

the trustees appointed by it must be settled independently, and cannot be made the subject of investigation in this case, the court cannot see how the ultimate rights of the parties would be affected by it. If the proceeds of the property now about to be divided, or sold for the purpose of division, were ready for distribution, the court, upon a proper application, suggesting the misapplication by Richard W. Higgins of the trust fund which came to his hands under the decree of December, 1827, *would detain* his proportion of the property in this case, to meet anything which he might appear to be indebted to the parties in the other case, when his accounts should be settled. For, entertaining the opinion that it is the duty of this court so long as the fund is under its control, to see that these *cestui que trusts* receive equal portions of the bounty of Mrs. Maccauley, it would not suffer any one of them to withdraw from its custody any portion of it when well grounded suggestions are made that such party has already received more than his share.

According to my view of this case, there is but one trust, although it has been cut up into several distinct proceedings, and parceled out among several hands. Now, when a final disposition of the whole trust fund is about to be made, it is indispensable to justice that the proceedings in all the cases should be brought together, which may be done by an order of consolidation which will be passed.

The next question discussed by the counsel relates to the liability of the defendant, Richard W. Higgins, to be charged with interest upon the proceeds of sales for which he has not accounted, and I think there can be no doubt that he is so liable. In the contingency which has happened, the increase as well as the original stock was to be equally divided among the three children of Mrs. Higgins, and if any one of them has appropriated an undue share of the principle to his use, I am at a loss to see upon what principle he shall be exempt from the payment of interest. Suppose, instead of wrongfully using this money, he had with the consent of the court borrowed it from the trust fund? Would he not in such case be chargeable