

the sum or value of \$20,000, or one equal child's part of said property. And the persons so selected being duly qualified, and having ascertained, by an examination of the trust property, that one equal child's share considerably exceeded \$20,000, proceeded to set apart so much of said property, real and personal, as amounted to that sum or value, less \$30 41, which they directed should be paid by the legal representatives of Ann Donnell, in cash; and did, on the 7th of June, 1842, accordingly set apart said property, to be held by said trustee Howard, for the sole and separate use of said complainant Mary, in conformity with the provisions of said marriage settlement.

This allotment, thus made by the persons so selected, was affirmed and ratified by the complainants and defendant, Donnell, as appears by a writing to that effect signed by them, which, though not dated, is admitted to have been signed on the same day. And by a declaration, dated the 14th of July, 1843, under the hand and seal of Howard, the trustee, he ratified and affirmed said allotment, and declared that he held said property for the use of the complainant Mary, according to the provisions of the said marriage settlement of her mother, Mrs. Donnell.

The bill in this case was filed on the 8th of June, 1849, and of the subjects of claim presented by it, all are, by the agreement before-mentioned, abandoned, except the claim for interest on the \$20,000, or a proportion of rents and profits from the 25th of April, 1839, the day of the death of Mrs. Donnell, to the 9th of June, 1842, when the property was set apart, and from which period the complainants have been in the enjoyment of it, and, consequently, the first and most material question is whether, under the circumstances of this case, the claim, in either aspect of it, can be supported?

It may, I think, be very fairly inferred, that at the time this portion of the trust property of Mrs. Donnell was set apart and segregated from the rest of the estate, it was the impression of the defendants, Donnell and Howard, that the entire claim of the complainant in reference to this property was