

and agreed upon by the parties. And although the credit is entered on the 12th of November, 1842, prior to the allowance of commissions by the Orphans Court, the single bill of Stewart appended to the settlement, and given for the balance ascertained by it to be due, bears date on the 21st of December, 1843, upwards of eleven months after the allowance. In addition to this, it appears by a paper proved to be in the hand writing of Stewart, and dated on the 23d of the same month and year, that to secure the payment of the same precise sum he conveyed to Brown, by a bill of sale, certain articles of agricultural produce, which, notwithstanding he, Stewart, afterwards sold.

Now it is said, that though Stewart, in this solemn and authoritative manner recognized his indebtedness to Brown in the sum fixed by the settlement, and that although he did this after he knew or certainly had the means of knowing the amount of commissions allowed by the court, that still he is not to be concluded, but may now open that settlement, and show it to be erroneous with respect to transactions and proceedings which had occurred before he signed and sealed instruments acknowledging his indebtedness, in the sum in question, in the most obligatory form known to the law.

No attempt has been made to impeach the settlement on the ground of fraud, and I can see nothing in the evidence to show that these instruments were executed under the influence of mistake. The only witness who speaks upon the subject of commissions is Mr. Camden, and if he is to be credited, and there is nothing in the cause upon which a suspicion of his veracity can be founded, the amount of compensation to be paid by Brown to Stewart for such services as he might render as one of the administrators, was referred exclusively to the discretion of the former.

Conceding the agreement between these parties to be proved, it is supposed it is obnoxious to the remarks of the Court of Appeals, in the case of *Owings vs. Owings*, 1 *Har. & Gill*, 484, in which agreements transferring the right to administer upon an estate to a third party, in consideration of receiving from