

THE CHANCELLOR :

In deciding upon the propriety of allowing commissions to the trustee upon the sales of the property, the court is not embarrassed by any previous order making such allowance, no such order having been passed ; the sale itself, indeed, not being finally ratified.

That a trustee may waive his claim to commissions, where that claim exists, has been decided by the Court of Appeals in the case of *Ridgely vs. Gittings*, 2 *Harr. & Gill*, 58, and of course is not to be disputed, nor has it been disputed in this case.

Without imputing to the trustee any improper conduct in this case, or any the least desire to escape from his engagement in reference to the claim for commission on the proceeds of the sales of the property made by him, (and the court certainly means to make no such imputation,) I am, nevertheless, of opinion, after a close examination of all the evidence, that it was distinctly understood that no such charge was to be made by him.

And I am further of opinion, that when Mr. Glenn purchased five out of the seven shares into which this estate is to be divided, he was well warranted in believing, both from the oral and written declarations of the trustee, that the property would be sold by the latter, unburdened by the charge of commissions. This, the Chancellor thinks, is the conclusion to which any mind must come, after a careful examination of all the evidence.

It is also clear, he thinks, that in some of the conversations and letters of Mr. Campbell upon the subject of selling this property, a judicial appointment for the purpose was within the contemplation of the parties ; and I do not, therefore, see how the distinction taken in the answer, between the duties of an agent and those of a trustee, appointed by the court, can avail him.

Without going into a detailed investigation of the proof, the Chancellor upon this statement of the conclusion to which an examination of it has brought him, considers it proper to pass an order disallowing the claim to commissions upon the sales of the property.