on the 16th of December, 1805, and another of the 22d of April, 1806, which have been produced as evidence by the plaintiff, that up to that time *Hoye* had not, on his part, complied with the agreement. A third letter from *Thomas*, dated on the 16th of August, 1806, has been produced and relied on by the plaintiff, which evidently alludes to some departure from the original agreement, which *Thomas* was willing