

GEORGE W. BARRY ET AL.

vs.

WILLIAM J. BARRY ET AL.

} MARCH TERM, 1847.

[WAIVER OF COMMISSIONS—PETITION TO VACATE DECREE—LAPSE OF TIME.]

A TRUSTEE may waive his claim to commissions, where that claim exists.

The enrollment of a decree obtained by surprise, may be vacated, either upon a bill or petition.

A decree or order, after delay and lapse of time, cannot be set aside, except upon very strong grounds.

The order sought to be set aside, was passed on the 18th of November, 1844, and no objection is made until August, 1846. HELD—that upon the ground of delay, alone, there would be great difficulty in granting relief against the order, even if the merits were with the petitioner.

[On the 24th of April, 1839, a decree passed this court for the sale of the real estate of Robert Barry, deceased, for distribution among his heirs at law, and appointing Bernard W. Campbell trustee for that purpose. The trustee being unable to effect an advantageous sale, the property was rented out by him, and on the 8th November, 1844, an order was passed authorizing him to continue to rent the same, and to apply portions of the rents to its repair; and referring the case to the Auditor for an account. On the 18th of the same month a further order was passed, allowing the trustee a commission of eight per cent. upon his collections, and disbursements. Sundry accounts were stated by the Auditor, and ratified by the court, crediting the trustee with his commissions, and with certain payments and disbursements made by him, and charging him with the rents which he had received; and afterwards on the petition of John Glenn, who had become purchaser and assignee of five-sevenths of said property, an order was passed, dated 23rd February, 1846, directing the trustee to sell the same, upon the terms mentioned in the decree. It was accordingly sold to said Glenn, at public sale on the 6th May, 1846, for the sum of \$12,000, and an order of ratification *nisi* of the sale was passed on the 28th of the same month. On the 24th