

by the will of H. M. Ogle. He took out letters testamentary on the personal estate of the Orphans Court, and returned an inventory there. He filed the petition in the Chancery Court, in the name of the infants, stating that the several trustees had declined the trust, and praying that he might be appointed trustee to sell the real estate; after paying the only debt which the personal estate was inadequate to discharge, he deposited the residue in court, declined acting as trustee for the investment of the funds appropriated to secure the annuity to Mrs. Bevans, and procured the payment of the funds deposited to the guardian of the Bevans. He proceeded, in the mean time, to settle up the personal estate "as executor," in the Orphans Court, and to pay over the balance on the final account, under the directions of that court, to the persons by him and them believed to be entitled to it. But has he divested himself, by these proceedings, of the character of trustee, as to the personal estate, either under the will or under the decree?

There is no positive and direct disclaimer by him of the trust, to be found in any part of his proceedings. The strongest fact from which a disclaimer may be inferred, is the allegation by the infants in the petition for the sale of real estate, signed by him as their next friend, and which allegation he may therefore be presumed to have sanctioned, that the several trustees had declined to act; but this inference, it seems to me, could thence be fairly made only as to the real estate, as the real estate only was therein prayed to be sold, and although in the disposition of the personal estate he seems to have acted generally as if he conceived himself no longer under the obligations of the trust, yet, in some instances at least, paying to Mrs. Bevans \$600, for the maintenance of herself, and education and maintenance of her children, he assumed the character of trustee. Whatever his intentions and desires were, however, and whether he had declined the whole trust under the will or not, the Chancellor's decree on the petition deprived him of it. His appointment was by the court, and his powers were, from that time, derived from, and dependent upon its decree; and what is the decree of the court? not that he shall sell the real estate, and bring