

sale equal to the sum allowed to him as commissions upon the whole, by a previous order of the court. In such case the court cannot revoke its order, merely because of the death of the trustee; and, therefore, the only mode in which this double charge could be prevented or corrected, would be to alter the practice, so as to postpone the payment of the trustee's commission until the whole of his duties had been performed, or to authorize summary proceedings to be instituted, to make his representatives refund in part, with which the succeeding trustee may be compensated for his trouble in collecting the balance. Under such circumstances, it seems to be fair, by way of analogy to the rule laid down by the legislature in regard to sheriffs, and others,<sup>(b)</sup> to apportion the commission or poundage, where it can be done, between the preceding and succeeding trustee according to the sum which each may have collected, or on a consideration of the trouble and merits of each. But in this case the fund has been already charged with full commissions; and therefore should not now be again charged with more than a necessary recompense to the present trustee for his trouble; which in this, as in all similar cases, must be regulated according to the services actually rendered.

Whereupon, it is ordered, that this trustee be and he is hereby allowed half commissions on the amount stated to have been received by him.

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### McKIM v. THOMPSON.

To obtain an order upon a defendant to bring money into court, before the final hearing, it must appear, that he who asks for such an order has an interest in the money proposed to be called in; and that he who has it in his hands has no equitable right to it; and the facts from which this appears must be found in the case as it then stands, either admitted or so established as to be open to no further controversy at any subsequent stage of the proceedings.

A defendant cannot be allowed to put in a supplemental answer, except under very special circumstances.

An appeal does not lie from a mere interlocutory order, by which nothing is finally settled between the parties.

The case referred, and a decree upon the award.

It appears, that *Marcus Heyland*, for the purpose of carrying on the business of a merchant in the city of Baltimore, went to Eng-

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(b) 1795, ch. 88, s. 6; 1813, ch. 102, s. 5; Bac. Abr. tit. Sheriff (1).