proceedings were based in the first instance.It has been argured,however,that Mr. Charles H.Utermehle has succeeded to the trust as the only son and heir at law of his mother,the executrix,by virtue of Article 46,Semtion 24,of the Code,which provides;-"But a trustee in fee trial or fee simple of any lands,tenements or heredit aments,who shall be seized of the naked legal estate therein,without having or bei ng entitled to any beneficial interest or estate whatsoever in the said lands,ten- ements or hereditaments,shall die,the said legal estate shall be deemed and taken to have decended to such person or persons as would have been the heirs of such trustee at common law."This provision is part of the inheritance law of the State, and its manifest purpose is to regulate the desent of the bare legal title trust estate. It does not undertake to controll,restriot or affect in any way the estab- lished jurdistion of courts of equity with reference to the administration of tru- sts. The duty imposed upon the executrix under the present will,while it is chara- cterized by the testator as a trust,involves no continuing custody and managment of the estate,but it confined exclusively to the sale and distrobution. It was certainly not intended by the statutory provision last quoted that the heirs at law of the executor upon whom such a power has been conferred has a vested right to its exercise which he can successively assert as against the united efforts of the persons entitled to the estate to invoke the jurisdiction of a Court of equi- ty for the appointment of trustees upon their recommendation. In Dodge vs.Dodge, supra,and Druid Park Heights Co.vs.Oettinger,53 Md.86,there are expressions in the opinions of the Court of Appeals which assums for the purposes of the desisions then being rendered the right of the heir of a trustee to succed to the trust,but in each ofthose cases the instrument creating the trust conferred it upon the trus tees and his heirs without the addition of the term "assigns",and no such conditi- ons as those here existing were presented. It was not held in the cases just cited or in any other that we have discovered,that the mere existence of an heir at law of a deceased trustee,apart from any effective authorization available to him und- er the deed or will creating the trust,deprives a Court of equity of its general and well-recognized jurisdiction to supply a vacancy thus occuring in the trustee- ship, In 39 CYC 314 it is said that upon the death of a trustee "and before the appointment of a successor" the legal title to the estate descends to his heirs at law. Except in cases covered by our statue,where the trustte holds no beneficial interest in the estate,the title would pass for the time being to those who would be the heirs of the trustee under our law of descents and not to his eldest son as at common law. In either instance it appears to be the object of the law simply to designate a repository of the legal title pending the exercise of the rights by th the beneficiaries of the trust to involk the jurisdiction of chancery for the appo intment of a trustee to proceed with the administration of the estate.

In our opinion this Court has authority to appoint trustees in this proceeding under its general powers,even if it should be held that the case is not within the purview of Section 94 of Article 16 of the Code. As Mr.Ralph L.Hall is the holder of an undivided four sevenths interest in the estate,under assignments which have not been questioned except upon the grounds we have considered and found insuffic- ient,we think it is proper that he should have representation in the trusteeship, but as he is a non-resident of the State,his solicitor of record will be appointed in conjunction with the trustees named in the decree heretofore passed.

Hammond Urner
Glenn H.Worthington

Filed August 14,1915.