

County, whereby he allowed the executors the sum of \$3,000 for their care, pains, and trouble as such executors, and in lieu thereof, awarding them the sum of \$815.73.

The appeal to Divisional Court was heard by HON. SIR WM. MULOCK, C.J.Ex.D., HON. MR. JUSTICE CLUTE, and HON. MR. JUSTICE SUTHERLAND, on 12th April, 1912..

C. A. Moss, for the executors, appellants.

R. C. H. Cassels, for the residuary legatee.

F. W. Harcourt, K.C., for the infants.

THEIR LORDSHIPS' judgment was delivered by

HON. SIR WM. MULOCK, C.J.Ex.D. (V.V.):—There is no fixed rate of compensation applicable under all circumstances for services of executors and trustees. They are entitled to reasonable compensation; and what is reasonable compensation must be governed by the circumstances of each case: *Robinson v. Pett*, 2 W. & T. L. C. Eq. 214. Various authorities upon the subject are collected in Weir's Law of Probate, p. 389, *et seq.* An examination of the cases there cited shews the following allowances to executors according to circumstances. In some instances they have been given a commission on moneys passing through their hands, varying from one to five per cent.; in others, a bulk sum; in others, a commission and a bulk sum; in others, an annual allowance in addition to or exclusive of commission.

As said by Chancellor Vankoughnet in *Chisholm v. Barnard*, 10 Gr. 481: "Five per cent. commission on moneys passing through the hands of executors or trustees, may or may not be an adequate compensation, or may be too much, according to circumstances. There may be very little money got in, and a great deal of labour, anxiety, and time spent in managing an estate, when five per cent. would be a very sufficient allowance."

And in *Thompson v. Freeman*, 15 Gr. 385, Spragge, V.-C., says: "On the other hand, the amounts might be so large, and the duties of management so simple, that five per cent. would be more than a reasonable allowance."

Thus, there being no established uniform rate or method of compensation, it is necessary here to consider the nature of the estate and the duties required by the testator to be performed by the executors in order to determine what would be a proper allowance for their care, pains, and trouble.