

of this claim must take rank, as a simple contract creditor only, and be treated accordingly.

The next question relates to the allowance for commission, as claimed by the trustees, upon the proceeds of the sale, which was to have taken place on the 15th of October, 1846; but which was postponed, at the instance of Edward H. Dorsey, and concurred in by the opposite party, according to the statement in the trustees' report (this opposite party being the Baltimore Life Insurance Company). "And the trustees further report, that upon the occasion of this postponement, the said Edward H. Dorsey entered into a stipulation with your trustees, for payment of commissions and expenses."

If there remained a surplus of the proceeds of sale, after paying all claims against the mortgaged property, which surplus would belong to Dorsey, it might be a question, how far he would be bound by his stipulation with the trustees to pay their commissions for postponing the sale, though such engagements, under ordinary circumstances, should not, I think, be regarded with a very favorable eye. But as there is no surplus, the proceeds of sale, on the contrary, being altogether insufficient to pay the claims of creditors who come in after the Baltimore Life Insurance Company, it appears to me quite plain, the claim cannot be allowed. If allowed at all, it must be at the expense of parties, who neither approved or knew of the stipulation; and those who did know and approved of it, bear no part of the burden, the claim of the Insurance Company being paid in full, and there being nothing left for Dorsey, whether the commission is allowed or not.

There is, moreover, another reason, which is conclusive against the right of the trustees to have this commission paid out of the proceeds of sale. Their contract was with Edward H. Dorsey, *personally*. The report states, that "the said Edward entered into a stipulation with your trustees for payment of commissions and expenses." The contract was not that they should be paid *out of the proceeds of sale*, but that Dorsey should pay; and to Dorsey, it seems to me, they must look for payment. If it had been intended that the commis-