CHARLES R. CAMPBELL, Executor of the Will of THOMAS DORUM, Petitioner, *v.* HOWAH DORUM, Widow of the Late THOMAS DORUM, MOMO GRAY, Guardian with HOWAH DORUM of RACHEL MARSAH DORUM, and MARSAH, Legatees Under the Will of THOMAS DORUM, and NETE-SIE BROWNELL, Resident Judge of the Circuit Court of the First Judicial Circuit, Montserrado County, Respondents.

CERTIORARI TO CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued December 23, 1940. Decided February 21, 1941.

1. Generally speaking, an executor should not be required to render an account to anybody, but should administer the estate according to his own discretion and without being interrogated.
2. But the Court will not lay down a premise that an executor relieved by his testator from rendering an account is thereby entirely exempted from so doing.
3. Whether or not an executor or administrator is entitled to the advice and assistance of counsel in many of the duties devolving upon him differs in several jurisdictions as to the responsibility of the estate for compensation.
4. Provision may be made for the widow and minor children prior to payment of debts, except for administrative and funeral expenses.

Respondents, beneficiaries of an estate and petitioners in the lower court, filed a petition in the probate division of the circuit court for an accounting from petitioner, executor of the estate and respondent in the court below. From adverse rulings of the circuit court, petitioner moved for and was granted a writ of certiorari to the circuit court. On certiorari in the Supreme Court, *writ of certiorari quashed.*

Anthony Barclay and *A. B. Ricks* for petitioner. *Benjamin G. Freeman* for respondents.

MR. CHIEF JUSTICE GRIMES delivered the opinion of the Court.

The responsibility for paying funeral expenses and other debts, as well as paying legacies of a dead person and distributing the residue of an estate, most frequently devolves upon one sometimes called an executor, at other times an administrator.

An estate administered by an executor is said to be testate; that committed to the control of an administrator is characterized as intestate. The difference in their duties and responsibilities is more than the mere dissimilarity which the name suggests or that above indicated; for, to give but one illustration, an executor is appointed to the office by the deceased person himself within the body of the instrument known as his last will and testament. The testator may therein express such unbounded confidence as will relieve his appointee from filing any inventory, giving any bond, and rendering any account to anybody; while, on the other hand, by omitting one or more of such testimonials of confidence or by being silent on such questions altogether, the testator may leave his executor with but little more power and privilege than that with which an ordinary administrator is invested.

An administrator, on the other hand, is appointed by the court charged in the particular country with the oversight of intestate estates. He is an agent of the court appointing him, while an executor is essentially the agent of one no longer living to receive the executor's report of his conduct of affairs or to direct and guide him. Hence an administrator's duties are much more circumscribed and his responsibility much more limited, because every important act must be referred to his principal which, in such instance, is the court.

But it is not our intention at this time to prepare a dissertation on the similarities and differences between

executors and administrators; our duty is rather to deal with only such of those as may be germane to the proper determination of the case we are now about to consider.

One Thomas Dorum died in the city of Monrovia on the nineteenth of December, 1937, leaving a last will and testament executed on the ninth of August of said year. The principal beneficiaries under the will are or were the widow, Howah Dorum, his mother-in-law, Marsah, and his minor child, Rachel Marsah Dorum. One Momo Gray, the grandfather of the decedent's daughter, Rachel Marsah, was, along with the widow, appointed as guardian of the infant child, and these are the parties who are now respondents in this Court. Charles R. Campbell, the petitioner in this Court, was the sole executor named in the will. Testator's confidence in the ability and integrity of the said Charles R. Campbell to properly administer the estate was testified to by the seventh clause of the will which reads as follows:

> "I hereby nominate and appoint as my sole executor Mr. Charles R. Campbell and do request that he do [*sic*] not require to file bond nor render account to any court. Court is simply requested to probate this my last Will and Testament and assume no further jurisdiction."

