

Commissions.

No provision of testator can affect discretion vested in orphans' court to fix commissions within limits prescribed by this section, and failure of executor to claim commissions is immaterial. (See, however, sec. 6.) Construction of a direction in a will that executor be allowed "reasonable" commissions. When only an appeal lies from action of court in fixing commissions. *In re Watts*, 108 Md. 698; *Handy v. Collins*, 60 Md. 231; *Dalrymple v. Gamble*, 68 Md. 167; *In re Baxley*, 47 Md. 561; *Wilson v. Wilson*, 3 G. & J. 23; *Ringgold's Case*, 1 Bl. 9; *McKim v. Duncan*, 4 Gill, 84; *Nichols v. Hodges*, 1 Pet. 565. *Cf.* *State v. Baker*, 8 Md. 49.

An executor will not be allowed commissions on notes or bonds for payment of money unless he collects same; *contra* as to stocks and bonds payable to bearer, and having a market value. *Handy v. Collins*, 60 Md. 231 (decided prior to act of 1884, ch. 470). *Cf.* *Hardt v. Birely*, 72 Md. 138.

Where the will contains a bequest to one of two executors in lieu of commissions—see sec. 6—the other executor can only be allowed one-half of the maximum stated in this section. *Lee v. Lee*, 6 G. & J. 316.

The minimum rate of commissions as prescribed in this section only applies where administration is full and complete. Commissions for partial administration. *In re Estate of Baxley*, 47 Md. 559; *Parker v. Gwynn*, 4 Md. 425; *McPherson v. Israel*, 5 G. & J. 63.

The right to commissions does not arise from contract, but is fixed by statute, and orphans' court may not allow commissions in excess of percentages specified in this section; such commissions should be apportioned among successive personal representatives. Appeal. *St. Mary's Orphan Asylum v. Hankey*, 137 Md. 571.

Commissions are compensation allowed to executor or administrator for services performed in settlement of estate, not merely for statement of account. What commissions are allowed, and what disallowed. *Crothers v. Crothers*, 123 Md. 605.

Since allowance of commissions to administrator is within discretion of court, its action is not subject to appeal. It is mandatory upon orphans' court to fix amount of commissions administrator should receive. *Beachley v. Estate of Bollinger*, 119 Md. 156.

The commissions allowed a collector, and those allowed executor, are distinct and independent. It is immaterial, therefore, that commissions allowed 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 statute. The act of 1884, ch. 470, cannot 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 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 act of 1884, ch. 470, and involving question of commissions as depending upon certain bonds being included in inventory, see *In re Estate of Stratton*, 46 Md. 553.

As to the tax on commissions of executors and administrators, see art. 81, sec. 119, *et seq.*

Costs and counsel fees.

Caveat proceedings are not litigation "for the recovery or security of any part of the estate," cost of which may be allowed administrator *pendente lite*; *contra*, where executor is called upon to defend 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 administrator, however, who successfully establishes his right to letters. *Ex parte Young*, 8 Gill, 286. *Cf.* *Koenig v. Ward*, 104 Md. 565.

Counsel fees will not be allowed unsuccessful claimants in connection with litigation involving question of to whom an estate belongs. *Dorsey v. Dorsey*, 10 Md. 471, followed. Cases distinguished. *McComas v. Wiley*, 135 Md. 591.

The administrator of a supposed intestate will not be allowed for services, costs, fees, etc., expended in unsuccessfully attaching a will probated in another state. This section construed in connection with sec. 106. *Dalrymple v. Gamble*, 68 Md. 163.