

The commissions allowed a collector, and those allowed an executor, are distinct and independent. It is immaterial, therefore, that the commissions allowed the two officials aggregate more than ten per. cent. *Wilson v. Wilson*, 3 G. & J. 22. And see *Lemmon v. Hall*, 20 Md. 171; *Renshaw v. Williams*, 75 Md. 508.

The right to commissions does not arise from contract, but is founded on the statute. The act of 1884, ch. 470, can not be construed retroactively so as to bring within its operation accounts stated prior to its adoption. *Gaines v. Reutch*, 64 Md. 521.

One administrator is not entitled to the entire commission because he did all the work. *Richardson v. Stansbury*, 4 H. & J. 275; *cf. Brown v. Stewart*, 4 Md. Ch. 368.

Commissions are not earned until the administration account is passed. When commissions are forfeited. *Kealhofer v. Emmert*, 79 Md. 252.

As to an agreement to serve as administrator without commissions, see *Mott v. Fowler*, 85 Md. 676. And see *Ridgely v. Gittings*, 2 H. & G. 58.

For a case decided prior to the act of 1884, ch. 470, and involving the question of commissions as depending upon certain bonds being included in the inventory, see *In re Estate of Stratton*, 46 Md. 553.

As to the tax on commissions of executors and administrators, see art. 81, sec. 115, *et seq.*

#### Costs and Counsel Fees.

Caveat proceedings are not litigation "for the recovery or security of any part of the estate," the cost of which may be allowed an administrator *pendente lite*; *contra*, where an executor is called upon to defend a will already probated. *Harrison v. Clark*, 95 Md. 313; *Miller v. Gehr*, 91 Md. 714; *Dalrymple v. Gamble*, 68 Md. 165; *Townshend v. Brooke*, 9 Gill, 91. And see *Koenig v. Ward*, 104 Md. 565; *Tilghman v. France*, 99 Md. 616.

Counsel fees may be allowed an administrator, however, who successfully establishes his right to letters. *Ex Parte Young*, 8 Gill, 286; *cf. Koenig v. Ward*, 104 Md. 565.

The administrator of a supposed intestate will not be allowed for services, costs, fees, etc., expended in unsuccessfully attacking a will probated in another state. This section construed in connection with section 104. *Dalrymple v. Gamble*, 68 Md. 163.

For a case denying the application of the words "for costs and extraordinary expenses (not personal) laid out in the recovery or security of any part of the estate" to an alleged attorney's fee, see *Flater v. Weaver*, 108 Md. 676. And see *Browne v. Preston*, 38 Md. 380 (involving a contingent fee); *Billingslea v. Henry*, 20 Md. 287; *Edelen v. Edelen*, 11 Md. 416.

While the allowance of a counsel fee is not the subject of issues, it is the subject of appeal as to the reasonableness of the amount allowed. *Miller v. Gehr*, 91 Md. 714; *Maynadier v. Armstrong*, 98 Md. 180.

#### Funeral expenses.

It is within the discretion of the court to allow funeral expenses not to exceed the maximum mentioned in this section; hence, such matter is not a proper subject for issues. *Maynadier v. Armstrong*, 98 Md. 180. And as to funeral expenses, see *Wethered v. Safe Deposit Co.*, 79 Md. 160; *Lentz v. Pflert*, 60 Md. 300; *Shaeffer v. Shaeffer*, 54 Md. 684.

A husband as executor of his wife's estate will not be allowed for funeral expenses, medical attendance and tomb-stone—see notes to article 45, section 21; *Stonesifer v. Shriver*, 100 Md. 50.

As to funeral expenses, see also, art. 16, sec. 218.

#### Generally.

Cited but not construed in *Winder v. Diffenderfer*, 2 Bl. 207; *West v. Smith*, 8 How. 412.

See sections 6, 65, 74 and 95 and notes.

Taxes are a preferred debt—art. 81, sec. 70; see also, art. 81, sec. 68.