The said executor has been throughout the proceedings in this case contending that with such a high testimonial of confidence in him, as the clause of the will above recited discloses, he should not, under any circumstances whatever, be required to render any account to anybody, but that he should be left to administer the estate according to his own discretion and without being interrogated or having his actions subject to review by any person or court whatever. Generally speaking, this in many instances may be correct, especially if the estate were being so administered as to cause perfect satisfaction to all those beneficially interested and thus to obviate any complaint against him. However, in the present matter

respondents were clearly not satisfied with the executor's management of the estate. As our law provides that "every act which is prejudicial to the interest of another is an injury, unless it be warranted by some law" (Stat. of Liberia (Old Blue Book) tit. I, § 2, at 22, 2 Hub. 1515), this action was commenced. The petitioner's contention would be unthinkable had he been a mere administrator, an administrator *cum testamento annexo* or an administrator *de bonis non,* for in every such case he would have been the agent of the court which had appointed him and, therefore, would have been compelled to render accounts at such periods as the judge of the court, his principal, might direct. But to lay down a premise that an executor relieved by his testator from rendering an account is thereby entirely exempted from so doing is absolutely incorrect, for, in the final analysis, whatever may be the differences between the rights, powers and duties of an executor or administrator, they are both trustees. Therefore, the exemption by the testator from accounting would not prevent any of the cestuis que trust who might be dissatisfied with the executor's execution of the trust from invoking the aid of a court of chancery or, as is better known in this jurisdiction, a court of equity to compel the executor as such trustee to render an account of how he has executed or is executing the trust estate committed to his care. *Cf. McKeigue* v. *Chicago & Northwestern Ry. Co.,* 730 Wis. 543, 110 N.W. 384, 11 L.R.A. (n.s.) 148 (1907); 11 R.C.L. *Executors and Administrators* § 2, at 19 (1916).

The general rule on this subject is as follows:

> "An executor or administrator may be required to report to the court at stated intervals, and it has been said to be essential to the preservation of the rights of creditors, legatees and other parties in interest, that the court should have power at all times to compel his personal attendance before the court. Although powers are sometimes confided to an executor, or more

properly to the person filling the office of executor, as a trustee, which are so delicate, and of such a nature, that a court cannot execute them, yet in many cases the discretion of an executor may be controlled by the court. A court *will not,* however, *interfere with the discretion placed in an executor without clear and adequate cause,* as where the executor or trustee is actuated by improper or selfish motives, or his *discretion is not exercised in good faith,* but arbitrarily and to further his own personal interests. The reason for this hesitancy on the part of the court to interfere is that the testator has a right to dispose of his property as he pleases, and he may subject all or any part of it to the discretion of his executor or trustee. This discretion, properly exercised, will not be interfered with by the courts. Where the power given to an executor to do or not to do a particular thing is wholly discretionary, the court has no jurisdiction to lay a command or prohibition upon him as to the exercise of that power, provided his conduct is bona fide, and his determination is not influenced by improper motives. *Id.* § 138, at 132 (1916). (Italics supplied.)

"In some jurisdictions executors and administrators may ask the instruction of a court of equity as to their duties under a will, and as to the effect of acts already done, unless the matter is one which can be more appropriately dealt with in the probate court. Equity may also, in its discretion, give instructions as to future accounts of which the probate court has no jurisdiction, although the latter court may pass upon them after their rendition and application for a final settlement. In a proper case a bill in equity may be brought by parties interested in the estate for a construction of the will and a determination of the rights of the complainants. In a few states the probate courts have concurrent jurisdiction with the courts of equity of a petition by the executor for instructions

as to the construction of a will, but, in general, this jurisdiction is now obsolete." *Id.* at 132–33.

In Liberia, however, the power to demand an accounting from an executor has been delegated by statute to the probate court in the following language:

". . . Said Court [probate court] shall have jurisdiction in the following matters, namely:

. . . . .

"3. To direct and control the conduct and settle the accounts of executors and administrators." Rev. Stat. § 1268.

With the premise above laid down, by settling the points hereinbefore discussed, let us now proceed to consider the further rival contentions of the parties now in litigation at this bar.

In a petition filed in the Probate Division of the Circuit Court of the First Judicial Circuit, the respondents, petitioners in the court below, complained *inter alia* that although ample provision had been made in the last will and testament of the testator for the maintenance of his surviving minor daughter, Rachel Marsah Dorum, one of the respondents, and the other legatees, and although the executor, now petitioner, received rents and payments from the government in arrears of the pension, nevertheless no payment whatever had been made to the widow for support of the testator's said minor child as provided for in the fourth paragraph of the said will.

