

to concede on *Hoye's* granting the indulgence therein asked for; but what was done in consequence of the proposition, thus made, does not appear.

Long after which, in the year 1815, *Edward Thomas* sued out a *scire facias* on his judgment against this plaintiff *John Hoye*, as administrator *de bonis non* of the late *William Deakins*. To which *Hoye* appeared and put in five pleas, in one of which he relied on the agreement of the 26th of March, 1805; and alleged, that the land therein mentioned became the right and estate of *Thomas*, and was received by him in full satisfaction of his judgment. But afterwards *Hoye* withdrew his pleas; and on the 24th of April, 1817, confessed judgment, as appears by the record, to bind assets in hand, and future assets as they accrued.

After which *Hoye* filed this bill, asking for a specific performance of the agreement of the 26th of March, 1805; but *Thomas* having died before he had answered; *Hoye*, by a bill of revivor, made his executors parties. The original bill alleges, that on the 5th of January, 1816, *Hoye* executed a deed for lands according to the agreement, which deed he tendered to *Edward Thomas's* attorney, on the 25th of April, 1817, who refused to accept it. But the answer of the defendants in no manner admits this deed; and there is no proof whatever of it; or of its conformity to the agreement.

Upon the state of facts, I feel perfectly satisfied, that the complainant cannot have the relief he asks, even supposing the agreement to have been not at all affected by the proceedings at law; and to be such a one as a court of equity would specifically enforce; because the plaintiff *Hoye* has, in fact, altogether failed to perform his part of it, according to its clear and positive provisions. But, if he had complied with it, he has not placed himself here in a condition to obtain the relief he seeks. He has not brought all the proper parties before the court. The executors of *Edward Thomas* might assign the judgment; but his heirs are the persons, who alone are to be benefitted or affected by any conveyance of the specified lands, that had been made, or which might now be ordered by the court.

Whereupon it is *Decreed*, that the said bill of complaint of *John Hoye*, be and the same is hereby dismissed with costs to be taxed by the register. And it is further *Decreed*, that the order of the 2d of July, 1821, together with so much of the order of the 24th of November, 1824, as prohibits the trustee from making sale of so much of the real estate of the late *William Deakins*, as was autho-