

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. 104, *et seq.*

Costs and counsel fees.

Costs and expenses may only be allowed for recovery or security of part of estate and counsel fee could not be allowed by administrator in connection with controversies between numerous persons claiming as relatives of deceased and the Mayor and City Council of Baltimore. Baltimore v. Link, 174 Md. 111.

Allowance of counsel fees out of estate under this section, when justified. Mudge v. Mudge, 155 Md. 3.

Counsel fees will not be allowed widow, who secured appointment as administratrix without notice to children of her husband who were also eligible for appointment, in opposing petition of children for revocation. Counsel fees not allowed widow in seeking reappointment, although reappointment, after revocation. Horton v. Horton, 158 Md. 634.

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. 109. Dalrymple v. Gamble, 68 Md. 163.

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

Funeral expenses.

Where charges are excessive, burden of proof is on undertaker and administrator. Tsaracklis v. Characklis, 176 Md. 31.

Sec. 465, Art. 4 (1938 Ed.), Public Local Laws, relating to funeral expenses is not in conflict with this section. Watson v. Cook, 170 Md. 377.