

THE CHANCELLOR:

It appears by the proceedings in this case, that a bill was filed in Baltimore County Court, as a court of equity, on the 14th of June, 1844, for the sale of certain parcels of real estate, formerly the property of Joseph Alemeida, deceased, for partition among his children, or their heirs, and, that a decree for that purpose passed on the 1st of January, 1845, appointing the testator of the defendants, trustee to make the sale. That in pursuance of said decree, he gave bond as trustee, with condition in the usual form for the faithful performance of the trust thereby reposed in him, and, that shortly thereafter, in the same year, he made reports of his sales, amounting to the sum of \$1925, which were finally ratified, the first, on the 22d of February, 1845, and the last sale, on the 24th of April thereafter. The record in that case discloses no farther proceedings, until the 19th of November, in the year 1849, when a petition was filed by the party in whose name the original bill was exhibited, in which it was alleged, that the trustee, Durkee, after making the sale, departed this life before he had completed his trust by paying over all the proceeds of sales, and praying that another trustee might be appointed for the purpose of completing the trust thus left incomplete by the former trustee, and upon this petition the court, on the same day passed an order appointing other trustees as prayed. It is admitted, however, in the present case, that the trustees thus appointed have not bonded, nor have they taken upon themselves, in any way, the execution of the trust.

Under these circumstances, a bill *quia timet* was filed by the complainant, the surety of Durkee, in his bond as trustee, on the equity side of Baltimore County Court, which was subsequently transferred to this court upon the suggestion of the defendants, in which, after stating and referring to the proceedings in the former cause, it is alleged, that Durkee failed to bring into court for distribution, the proceeds of the sales made by him, but appropriated the same to his own use. That Durkee is dead, and the defendants, his executors, are proceeding to settle up and close his estate, and that the complainant appre-