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DIARY FOR MAY.

- 16. Sun....3rd Sunday after Easter.
- 17. Mon...Easter sittings of Divl. Ct., Q. B., and C. P. begin.
- 21. Fri....Confederation proclaimed 1867. Lord Chancellor Lyndhurst born 1779.
- 23. Sun....4th Sunday after Easter.
- 24. Mon...Queen Victoria born 1819.
- 27. Thur...Habeas Corpus Act passed 1679. Sir W. Grant Master of the Rolls, 1801.
- 30. Sun....Rogation Sunday.
- 31. Mon...Parliament first met at Toronto, 1797.

TORONTO, MAY 15, 1886.

THE judgment in the County Court case of *Foley v. Moran*, noted in our last number (*ante*, p. 167), is not in all respects to be followed. On application for prohibition, Wilson, C. J., is said to have decided that although the defendant did not appear at the hearing there was an adjudication on the merits, and that the application not having been made within fourteen days could not be set aside.

ACTIONS FOR TORTS BY AND AGAINST THE REPRESENTATIVES OF DECEASED PERSONS.

AMONG the amendments of the law made at the recent session of the Ontario Legislature is one relating to actions of tort, which, besides making a further inroad on the old maxim, *actio personalis moritur cum persona*, will, we think, hereafter occasion considerable difficulty and delay in administering the estates of deceased persons.

Perhaps there was a want of equity in the old rule which deprived the representatives of a deceased person of all remedy for wrongs committed against the deceased in his lifetime, and by the death of the

wrong-doer exempted his estate from liability for the wrongs done by him in his lifetime. This rule, however, was relaxed, and for injuries committed to the real estate of any person, committed within six months next before his decease, a right of action was given to his representatives provided they sued within one year after his death. So also in the case of any wrong committed by any deceased person within six months previous to his decease, to the real or personal property of another, his representatives were made liable to suit, provided the action was commenced within six months after they had taken upon themselves the administration of his estate. (R. S. O. c. 107, ss. 8, 9.) These provisions, however, have been repealed, and now by 49 Vict. c. 16, s. 23, the personal representatives may maintain an action for all torts or injuries to the personal property of the deceased (slander and libel only excepted), provided the action is brought within one year after the death of the party injured; and it is further provided that "in case any deceased person committed a wrong to another in respect of his person, or of his real or personal property, the person so wronged may maintain an action against the executors or administrators of the person who committed the wrong. This section does not apply to libel or slander." This clause, we may observe, gives a new right of action against the personal representatives of a deceased person, unqualified by any limitation of time within which the action is to be brought. This, we think, is a serious omission, and personal representatives may in consequence of it be placed in a serious quandary in administering estates. Suppose a personal representative is notified of a claim for a tort