be sold and divided equally among his heirs . Among the testator's heirs living at the time of his death was a granddaughter,the child of a deceased sister daughter,and this heir having died during the life tenancy,the question arose as to whether she had aquired a vested interest under the will This question was answered by the Court of Apeals in the affirmative. In the opinion delivered by Judge Boyd,it was said,in language quoted from 15 Encyc.of Law (2 ed.) 322! " It is well settled that a gift to the heirs of onw will be construed as referring to these who are such at the time of the ancester's death,"andthe opinion proceeds to say!"Ihen if we adopt the ordinary meaning of the term used by the testator (lawful heirs),we find that the presumable intended that those who would be entitled to his real estate at the time of his deathshould set the BENEFIT OF THE PROCEEDS of the sale." The same principal was applied in the case of Suman vs.harvey above cited.These desoisions would seem to be conclusive of the question under consideration,as there is nothing in the context of the present will which indicates that the testator intended the term heirs to be understood in other than its ordinary legal meaning.The interest of Alfred B.Kolb,who was one of the testater's heirs at law,must therefore be held to have been vested and consequently assignable To support the opposite view the case of small vs.Small,90 Md.550,and Engel vs.Geigel,65 Md.544,and and others of that class,were cited in the argument. But the limitations in those cases were entirely unlike these now being considered,and the questions there presented were goverened by a wholly different principle. In Small vs.Small,for example,the estate in remainder was directed to sold after the expiration of the life estate,and proceeds equally divided among the five children of the testator " or the survivors of them and the heirs of any of them who may meanwhile have died; the children of any of them taken under this devise the parent's portion." This language clearly indicated an intention that the remainder should vest only in those of the testator's children who survived to the period of distribution,and the Court of Appeals so decreed. There is no analogy between such a case and the one now under discusion. When the decree in this case was passed in the will conferring the power of sale upon the "executrix,her heirs,executors,administrators and assigns"wes noticed and considered by the Caurt,but it was concluded that the use of the terms following the word "executrix"did not exclude the jurisdiction of this Court to appoint trustees to make the sale under Article 16,Section 94 of the Code. The executrix having been appointed and directed to sell the property for the purpose of distrobution,and having died without executing the power as to the land involved in this proceedings,the case was treated as being within the terms of the statute,and the phrase appended to the designatédn of the executrix as the appointee of the power,was not regarded as having the purpose or effect of appointing in succession her "heirs,wxecutors,administrators and assigns"to the duty and authority of selling the property and dividing the proceeds among those entitled. But if,as is now urged,thetestator intended to develvethe powers successivlely,by way of substitution,upon the heirs,person representatives and assign of the person named as executrix,such as theory,as presented on behalf of the "heirs" of Mrs Utermehle,the executrix,must take into consideration the fact that there is an "assign" to whom all her right, title and interest,of every kind and description,at law or in equity,under the will,in the real estate,or its proceeds,has been transferred.It was, of course,not the intent of the testator that bothof the "heirs" and the "assigns"should succeed to the powers vested in the person first appointed,and in view of the comprehensive transfer effected by Mrs.Utermehle's deed of assignment,the contention that her son has become invested with the authority to sell by virtue of the terms of the will cannot be sustained.The present "assign"of the original appointee of the power of sale has become a party to this proceedings and is involking the exercise of jurisdiction of this Court to the end that a trusteeship may be created,for the execution of the power,in which he may be representative. In pursuing this course he must be held,upon the authority of Dodge vs.Dodge,109 Md. 164,to have waived or renounced any right he may have be assumed to have had have to execute the trust. As the case is now presented all the persons approving to be interested in the sale and distrobution of the estate are asking the Court to appoint trustees to accomplish that object in pursuance of the testator's direction. The jurisdiction of the Court being thus invoked,it may be properly exercised,for the purposes indicated,independently of the Code provision upon which the