

discussion an able and interesting opinion, in which the case for the bank is presented with great clearness. Justices Cross and Ramsay, on the side of the majority of the Court, adopt a view which would require greater circumspection on the part of banks making advances upon such security.

### NOTES OF CASES.

#### COURT OF QUEEN'S BENCH.

QUEBEC, Dec. 6, 1884.

Before DORION, C.J., RAMSAY, TESSIER, CROSS,  
and BABY, JJ.

YOUNG et al., Appellants, and RATTRAY, Re-  
spondent.

*Executor, Powers of—C. C. 914—Legacy—  
Value of Services—Acquiescence.*

*The general powers of an executor include the engagement of clerks to keep the books of the estate, and to carry on its affairs. These general powers are not restricted by the fact that the executor has received a legacy under the will, unless it be apparent from the terms of the testament that the legacy was intended as compensation for special services.*

*The clerk employed by an executor to keep the books of the estate went on for several years receiving \$400 per annum for his services, and himself entered the amount in the books: Held, an acquiescence in that rate of remuneration.*

RAMSAY, J. This is an action brought by the respondent on a *quantum meruit* for work done as clerk and agent of the estate of the late D. D. Young, against the representatives of that estate.

The first question that presents itself is whether the representatives of the estate are liable at all, not having employed the respondent. On this point there seems to be no difficulty. Rattray, who was the clerk of the executor Knight, was employed by the latter to do the work, and there is no doubt in my mind that the general powers of an executor justify him in employing those necessary to keep the books of the estate and carry on its business, precisely on the same principle that an executor employs a carpenter or any other mechanic, or a labourer to repair the

houses or cultivate the fields forming part of the estate. Further, I don't think that this general power is modified in the least by a legacy to the executor, unless it should appear by the terms of the will that this legacy was to be the equivalent of certain services. When the law says that the duties of an executor are performed gratuitously, it merely means that for those duties which specially and particularly belong to the executor, and which can be performed by no one else, he shall not charge—for instance, for the exercise of his judgment in making investments, signing documents, and other such acts of a purely personal character. It would be a most extraordinary disposition of the law if it said that when an estate of perhaps \$100,000 passed into the hands of an executor, it should be relieved of the costs of administration. But the law does not say that, but the very reverse. (See 914 C.C.)

The next question is, was there an engagement, express or implied, by Mr. Knight? This question can only be cleared up by Mr. Knight's testimony, and by the circumstances of the case. As to the engagement it is perfectly clear by the testimony of Knight no rate of remuneration was fixed upon at first. He says:—"We should pay him what was right and fair. At that time I believe there was nothing said about a special rate." The difficulty then is to establish what was a "right and fair remuneration." Respondent desires to establish this by general testimony; appellants say that though not settled at first, it became settled by the acquiescence of the respondent, and by his taking deliberately and for a series of years, a remuneration at the rate of \$400 a year. But Mr. Knight tells us that it was worth \$800, and \$800 has been allowed by the judgment appealed from.

The question as to what certain work is worth is often a very doubtful one. It depends much on the scale of remuneration the person performing it receives in other work he does, or what he is able to obtain. It is then much safer to establish the price of work at the rate the parties have agreed upon. Now, in this case, we have ample opportunity of discovering by the course of events what the parties considered