

THE FARMERS' AND PLANTERS' BANK
 VS.
 JAMES MARTIN AND WILLIAM R. TRAVERS. } JULY TERM, 1852.

[COMMISSION TO SOLICITOR AS FEES—PRACTICE—EVIDENCE.]

WHEN trustees are compelled to bring suit for the purchase-money, it has been the constant practice of the Court to allow a commission of 5 per cent. to the attorney engaged by them, and when the trustee is himself an attorney, and collects the money in that capacity by a suit at law, a similar allowance has always been made to him.

Such commission, as well as the trustee's commission as such, and the costs of suit, are always deducted from the proceeds of sale before distribution is made among creditors, the effect of which is, of course, to throw these allowances upon the unpreferred creditors, when the fund is insufficient to pay all.

Such commissions will also be allowed to the trustee, where he proceeds to collect the purchase-money by proceedings for a re-sale in the same case.

Where a purchaser knew of an incumbrance on the land, consisting of ground-rent in arrear, and the property was re-sold, he cannot be allowed a credit for such incumbrance paid by him.

The fact of such knowledge on the part of the purchaser may be proved by parol, though the advertisement of sale made no mention of ground-rent in arrear as an incumbrance on the property.

The advertisement is not the contract of the parties, and it is the constant practice of trustees to introduce other terms of sale, and make known to bidders at the time of the sale, facts and circumstances affecting the title or value of the property not mentioned in the advertisement, and parol proof of such facts is always admitted when it becomes necessary to resort to it to vacate or uphold the sale.

[The facts of the case are stated in the opinion.]

THE CHANCELLOR:

The questions in controversy, arising upon the exceptions to the report of the Auditor in this case, relate to the allowance to William W. McClellan, the first purchaser, of the sum of \$161 25 for arrears of ground-rent and interest thereon, due at the time of his purchase, and to the allowance to the trustee