

sion should come out of the proceeds of the sales, the contract should have been entered into by the Insurance Company, the creditor, as well as by Dorsey, because, in the event of a deficiency, the loss would have fallen upon the creditor; and, therefore, the fact, that it was the stipulation of Dorsey alone, is strong to show, that he, and he alone, was to pay it.

I am, therefore, of opinion, that no commissions can be allowed upon the postponed sale. The trustees are, of course, entitled to commissions, according to the rule of the Court, upon the proceeds of sale actually made, and to all the usual expenses attending it, and the preceding attempt to sell, which was ineffectual.

It is believed that the decision of these two questions, will enable the Auditor to state an account, finally settling the whole case.

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DONALDSON and MAYER, for Swann, and the Trustees.

R. W. GILL, for Glenn, and Patterson.

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[Separate appeals were taken by Swann, and the trustees, from the order of the Chancellor, passed in accordance with the above opinion. Upon the appeal of the trustees, the order disallowing their claim has been affirmed. The appeal of Swann, is still pending.]