

the money into court to be disposed of under the direction of the Chancellor, but that he shall sell the real, personal, and mixed estate whereof H. M. Ogle died seized, and which by the will was directed and authorized to be sold, and directs him to bring the money into court, to be applied under the Chancellor's direction, according to the will.

The decree was passed under the act of 1785, ch. 72, sec. 4. The petition was not an application by the trustee, nor by parties interested against the trustee, to administer the estate in the Chancery Court, and the Chancellor had no other authority to pass the decree but that derived from the act of 1785, and it imposed upon the trustee precisely the same obligations that were imposed upon him by the will.

Upon the petition of Mrs. Bevans to have a certain amount invested for her maintenance, the trustee, B. Ogle, declined acting as trustee, relative to the appropriation to Mrs. Bevans, made by the order of January 25th, 1816, and the Chancellor, by order of February 28th, reciting the first order, and the trustee's declining to act, appointed another trustee in the place of the said B. Ogle, under the said order, which, though an unusual proceeding, certainly left B. Ogle in the exercise of all his functions as trustee, except those which by the last order were transferred to another person, and though by depositing in court all the proceeds of the real estate then sold, not disposed of by the Chancellor, he was, as to that, free from any further responsibility as to them, yet any other fund proceeding from the real estate, and the residue of the personal estate, after the payment of the creditors, he was still bound to preserve and dispose of under the trust.

Admitting that he had, notwithstanding the decree of the Chancery Court, the power to dispose of the personal assets in the payment of debts in the Orphans Court, yet when they were paid, and a final account passed, the residue in his hands was a trust fund, to be administered as such. If there had been another trustee, it should have been paid over to him; but B. Ogle being both executor and trustee, the residue remained in his hands as trustee. 6 *H. & J.*, 162; 3 *Har. & McH.*, 179; 2