No real answer was filed to the said petition, but in a document submitted, entitled "Report of the Executor," the theories advanced are: (1) The cash assets then in hand were insufficient to settle all the liabilities of the deceased, and (2) *All* liabilities would have to be settled before any legatees could be paid or provision made for the widow and minor child.

Such a contention seems not to be in accord with the recognized principles of law nor in harmony with considerations of natural justice; otherwise what would be-

come of the widow and minor children while awaiting the collection of assets and the settlement of debts?

In *Ruling Case Law* we have the following:

> "Among the foremost classes of claims recognized as entitled to priority of payment, are the expenses of the administration; and these are usually placed in the same class with the expenses of the funeral and the last illness of the decedent. The priority in dignity of expenses of administration is such that they are to be paid in preference even to debts due the state. Highly favored among the claims presented to an insolvent estate of a decedent are allowances for the support of his widow and children, under some statutes it being provided that the allowance to the family must be paid or provided for before payment is made of any debts save expenses of administration and funeral expenses. The allowance for the family which is entitled to this preference is usually limited to support for one year. . . ." 11 R.C.L. *Executors and Administrators* § 290, at 255–56 (1916). See also 18 Cyc. of Law & Proc. *Executors and Administrators* 373–74, 375–78, 380, 381 (1905).

Hence it was correct and proper for the court below to have made some provision for the widow and minor child before the debts had all been paid, the trial judge having erred in but one respect, *viz.:* undertaking to do so after the notice that a writ of certiorari was being issued, instead of making returns in that sense and having the Justice presiding in chambers authorize him to make such a provision.

The last of the several contentions raised in the court below and argued at this bar which we intend considering at this time is whether or not the executor was warranted in employing two lawyers to advise him in the administration of the estate and in the defense of this suit.

A survey of the body of the law on this subject is epitomized in the following paragraphs:

In many jurisdictions an executor has no right to em-

ploy counsel at the expense of the estate to do what he himself should do and the doing of which he is compensated for by his commission. A contract therefore for the employment of counsel is essentially one made by the executor or administrator in his individual capacity. And so inflexible is that rule in some places that if one named for that office has doubts about his knowledge or his ability to obtain that knowledge which he is bound to exercise, it becomes his duty to decline the trust. Hence, attorneys employed by an administrator to assist him in administering his trust or to prosecute or defend an action for or against him in his official capacity have no claim they can enforce directly against the estate. Similarly, it has been held that if an executor employs an attorney to have a will probated, the value of such attorney's services is not in the first instance a debt or charge against the real estate of the deceased, but is a charge against the executor, the one to whom the attorney must look for compensation in the executor's individual and not in his representative capacity.

In other jurisdictions, however, an executor or administrator is entitled to the advice and assistance of counsel in many of the duties devolving upon him. In all such places he may employ attorneys at law to advise him in reference to the management of the affairs of an estate, and the courts may allow as credit to the personal representative any reasonable counsel fees which may have been paid by him to them. This will depend very largely, however, on the meritoriousness of the position which has been taken by him in reference to the litigation in which the estate is involved. Counsel fees and costs will not be credited such personal representative if the litigation is either useless, unnecessary, or vexatious. 11 R.C.L. *Executors and Administrators* §§ 260–62, 264–65, at 233–35, 236–38 (1916).

We are inclined to instruct the court below to allow the accounts of the executor to be credited with the ex-

penses of one attorney only. With an estate like this, trembling on the brink of insolvency and engaged in a cause with such little, if any, merit, two attorneys are in our opinion a luxury. The court should assess the attorney's fees *quantum meruit;* the amount paid the other lawyer should be deducted from the foregoing that the writ of certiorari issued in this suit ordered payable to the executor.

It follows from the foregoing that the writ of certiorari in the suit should be quashed and that a mandate should be issued to the probate court ordering said court to resume jurisdiction and to proceed to receive, adjust, and settle the accounts of the executor in harmony with the indications herein given; and that the costs of these certiorari proceedings should be paid by the petitioner in certiorari; and it is hereby so ordered.

Writ of certiorari quashed.