

PAYMENT OF EXECUTORS—THE BENCHERS OF THE LAW SOCIETY.

manual or physical labour, and although a clerk has been employed, yet if they require and cause anxiety and watchfulness, skill and exactness, good judgment and honesty, all of which are rendered, then the allowance should be liberal: Per Vankoughnet, C., in *Proudfoot v. Tiffany*, cited in *Denison v. Denison*, 17 Gr. at p. 311. See *Matthews v. Bagshard*, 15 Jur. 977.

The present Chancellor has laid it down that regard should be had to the *amounts* passing through the executors' hands. In fixing the poundage payable to sheriffs on levying moneys under execution, the courts, both of common law and equity, have considered the amounts a proper element of consideration, allowing the maximum percentage on small sums, and reducing the scale as the amount increases. This is a principle which may well be applied to executors' compensation. In the case in hand before the court, where it appeared that the estate was very large, and where there was no evidence of any particular trouble in the management, it was deemed reasonable to allow, for collecting and investing moneys upon mortgage up to \$600, five per cent.; and for sums above that amount, three per cent. was thought sufficient: *Thompson v. Freeman*, 15 Gr. 384. In *Bald v. Thompson*, 17 Gr. 154, five per cent. was allowed on the purchase money, principal and interest, of lands collected; and it was said that in a special case, the executor might be allowed more for effecting sales of the property. In *Chisholm v. Bernard*, 10 Gr. 479, it was remarked by the court that five per cent. on moneys passing through the hands of the executor 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, where five per cent. would be a very insufficient allowance.

Thompson v. Freeman also lays down the principle that if the executor deals with the estate and settles claims in such a way that the sums upon which the commission is claimed do not actually pass through his hands, then the remuneration should be fixed, not by a percentage, but by a compensation commensurate to the labour, care and anxiety involved. See, upon this head, *Campbell v. Campbell*, 2 Y. & Coll. C. C. 607.

Where there are several executors, the one

upon whom the chief burden of management rests may be entitled to twice as much compensation as his co-executor, and it will be left to the Master to apportion the commission among the recipients as they severally deserve: *Denison v. Denison*, 17 Gr. 311.

When the services extend over a considerable period, the commission should be allowed from time to time as earned, and credited thus upon the accounts, so as to reduce *pro tanto* the interest and perhaps the principal chargeable against the executor. If the account is not taken in this way, which is the strictly correct mode, then in some cases interest may be allowed upon the commission: *Denison v. Denison*.

After the Master has fixed the executor's remuneration, the court are very slow to interfere with his finding, unless he has been wrong in principle, or has been manifestly exorbitant or inadequate in his allowance. The general rule is—as laid down in *Knott v. Cutler*, 16 Jur. 754, S. C. 16 Beav.—that the quantum being entirely in the officer's discretion, the court will not entertain an appeal therefrom.

THE BENCHERS OF THE LAW SOCIETY.

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