in Chancery: *Harrison* v. *Patterson*, 11 Gr. 105; see s. c., 7 Gr. 531.

II. *Scope of the jurisdiction.*—The Court will not extend this act to all trustees, but to those only who act under wills or testamentatory dispositions of property. In other cases the general rule applies as it obtains in England: *Wilson* v. *Proudfoot*, 15 Gr. 109. Soon after the act was passed, it was held that compensation was thereby authorized to trustees and other persons acting under wills in respect of real estate, as well as to executors in respect of personal estate. This has always been followed, and may now be regarded as the settled rule of the Court on this point: see *Bald* v. *Thompson*, 17 Gr. 157, 158.

III. *Grounds upon which compensation is allowed, or disallowed.*—In considering in what cases remuneration should be awarded, it is of value to bear in mind the considerations which influenced the Court formerly in refusing any allowance. One, if not the principal consideration was, that the trustee might not make his duty subservient to his interest—that he might not create work with which to charge and load the estate. If it was considered necessary to remove every temptation of this kind, by refusing all payment for such work, it may fairly be argued that it never could have been intended by the Legislature that the trustee should be paid when he had not done the work, or had done it in such a way as to prejudice the estate or benefit himself.

The statute means that for such portion of the duties as the executor has bestowed his care, pains, trouble and time upon, in the proper administration of the estate, he shall receive reasonable compensation. When he has neglected any portion of his duties, or has applied his care and pains in mal-administration, it would scarce be asked that in respect of it, however much trouble may be brought upon him thereby, he should receive any wages or reward. The Legislature did not intend that when an executor had been guilty of any misconduct he should be deprived of any remuneration whatever, even in respect of those partial services which had been faithfully rendered. The statute evidently contemplates and indeed provides for payment of work from time to time. Looking to the large powers which this act presumes to compel defaulting trustees and executors to make amends for their misconduct, it would not have been considered necessary to deprive them, any more than any other agent, of payment for what had been well done: *McLennan* v. *Heward*, 9 Gr. 279.

The compensation is for care, pains, and trouble, and time expended: hence as a general rule an executor should not be allowed commission on sums which he has not realised and with which he is chargeable in consequence of his neglect or other misconduct: *Bald* v. *Thompson*, 17 Gr. 154. In respect of all moneys disbursed by him, the executor should have his commission, and if disallowed by the master the court will rectify his finding in this respect: *Ib.* In no case will executors be entitled to any allowance for services performed for the estate by another person who acts gratuitously, unless it can be shewn that they had labour and trouble during the same time in the management: *Chisholm* v. *Barnard*, 10 Gr. 479.

The misconduct of an executor may be punished, not merely by charging him with interest and costs, but also by the disallowance of all compensation to him under the statute, his right to such compensation depending altogether upon the circumstances of the case, having regard to whether or not his conduct has been blameworthy: *Gould* v. *Burritt*, 11 Gr. 523. When an executor has retained moneys of the estate in his hands, and has been charged with interest and rests in passing his accounts, yet he will not be deprived of his commission if he acted in the exercise of his best discretion in keeping such moneys in hand: *Gould* v. *Burritt*, *ubi sup.*, and see *McLennan* v. *Heward*, 9 Gr. at pp. 284, 285; *Landman* v. *Crooks*, cited in 9 Gr. 285.

If the executor deal with the estate in a manner not authorized by the will, but yet in the event his dealings assume a shape sanctioned by the will, a commission may be allowed in respect of such transactions, if they have been as profitable as if the directions of the will had been strictly followed; but if less profitable, then no commission should be allowed: *Thompson* v. *Freeman*, 15 Gr. 384.

We shall in our next and last paper on this subject arrange the remaining cases under their appropriate heads.