

court, appointing a new trustee to complete the trust. The bill assumed that the whole trust had become vacant by the death of the acting trustee, David McKim, and prayed that a new one should be appointed in his place, to whom the said ground rents should be conveyed and personal property be transferred, for the purpose of completing the trust left unexecuted by the deceased trustee.

In the progress of the cause, a difference sprung up among the parties in regard to the person who should be appointed trustee, and then it was maintained by some of them that Mr. Williams, stated to be the sole acting executor of the will of David McKim, was *virtute officii*, the trustee under the will of John McKim, Jr., so far as relates to that portion of the trust fund which consists of personal estate. This is the question which has been argued, and must be decided.

In the first place it may be observed that a separation of the real from the personal estate constituting the trust fund, would manifestly be in opposition to the will of the testator, and interfere very materially with the objects of the will. The direction is, that the trustees or the survivor, or the person or persons who may succeed them, may change the investments of the stocks and the proceeds thereof, with any accumulations from the income or profits of the *fund generally*. The whole is entrusted to the same keeping, and the same judgment which is to determine the propriety of selling and reinvesting the proceeds of the stocks is to decide upon the investment of the profits of the fund generally.

If, therefore, this court should decide that the trust, so far as the personal estate is concerned, has devolved upon Mr. Williams, as the executor of David McKim, by force of the words in the will of John McKim, Jr., "the heirs, executors, and administrators of the survivor," which it is said gives the power not only to the original trustee, but to the heirs, executors, and administrators of the survivor of them, then it would follow if the heirs of said David McKim were of age, that the trust as to the real estate devolved upon them, and thus it would happen that this property which the testator plainly designed should