

money into court, and paying it away in the manner directed; or, in other words, for the performance of all the duties specified in the decree, and the subsequent orders in relation to the sale and its proceeds. It is sufficiently evident, from the language of the rules, graduating the rate of the commission into the form of poundage fees, that the commission allowed to a trustee has never been considered, in any respect, as a commission in the mercantile sense of that term. A trustee of this court is a person of legal constitution, with legal duties; and though some of his duties may have a mercantile mixture in them, he does not transact them as a merchant. He acts altogether as a legal officer, and must be paid, as such, in proportion to his diligence, skill, trouble and risk; not exactly according to the value of the subject in litigation.^(s) And therefore the term *commission*, in the mercantile sense, cannot be applied to the compensation of a trustee, or any other officer of this court. But it has been found, in many cases, to be highly expedient, if not absolutely necessary, to have the property sold by an auctioneer; and it is obviously for the benefit of those concerned, that all sales should be so conducted,^(u) although no fee is allowed to a sheriff for so making a sale.^(v) Therefore it has been deemed proper to permit the trustee to employ an auctioneer, to whom may be allowed a fee, not exceeding five dollars, for each separate and unconnected sale.

Considering the nature of the office of a trustee, it follows, that as on the one hand, his compensation may, because of the discharge of his duties being attended with a very unusual degree of labour and risk, be increased; so, on the other hand, his compensation, because of his duties having been improperly or but partially performed, may be altogether withheld, or proportionably diminished. As where it appeared, that the trustee had been under the necessity of making several journeys or voyages, or had already, and should thereafter incur much extraordinary trouble for the purpose of executing the decree, he was allowed a compensation, in addition to the commission specified by the rule.^(w) On the other hand, where the

^(s) The Rendsberg, 6 Rob. Adm. Rep. 164; Wood v. Freeman, 2 Atk. 542.—^(u) The Rendsberg, 6 Rob. Adm. Rep. 168.—^(v) The King v. Crackenthorp, 2 Anstr. 412.

^(w) The Rendsberg, 6 Rob. Adm. Rep. 163; Hindman v. Clayton, MS., 8th March, 1805.

MILLAR v. BAKER.—This was a creditors' bill, filed on the 12th of February, 1796, to have the real estate of the late Christian Baker, lying in Frederick county, sold to pay his debts, &c. On the 2d of June, 1796, it was decreed, in the usual