

COMMISSIONS TO TRUSTEES.—*Continued.*

- an attorney, and collects the money in that capacity by a suit at law, a similar allowance has always been made to him.—*Farmers' Bank, vs. Martin & Travers, 224.*
2. 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. *Ib.*
 3. 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. *Ib.*
 4. The trustees for the sale of mortgaged property postponed the sale, at the request of the owner of the equity of redemption, who stipulated that they should be allowed commissions and expenses for such postponed sale. HELD,

That this was a *personal* contract with the party, and gave the trustees no right to claim such commission out of the proceeds of sale. *Nep-tune Insurance Co. vs. Dusey, 334.*

CONCURRENT JURISDICTION.

See PRACTICE IN CHANCERY, 31.

CONDITION PRECEDENT.

See DEEDS, CONSTRUCTION OF, &c., 1 to 4.

CONDONATION.

See DIVORCE, 3.

CONSIDERATION IN DEEDS.

See FRAUDULENT CONVEYANCES, 3, 4, 5, 15 to 19, 22 to 25.

CONSTITUTIONAL LAW.

1. The 23d section of the 4th article of the new Constitution, prohibits the origination of "new business" in the Court of Chancery, after the adoption of that instrument by the people. A cause in lunacy was depending in the Court before, and the lunatic died after, such adoption. A petition was then filed by parties in interest for the appointment of a receiver, upon the ground that there was a contest in the Orphans Court respecting the will of the lunatic, and delay would occur before any one entitled to the estate would appear. HELD,

That it is a question not free from doubt, whether such petition be not *new business* in the sense of the Constitution, though the Chancellor inclines to think that, under the peculiar circumstances of this case, the Court had the power to appoint the receiver for the temporary purpose of holding and preserving the property, until some person entitled to receive it should appear, and passed an order accordingly. *In Re Rachel Colvin, a Lunatic, 278.*

CONSTRUCTION OF ACTS AND STATUTES.

1. The Act of 1833, ch. 181, contemplates that the proceedings upon mortgages taken under it should be *ex parte*, until after the decree and sale, and that the propriety of the decree and the validity of the sale may be inquired into and contested after the order of ratification *nisi*, and before the final order. *Eichelberger vs. Harrison, 39.*
2. The devise in this case being not of lands, but of their rents and profits,