

Commissions allowed to a trustee, as a compensation for his skill and trouble, are not to be lessened or withheld because of conduct in respect to which he had been charged with interest. (e)

An account allowing to the trustee a commission of ten per cent. on collections and disbursements ratified. (f)

THIS bill was filed, on the 8th of August, 1825, by William Sydney Winder, and Araminta, his wife, against John Diffenderffer and his three infant children, Amelia Diffenderffer, Michael Diffenderffer, and Charles R. Diffenderffer. The answer of the defendant John invoked into this case the proceedings in a suit instituted some time before in this Court, which forms a preliminary and necessary illustration of the grounds of this controversy. The proceedings in that suit are as follows:

On the 27th of February, 1806, Sarah Rogers, Mary Lee, Catharine Rogers, and Nicholas Hopkins, filed their bill against John Merryman and William R. Smith, in which they stated, that Charles Rogers had, on the 15th of November, 1805, made his last will disposing of his estate, in trust, for the benefit of the plaintiffs, Sarah, Mary and Catharine, and soon after died. This will, so far as regards the matter in controversy, is as follows:

“I do hereby nominate and appoint my friends John Merryman, William R. Smith and Nicholas Hopkins, and the survivors, or survivor of them, and the heirs of such survivor, trustees of all my real estate, to hold the same in trust as hereinafter mentioned, and also I do hereby make them executors of this my last will and testament.

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(e) Cited in *Railway v. Keighler*, 29 Md. 580. See note (f), *infra*. As to allowance of commissions to trustees, see *Gibson's Case*, 1 Bland, 138, note (c).

(f) Reversed in *Diffenderffer v. Winder*, 3 G. & J. 347, where the Court said: “On the appeal taken in this case by Winder and wife we cannot sustain the decree of the Chancellor. It gives to the trustee a commission of ten per cent., which is the full allowance that ought to have been made to him had his conduct been marked by a strict performance of the duties he had assumed. But this is very far from being the posture in which he appears before us. It is the duty of a Court of equity in the distribution of its favors to discriminate between those who violate their duty, and abuse their trust, and those who perform it with skill and fidelity. To the latter a full commission is cheerfully bestowed: to the former half that amount is reluctantly granted. Mr. Diffenderffer having kept full and fair accounts of his receipts and expenditures, and in that respect faithfully discharged his duty as trustee, we do not think he has forfeited all claim to commissions as he otherwise would have done. We reverse therefore the decree of the Chancellor on the appeal by Winder and wife, on the ground that but five, instead of ten, per cent. commission ought to have been allowed to the trustee.” The case in the text is cited in *Whyte v. Dimmock*, 55 Md. 456, where it was held that payments to a *c. q. t.* of moneys collected, and upon which commissions had been allowed for such collection, are not *disbursements* within the meaning of the decree allowing commissions. Cf. *Jenkins v. Whyte*, 62 Md. 434.