

allowed. *Dulany v. Brice*, MS. 27th December, 1794; *Dowig v. Marvel*, MS. 16th October, 1789; *Anderson v. Anderson*, MS. 17th April, 1789; *Dorsey v. Croke*, MS. 16th October, 1789; *Taylor v. Casanave*, MS. 11th March, 1819; *Mildred v. Neil*, MS. 26th February, 1788.

But this Act of Assembly authorizing the allowance of a commission, as well as this rule by which that commission was graduated into the form of poundage fees, allowed to a sheriff for the sale of property taken in execution, it is evident, were both confined to sales made "for the purpose of paying the debts of deceased persons, or others;" and consequently, although they applied as well to sales of mortgaged property as to sales in creditors' suits, and the like; yet they did not extend to any case of a sale made of real, or personal property, because of its indivisible nature, for the purpose of dividing the proceeds among those by whom it was held jointly or in common; nor do they apply to the case of a sale made, pending a suit, of the property in litigation, because of its perishable nature, for the purpose of preserving its value to him to whom it may be determined to belong, by the final decree. Yet in these, as well as in all other cases, whether embraced by the Act of Assembly or not, the trustee has been allowed a commission, or compensated for his trouble in one form or other. But by the existing standing order passed at March Term, 1817, it is declared, that "on sales under decrees or orders of the Court, the following allowances to be made to trustees, &c. On the first three hundred dollars, seven per cent.; on the second, six per cent., one the third, five; on the fourth, four; on the fifth, three and a half; on the sixth, three and a half; on the seventh and eighth, three; and on the ninth and tenth hundred dollars, two and a half per cent. And three per cent on all above three thousand dollars; besides an allowance for expenses not personal. The above allowance subject to be increased in cases of postponement, at the request of the defendants, or of extraordinary difficulty of trouble from other circumstances; and to be lessened in case of negligence, &c. at the discretion of the Chancellor." This rule is expressed in the most comprehensive terms, and embraces all sales made by a trustee, under the authority of the Court, for any purpose whatever.

The commission allowed to a trustee is given to him as a compensation for his trouble and risk in making the sale, bringing the
147 * money into Court, and paying it away in the manner directed; or, in other words, for the performance of all the duties specified in the decree, and the subsequent orders in relation to the sale and its proceeds. It is sufficiently evident, from the language of the rules, graduating the rate of the commission into the form of poundage fees, that the commission allowed to a trustee has never been considered, in any respect, as a commission in