

marked B, and signed on the 2d September, 1846, by the counsel, and Gorman and Riddle. The counsel for Putney insists, that the trustee's demand for commissions must be limited to the sum of \$100, as provided in the contract of the 31st January, 1845, and signed by the counsel, and Gorman and Riddle. It is true, that by that contract, the trustee did agree to receive only the sum of \$100, in the event of his being required by the government, to give his receipt for any moneys which might be recovered; but, it is equally true, that by the subsequent contract of the 2d January, 1846, signed by two of the counsel, and Gorman and Green, the trustee, it was stipulated, that the latter should receive a proper compensation out of these moneys. By the agreement of 1845, which limits the trustee's allowance for commissions to the \$100, it is evident, that he was to be merely passive; passing his receipt for the money, if required to do so by the government, but making no exertion to recover it; whilst by that of 1846, he engaged to exert himself to secure the payment of the claim by the government, and to prevent any difficulties which the creditors might interpose, and hence the modification of the agreement, with regard to commissions.

So far as Gorman and Riddle are concerned, they being parties to the paper marked B, the allowance to the trustee of these sums is not to be questioned. And, if Putney seeks to avail himself of the agreement of January, 1845, to cut the trustee down to \$100, he must also submit to be bound by that of January, 1846, which stipulated, that the trustee should receive a proper compensation for the services therein agreed to be performed.

Putney was no party to either of these contracts, and he cannot be permitted to have the benefit of the one, without being bound by the other. He must take both, or neither. And if he repudiates both, the parties are thrown back upon the deed of trust, of 1839, under which the trustee is in terms entitled to a reasonable commission, and his expenses. I think, therefore, that Green, the trustee, is to be allowed for these two sums.