

made payable "to *Thomas Sellman* trustee for the sale of the real estate of *John Cross* deceased." After which, and before he had reported the sale, *Sellman* died, and *James Iglehart jun'r.* was appointed to succeed him as trustee; who made a report of the sale, and that he had the money received and also the bonds taken then in his hands. This sale was finally ratified on the 19th of March 1819; and, by an order of the 28th of April following, the proceeds were made payable to this same *James Iglehart*, who was also appointed trustee in the place of *Sellman* under the decree of the 12th of December 1816, leaving a balance still due from the late *John Cross's* estate to the late *Selby's* estate, as shewn by the statement taken from the report of the late *Thomas Sellman*, who had made and reported a sale under the decree in that case, which had not been finally ratified until the 27th of January 1818.

In which suit, for a partition of the late *Joseph Selby's* estate, the auditor, on the 1st of April 1818, made and reported a statement of a distribution of the proceeds of sale, allotting one share of the estate of the late *Joseph Selby* which had been sold to *John Cross*, to the said *John* and *Jemima* his wife, which was ratified on the same day. On the 29th of April 1819 *Iglehart* the trustee, by petition, applied to be directed as to whom the share awarded to *John* and *Jemima* was to be paid. Upon which the Chancellor passed the following order.

"1st May, 1819.—KILTY, Chancellor.—On considering the within application, I am of opinion, that the part of the proceeds of *Joseph Selby's* estate, allotted to *John Cross* and *Jemima* his wife, is to be paid to *Jemima Cross*, who has survived *John Cross*, inasmuch as it was not received, or assigned, or applied by him in his lifetime. Having been the purchaser, if he had settled up the other parts, he might have settled his proportion with the trustee by discount, or possibly might have settled that part only with him. The case must now be considered, as to her right, in the same manner as if any other person had been the purchaser.(z) But the trustee, in paying the parts allotted under the orders of the 1st and 29th of April 1819, must pay only a rate or proportion to each, according to the net sum received from the sale of *J. Cross's* real estate, until he recovers the balance on his bond. The present trustee is allowed one-third of the commissions of 182 dollars, paying two-thirds to the representatives of *T. Sellman*."

(z) *Jones v. Jones*, ante, 454.