

given by his will. Such, I say, is highly improbable. But whatever he intended to do, and conceding that I am mistaken in regard to his *intention*, I think it very clear he has not *executed* his intention in the mode required by law, to the perfection of a parol gift. That is, that he did not part with his legal power and dominion over the subject of the gift, and therefore that it is void in law and equity, will not make it good. There can, then, be no recovery, so far as the note of Mr. Rogers is concerned.

The bill, however, embraces other subjects, and with reference to these, the proceedings have become defective, in consequence of the discharge of Jacob G. Davis, a trustee under the will of Mr. Betts, and the appointment of another trustee in his place.

Before an account of these subjects can be taken, they being within the trusts of the will, it is indispensable that the new trustee should be made a party, which has not been done, and the case, therefore, as to them, will be allowed to stand over, with liberty to the complainant, by proper proceedings, to bring the new trustee before the Court.

[The Chancellor accordingly passed an order, dated the 9th of May, 1851, dismissing the bill, "so far as it seeks to recover from the defendant, Jacob G. Davis, for or in respect of the note of Lloyd N. Rogers to Solomon Betts, for the sum of \$2,673 75, dated the 17th of November, 1838, in the proceedings mentioned," but "that the said bill in all other respects be retained, with liberty to the complainant, by proper proceedings, to bring before the Court, as a party, William George Krebs, the trustee appointed in the place of Jacob G. Davis, one of the defendants, to execute the trusts of the will of Solomon Betts, deceased. And it is further adjudged, ordered, and decreed, that the question of costs be reserved for further order." A supplemental bill was then filed, making the said Krebs a party, and he having answered, the cause was, with regard to the questions left open by the decree of May, 1851, sent to the Auditor for an account, from the