Greenwade,
4 He is to be credited with all the expenses costs fees and taxes incident to the above trusts undertaken by John T Greenwade and which have been paid by Brady out of the trust fund.
5 He is to be credited with the several fees paid by him at different times to Counsel in relation to the trust estates inclusive of Charity Greenwades estate and including a fee of twenty dollars paid to J A Pearce Esq for drawing up and trustees report of sales.
6 He is entitled to eight per cent Commissions on the amount of sales to be allowed to him out of the trust fund.
7 Brady is not entitled to retain $300 out of the trust fund as an equivalent for a tract of land called Walnut Island "claimed by him as part of the tract called Sellers" sold to Joseph Lilley. The proof in the cause does not justify such an allowance.
8 John T Greenwade had no legal right or authority to sell the negro slaves Bill and Jim when he sold them to Brady The instruments exhibited as Bills of sale of these two slaves did not divest the title to them out of Brady and the other Mortgages in the Mortgage dated June 17th 1856 and vested in Brady in his individual dated right The Mortgage was then still uncancelled and unsatisfied, and it continued up to the 17th day of January 1860 when Greenwade executed the deed of trust to Brady conveying all the personal property chattels and effects belonging to the said party of the first part Greenwade a particular description of which will be found in a Mortgage executed by the said John T Greenwade to Passwaters from the Oregonal date in a blank memorandum of the deed of trust which is quite legible) that the deed was to have been executed on the 27th day of July 1858 when Brady had purchased the negro Jim (September 15th 1857) but Bill was not purchased till May 2d 1859 In his answer filed February 5th 1864 Brady admits the purchase of these slaves and exhibits the bills of sale as parts of his answer in which he alleges that he had purchased the negroes long prior to the execution of the deed of trust so far as relates to Bill he was purchased after the deed of trust was drawn but before it was acknowledged. But if there be any ambiguity about the conveyance of these slaves by the deed of trust it is removed by the express reference to the deed of Mortgage in which the negroes are clearly named as to the conveyance of his other personal property by Greenwade by the deed of trust the acts of Brady in selling that property and the acquiescence of Greenwade in that sale go clearly to show their construction and understanding of the deed of trust so far as relates to that property. In legal contemplation at the time purchased by Brady in the two slaves was Greenwade's Equity of redemption They were still liable to be sold for the Mortgage debt the two papers purporting to be Bills of sale of the two negro slaves not having been acknowledged and recorded are void as Greenwades creditors.
I am of opinion that the slaves in question passed under the deed of trust to Brady and that he must account for their value at the times he paid for them with interest from the time of the sale in each case
None of the accounts of the Auditor heretofore stated in this case can be affirmed but each and all of them are rejected and set aside and the various exceptions filed by the several parties to this cause necessarily

fall to the ground together with the accounts to which severally apply But to be more explicit Greenwade and Sellers exceptions to the Auditors 3d acct and to the Auditors second account are sustained except the items A B C D E F and I of their 3d exception which are overruled the item H is sustained. The 1st 2d 3d 4th 5th and 7th of Bradys exceptions are left to be regulated by the Auditor his 6th exception relating to Walnut Island is overruled.
10th The papers in this case are referred back to the Auditor with directions that he shall state an account between the parties in conformity with the views expressed supra in the foregoing opinion with the further direction that all the surplus fund remaining after sales paying the claims or debts for which Brady was security, as herein before mentioned shall be applied to the claims of Joseph Lilley filed in this cause.
James Smith.
And afterwards to wit on the 28 day of June in the year last aforesaid the Court here passed the following Order to wit. "By the Circuit Court for Allegany County It is hereby ordered and adjudged this 28th day of June 1865 that the sales of the tract of land sold by Samuel H Brady trustee under the deed from John T Greenwade to said Brady to Joseph Lilley and which is described in the survey made by Thomas J White and the Courses and distances and field made by said White and filed in the cause No 1024 on the Trust Docket of said Court be and the same is hereby ratified and confirmed and the said Brady as trustee is hereby ordered to execute the deed filed with the petition of said Lilley filed in said cause on the 13th day of October 1864 at expense of said petition upon said Lilley's paying all expenses attending the execution of said deed.
James Smith.
And afterwards to wit on the Eighth day of July in the year last aforesaid was filed in the cause here a petition in the words following to wit.
John T Greenwade to Samuel H Brady Deed of trust No 104 on Trust Docket
To the Honorable James Smith Judge of the Circuit Court for Allegany County
The petition of Samuel H Brady respectfully represents to your Honor that he desires to take the testimony of a single witness before the Auditor previous to his stating the accounts under the order of your Honorable Court heretofore passed in this cause George A Pearce Solicitor S. H. Brady
And thereupon the Court here passed the following order to wit.
The above petition having been read and considered It is this 8th day of July 1865 by the Circuit Court for Allegany County ordered that the petitioner have leave to take testimony before the Auditor in this case provided four days notice of the time and place be given to Josiah H Gordon Solicitor for Joseph Lilley and John T Greenwade of the said testimony be taken and so before the 15th July 1865.
James Smith
And afterwards to wit on the 10th day of July in the year last aforesaid was filed in the cause here an agreement in the words following to wit.
John T Greenwade to Samuel H Brady No 104 Trusts
In this case we admit that Samuel H Brady received the possession of the negro boys Jim and Bill "mentioned in the receipts of John T Greenwade filed with the answer of S H Brady to the petition of Lilley and Greenwade filed in the above at the respective dates of such receipts and we waive the taking of further testimony.