

tees and executors, to whom full power was given for the sale, conveyance and disposition of her whole real, personal and mixed estate, agreeably to its provisions. Three of these trustees renounced their trust and executorship. Benjamin Ogle took out letters testamentary on the personal estate, and might alone have performed all the duties of the trust without an application to the court of equity, 1 *Powell on Mortgages*, 279, *et seq.* What his actual intentions were, with regard to the whole trust, is not very clear; and he does not appear to have acted under any legal advice in the commencement of his proceedings in or out of court.

His first step after taking out letters testamentary and returning an inventory of the personal estate, without any positive disclaimer as to the trust, or any explicit disclosure of his opinion as to his right under the circumstances to act as such, was to file on the 15th of September, 1815, a petition in the Chancery Court, in the name of the children of Mrs. Bevans, by him as their next friend, and signed by him, in which it is stated, "that the several trustees appointed as aforesaid, by the said will, have declined acting in pursuance of the authority thereby vested in them, by reason whereof the provisions of said will, which were designed for the benefit of your orators, have failed to be effectual," &c., the prayer of the petition being for the appointment of B. Ogle, trustee for the sale of the real estate only.

This petition is the act of the infants, yet it may be treated in some measure as his act, and as a sort of renunciation of the trust under the will, and an attempt to obtain a new appointment confined to a portion of the subject matter of the trust. The proceeding, however, was one sanctioned by the act of 1785, ch. 72, sec. 4, authorizing the Chancellor, in such cases, to appoint a trustee, for the purpose of selling and conveying such property, and applying the money arising from the sale to the purposes intended; and the Chancellor, treating it as such, passed his decree "for the sale of the real, personal, and mixed estate, of which the said H. M. Ogle died seized, and which by her will was directed or authorized to be sold." This decree