

fixed by a general rule of the Court in that behalf. Upon this the Chancellor passed a general order providing a scale of per-centages by way of commission, as follows:—For receiving and paying out money, five per cent. on all sums not exceeding \$1,000; two and a half per cent. upon all sums between \$1,000 and \$5,000; and one per cent. for all above \$5,000. The mode adopted of computing the allowance was to reckon two and a half, one and a quarter, or a half per cent., according to circumstances on the aggregate amount received; and the same in respect of the aggregate amount expended. Thus if \$10,000 had been collected, the per centage on \$1,000 would be \$25, on 4,000 would be \$50, and on \$5,000 would be \$25; total amount allowed, \$100, and the same scale of allowances on the amount paid out. These regulations were afterwards changed upon legislative interference, and the rules in New York are now settled by the revised statutes of 1852, in which it is provided that "on the settlement of the account of an executor or administrator the Surrogate shall allow to him for his services, and if their be more than one, shall apportion among them, according to the services rendered by them respectively, over and above his or their expenses:—

"1. For receiving and paying out all sums of money not exceeding one thousand dollars at the rate of five dollars per cent.

"2. For receiving and paying any sums exceeding one thousand dollars and not amounting to five thousand dollars, at the rate of two dollars and fifty cents per cent.

"3. For all sums above five thousand dollars at the rate of one dollar per cent.; and in all cases such allowance shall be made for their actual and necessary expenses as shall appear just and reasonable."—*Rev. St. N. Y., Tit 3, Part II., Cap. VI., Sec. 64.*

The manner of estimating the allowance is, and always has been the same in the New York Courts—that is to say, full per-centages are not reckoned both on the receipts and disbursements: one half commission is allowed on the amount received, and one half on the amount paid out. Their practice in ordinary cases is to reckon commission upon the aggregate amount of the receipts and expenditures for the whole period of accounting. Where however an account is taken with annual rests for the purpose of charging interest on the yearly balances, then the commission

is computed upon the aggregate amount of receipts and disbursements during each year. — *Vanderheyden v. Vanderheyden*, 2 Paige, C. R. 237.

It may be noticed that these provisions and regulations of the New York law are objectionable in extending merely to the receipt and payment of money, and in not providing any allowances for care and trouble in the management of the estate. And apart from this consideration, many cases will occur in which the rate allowed may on the one hand prove inadequate, or on the other hand, exorbitant. It would seem the better course not to fix the remuneration by the terms of an inflexible tariff, which must be equally applied to all estates, however varied in their circumstances and however differing in the degrees of skill, care and responsibility, requisite on the part of the executors. In Canadian practice accordingly, the rate of compensation has been left to the judgment of the officer of the Court, who exercises his discretion upon a survey of all the special features of each case.

In our next paper we shall comment upon the scope of the Canadian Act, and collect the decisions thereupon.

#### ACTS OF LAST SESSION.

The Bills that were passed during the last Session of the Ontario Legislature received the Royal assent on the 15th February last. The following are those of general interest to our readers with their numbers as they appear in the list published in the *Gazette*:—

8. *An Act* to make valid certain Commissions for taking affidavits issued by the Court of Queen's Bench.

This Act refers to some invalid commissions issued under an Act of Upper Canada in the second year of George IV., without the seal of the Court.

11. *An Act* to alter the names of the Superior Courts in Ontario.

This Act we publish in this number.

14. *An Act* to confirm the deed for the distribution and settlement of the estate of the Honourable George Jarvis Goodhue, deceased.

We have incidentally referred to this, and to the Sprague Will Act, and to the Caverno Act, as measures of a most objectionable nature, and may refer to the subject hereafter at greater