

the mercantile sense of that term. A trustee of this Court is a person of legal constitution, with legal duties; and though some of his duties may have a mercantile mixture in them, he does not transact them as a merchant. He acts altogether as a legal officer, and must be paid, as such, in proportion to his diligence, skill, trouble and risk; not exactly according to the value of the subject in litigation. *The Rendsberg*, 6 *Rob. Adm. Rep.* 164; *Wood v. Freeman*, 2 *Atk.* 542. And therefore the term commission, in the mercantile sense, cannot be applied to the compensation of a trustee, or any other officer of this Court. But it has been found, in many cases, to be highly expedient, if not absolutely necessary, to have the property sold by an auctioneer; and it is obviously for the benefit of those concerned, that all sales should be so conducted; *The Rendsberg*, 6 *Rob. Adm. Rep.* 168; although no fee is allowed to a sheriff for so making a sale. *The King v. Crackenthorp*, 2 *Anstr.* 412. Therefore it has been deemed proper to permit the trustee to employ an auctioneer, to whom may be allowed a fee, not exceeding five dollars, for each separate and unconnected sale.

Considering the nature of the office of a trustee, it follows, that as on the one hand, his compensation may, because of the discharge of his duties being attended with a very unusual degree of labor and risk, be increased; so, on the other hand, his compensation, because of his duties having been improperly or but partially partially performed, may be altogether withheld, or proportionably diminished. As where it appeared, that the trustee had been under the necessity of making several journeys or voyages, or had already, and should thereafter incur much extraordinary trouble for the purpose of executing the decree, he was allowed a compensation, in addition to the commission specified by the rule. *The Rendsberg*, 6 *Rob. Adm. Rep.* 163; *Hindman v. Clayton*, *MS. 8th March*, 1805. (*f*) On the other hand, where the trustee, after having

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(*f*) *MILLAR v. BAKER*.—This was a creditors' bill, filed on the 12th of February, 1796, to have the real estate of the late Christian Baker, lying in Frederick County, sold to pay his debts, &c. On the 2d of June, 1796, it was decreed, in the usual form, that the property in the proceedings mentioned be sold; which was sold accordingly. After which the following remarks and orders were made:

*HANSON, C.*, 8th December, 1796.—It is stated, that Jacob Scheisler contracted for the sale of a parcel of ground in Frederick County, to Christian Baker, for £50 on credit; that the contract was, that a deed be given on Baker's executing a bond for the money; that Baker took possession and died without having executed a bond, or taken a conveyance; but that, before his death Baker paid one year's interest on the said £50, to Scheisler; that after Baker's death his creditors obtained a decree for selling his real estate; that under the decree, the said lot, which had been improved by Baker, was sold with other property, in which Baker had a legal estate in