

trustee to return to the purchaser the money which he has paid, and for the payment of his costs by the defendant, or out of the proceeds of any future sale which may be made by the trustee.

[No appeal was taken from this order.]

WALTER MITCHELL
vs.
WILLIAM HOLMES ET AL. } SEPTEMBER TERM, 1848.

[APPLICATION OF INCOME OF TRUST ESTATE—TRUSTEE'S COMMISSIONS—DEVISE.]

UPON a devise of real and personal property to a trustee, in trust, to apply the income arising therefrom for the mutual benefit of the uncle and aunt of the testator for life, and after the death of the uncle to the mutual benefit of the aunt and her children. It was HELD—

That, during the life of the uncle and aunt, the income of the trust estate should be equally divided between them; and, that the title of the children of the aunt to participate in the income, is to be postponed until after the death of the uncle.

The testator having said that the trustee, whom he also appointed his executor, shall have "ten per cent. on the whole amount of property which may come into his hands as trustee." It was HELD—

That he was entitled to this percentage on the whole amount of property, and not on the income only, irrespective of the sum which may have been allowed him by the Orphans Court as executor; and, in this respect, the two offices are to be regarded as distinct, as if filled by two different persons.

[The two questions presented to the court in this case, (the facts of which will appear from the Chancellor's opinion,) were, firstly, into what proportions was to be divided the income of certain trust property, devised to two for life, and after the death of one of them, for the mutual benefit of the other, and her children; remainder to the said children in fee. And, secondly, whether a trustee, who, as executor, had received a commission on property, paid into the trust fund, should be allowed, as trustee, an additional commission on the same property.]