to reside; *Buchanan* v. *Hamilton*, 5 *Ves.* 722; or had absconded on a charge of forgery; *Millard* v. *Eyre*, 2 *Ves. Jun.* 94; or had been guilty
435 of a breach *of trust; *Ex parte Phelps*, 9 *Mod.* 357; or even where his co-trustees, there being several others, had a great aversion to act with him. *Uvedale* v. *Ettrick*, 2 *Cha. Ca.* 130. The Court may also appoint a new trustee in the place of one who declines to act. —— v. *Roberts*, 1 *Jac. & Walk.* 251. But if the deed or will should even expressly clothe a trustee with a discretionary power to appoint a new one, still the Court will not permit him to do so, without its sanction; it not being a sufficient answer to say, that the Court will take care to prevent the consequences; the mischief is, in a great measure, done by the appointment; the necessity of getting back the legal estate. *Webb* v. *Shaftesbury*, 7 *Ves.* 487; *Bayley* v. *Mansel*, 4 *Mad.* 226; *Southwell* v. *Ward*, 5 *Cond. Cha. Rep.* 409. The Act of Assembly has provided, that if any person shall die, leaving real or personal estate to be sold for any purpose, and shall not, by will, or other instrument of writing, appoint a person as trustee to sell or convey; or the person appointed shall die, or refuse to act, the Chancellor may appoint a trustee for such purpose. 1785, ch. 72, s. 4. But although a trustee, who had accepted the trust, may, by the consent of most of the *cestuis que trust*, and with the sanction of the Court, because of his unwillingness to continue any longer in the office, be discharged, and another appointed in his place; yet the *cestuis que trust* must be fully apprised of his application to be discontinued. *Rex* v. *Simpson*, 3 *Burr.* 1467. And if it appears that the most interested, or greater part of them are not then in being, or are incompetent to consent, his request will not be gratified, since he cannot, by any act of his own, without communication with his *cestuis que trust*, denude himself of the character of trustee till he has performed his trust. *O'Keeffe* v. *Calthorpe*, 1 *Atk.* 18; *Crewe* v. *Dicken*, 4 *Ves.* 100; *Chalmer* v. *Bradley*, 1 *Jac. & Walk.* 68.

Here, however, it does not appear that there is any just cause of complaint against these trustees; and the trustee Wayman, having voluntarily taken upon himself the trust, cannot now be permitted at his pleasure, to abandon it; and there is no one competent to consent to his discharge on behalf of the infant plaintiff Larkin Shipley and his issue, and the *feme covert* Ann Jones and her issue, who are the principal, if not the only *cestuis que trust.*

The Act of Assembly declares, that in cases where trustees have been appointed by last will and testament to execute any trust, and any person interested in the execution thereof shall shew that
436 * it is necessary for the safety of those interested, that the trustees should give bond and security, the Chancellor may order them to do so; and if they shall fail to comply, to displace them. 1785, ch. 72, s. 10. The decree of the 5th of November, 1829, which required these trustees to give bond, was passed with