

## GIBSON'S CASE.

TRUSTEES UNDER DECREES TO SELL.—THEIR APPOINTMENT, REMOVAL, POWERS,  
AND COMPENSATION.

The Court of Chancery has the power in all cases, where it may be necessary, to appoint and employ a person as its trustee or agent to make sale of property for the purpose of executing a decree or order.

It may appoint a woman or any competent person on the recommendation of the parties interested; or if they are silent, the plaintiff's solicitor is usually appointed. (a)

But the Court will not appoint any one of its own officers, or any other officer to be trustee, the discharge of whose official duties may be incompatible with a proper attention to his duties as trustee; nor will the Court employ, as its trustee, an infant, *feme covert*, or non-resident. For negligence or improper conduct a trustee may be removed.

In general, the trustee, is to be regulated by the directions of the order or decree; but in making a sale, he may deviate from the mode prescribed by the decree, after the property has been put into the market, by advertising it for sale as directed. (b)

Commissions, or poundage fees to trustees, are allowed by law and regulated by rule of Court. (c)

The commission is given as a compensation for the performance of all the duties specified in the decree, and the subsequent order in relation to the sale, and its proceeds.

The trustee may employ an auctioneer.

The allowance of commissions to a trustee may be refused, diminished, or enlarged, according to the nature and circumstances of the case.

(a) See *Thornberg v. Macauley*, 2 Md. Ch. 425; *McKim v. Handy*, 4 Md. Ch. 228.

(b) Approved in *Markey v. Langley*, 92 U. S. 154; *Glenn v. Wootten*, 3 Md. Ch. 517. See also *Andrews v. Scotton*, 2 Bland, 643; *Harrison v. Harrison*, 1 Md. Ch. 331; *Tyson v. Mickle*, 2 Gill, 376, note (a); *Horsev. v. Hough*, 38 Md. 130. A departure from the regulations of the decree in any essential respect, without first attempting to sell in conformity with them, will always prevent a ratification, if objection be made. *Glenn v. Wootten*, *supra*. But after the trustee has once offered the property in the market, in the mode prescribed by the decree and has been unable to sell it, he may dispose of it in a different mode, and it is then for the Court to say whether it will ratify the sale or not. *Ibid.* But a private sale, even after an ineffectual effort to sell publicly, is open to objections which would not be allowed to stand in the way of a public sale. *Latrobe v. Herbert*, 3 Md. Ch. 378.

(c) As to the allowance of commissions to trustees, see *Winder v. Diffeinderffer*, 2 Bland, 166; S. C. 3 G. & J. 311; *Goodburn v. Stevens*, 1 Md. Ch. 420; *Bentley v. Shreve*, 2 Md. Ch. 215; *Bank v. Martin*, 3 *Ibid.*, 224; *Ringgold v. Ringgold*, 1 H. & G. 13; *Ridgely v. Gittings*, 2 H. & G. 58; *Brady v. Dilley*, 27 Md. 570; *Railway v. Keighler*, 29 Md. 572; *Widener v. Fay*, 51 Md. 273; *Whyte v. Dimmock*, 55 Md. 452; *Willson v. Tyson*, 61 Md. 575; *Jenkins v. Whyte*, 62 Md. 427.