

remain in the same hands until all the purposes of the trust should be accomplished would be separated.

The case then would be precisely like the case of *Cole vs. Wade*, 16 *Ves.*, 45, in which the Master of the Rolls decided against the transmission of the trust to the executors of the surviving trustee, notwithstanding the testator in express terms had given the power not only to the original trustees, but to the heirs, executors, and administrators of the survivor of them. It may be said here as it was said there, that "the heirs and executors of the surviving trustee may be different persons, yet all the directions about the distribution, (the selling and reinvestment in this case,) proceed upon the supposition that the same persons are to select the objects and settle the proportions in which they are to take." But the Master of the Rolls proceeds to say, "if the real estate is to go to one, and the personal estate to another, it is entirely uncertain how the power is to be executed." So here if the real estate is to go to one, and the personal estate to another, how shall the power of reinvestment be executed.

It is contended in this case on the part of those of the *cestui que trusts* who desire the appointment of Mr. Williams, that the power given to the trustees by the will of the testator, does not imply a personal confidence, and that a power of this kind to trustees, their heirs, executors, and administrators is not confined to the original trustees, but passes to all who may sustain that character. But my decided opinion is, that the power here, does imply personal confidence, and that degree of confidence which a testator would not be very likely to repose in those whom he could not know, and of course he could not know the persons whom the trustees appointed by him would make their executors.

The judgment of the Master of the Rolls in the case of *Cole vs. Wade*, 16 *Ves.*, 27, which judgment was affirmed by the Lord Chancellor in 19 *Ves.*, 425, and against which no opposing authority has been produced, seems to me decisive of the question in this case. There being then no one to execute this trust, this court must appoint a trustee for the purpose.

Two persons are recommended, John S. McKim, one of the