cellor in the penalty of $30,000, conditioned for the faithful performance of the trust reposed in him, &c.(*g*)

After the passing of this decree, Hopkins refused to take upon himself the trust; in consequence of which the plaintiffs, with the other devisees, by a petition signed by them, recommended Samuel Vincent to be appointed.

KILTY, C., 4th April, 1806.—Nicholas Hopkins, heretofore appointed trustes for the purpose of carrying into effect the will of Charles Rogers, having, in writing, refused to accept the said trust; it is, therefore, decreed, on the recommendation of Sarah Rogers, Alexander and Ann Martin, Mary Lee, and James P. Boyd for Catherine Rogers, that Samuel Vincent be and he is hereby appointed trustee for the purposes aforesaid, with all and singular the powers vested in the former trustee by the original decree; provided, that before he shall act as trustee aforesaid, he shall file in this Court, a bond with such penalty and security as was prescribed for the former trustee by the original decree.

This trustee gave bond accordingly; after which, Sarah Rogers, Alexander Martin, and Ann his wife, George Lee, and Mary, his wife, and Catharine Rogers, as devisees of the testator Charles Rogers, by their petition stated, that although the affairs of the estate were then unsettled; yet a division might be very advantageously made among them, subject to the payment of the debts of the deceased. Whereupon they prayed, that a partition might be made, &c.

KILTY, C., 22nd November, 1806.—The Chancellor has considered this petition, and does not perceive how it can be complied with, consistently with the decree already passed, on which no report has been made by this trustee. The Chancellor refers the petitioners to the objections stated by him to the bill, soon after
173 * the said decree, in order to obtain a partition; but will hear them at any time in support of the present petition.

(*g*) The *ex parte* proceeding by petition under the Act of 1785, ch. 72, s. 4, applies only to cases where a testator has left "real or personal estate to be sold for the payment of debts, or other purposes," and there is no one appointed to make the sale; or he who has been appointed to do so, neglects or refuses to execute such trust. This, it is proper to recollect, is not a case where the testator had left his estate to be sold for any purpose. And it has been provided, that on the death of a trustee, having no beneficial interest in the lands, the heir at common law shall succeed to the trust estate so held; 1831, ch. 311, s. 11.