

against which, the mortgage was intended to indemnify them, and "also to save harmless and indemnify the said Nicholas I. Watkins and Basil Shephard as sureties on his trustee's bond hereinbefore mentioned."

Selby, whose testimony was taken under this commission, denied that he had ever charged himself as guardian with the money received by him from the purchasers of the estate of Williams; he stated that he had only intended doing this on certain terms, which he described, and which he said had not been complied with. To a cross interrogatory on the part of Stewart and Mrs. Selby, he replied that it was his impression, that when he executed the mortgage he did not know the exact sum due, but whatever money he had received as trustee, it was his intention, and the said Watkins' intention, to have secured by the said deed; that he was not asked for the mortgage, but gave it of his own motion.

The case having been argued before the Chancellor, he delivered the following opinion, after first stating the facts: ]

THE CHANCELLOR :

Upon this state of facts, I am called upon to decide, whether the burden of the loss resulting from the default of Selby shall be thrown upon the sureties in his bond as trustee, or guardian; or, in other words, whether the balance which is or ought to be in his hands, of the purchase money of the estate of Edward Williams, is to be considered in his hands as trustee under the decree of this court, or as guardian under the appointment of the Orphans Court? Upon this question, the solicitors of the parties have been fully heard, and the facts and circumstances of the case deliberately considered.

The solicitors for the sureties in the bond given by Selby as trustee, seem to consider the case as coming within the principle decided by the Court of Appeals, in the case of *Watkins, administrator vs. The State, use of Shaw*, 2 G. & J., 220, in which it was decided, that where a sole executor sustains the double character of executor and guardian, the law will adjudge the ward's proportion of the property in his hands, to be