

DIARY FOR MARCH.

1. Wed. *St. David.* Last day for County Clerk to transmit to Chief Superintendent audited school account.
5. SUN. *2nd Sunday in Lent.*
7. Tues. *Shrove Tuesday.* Last day for notice of Trial for County Court, York.
12. SUN. *3rd Sunday in Lent.*
14. Tues. General Sessions and County Court Sittings in York.
17. Frid. *St. Patrick's Day.*
19. SUN. *4th Sunday in Lent.*
25. Sat. *Annunciation.*
26. SUN. *5th Sunday in Lent.*
31. Frid. Last day for Local Superintendent of Common Schools to complete first half-yearly visits to schools.

The Local Courts'

AND

MUNICIPAL GAZETTE.

MARCH, 1871.

PAYMENT OF EXECUTORS.

FIRST PAPER.

On the 1st September, 1858, the law came into force touching compensation to executors and others, which is now embodied in the Consolidated Statutes of Upper Canada, cap. 16, sec. 66. This section provides that the judge of any Surrogate Court may allow to the executor, or trustee, or administrator acting under will or letters of administration, a fair and reasonable allowance for his care, pains and trouble, and his time expended in or about the executorship, trusteeship, or administration of the estate and effects vested in him under any will or letters of administration, and in administering, disposing of and arranging and settling the same, and generally in arranging and settling the affairs of the estate, and therefor may make an order or orders from time to time, and the same shall be allowed to an executor, trustee or administrator in passing his accounts.

Prior to this enactment the English rule obtained in this Province, that in all matters of trust, or in the nature of a trust, whether testamentary or otherwise, the trustee was not entitled to any remuneration whatsoever for his pains, trouble and personal services. There are some English cases to be found pointing in an opposite direction, such as *Marshall v. Holloway*, 2 Swanst. 452; *Ex. p. Fermor*, Jac. 404; *Newport v. Bury*, 23 Beav. 30. These have been usually considered as cases of special exception, but may perhaps be

viewed as instances wherein the rule has been properly relaxed, on the ground that compensation had been intended.

The English Courts, however, did not consider the rule in question applicable to their Colonial possessions. In many cases touching both East and West Indian estates, a commission of five per cent. has been allowed to the Indian executor, upon passing his accounts in the English Courts: *Chetham v. Audley*, 4 Ves. 72, in which five per cent. was allowed upon the payments made on account of the estate: *Cockerell v. Barber*, 1 Sim. 23 *S. C. in appeal*, 2 Rus. 585, in which five per cent. was allowed on all assets collected by the executor in East India, including assets retained by him for a legacy to himself, not given to him as executor,

In *Matthews v. Bagshaw*, 14 Beav. 123, five per cent. was allowed on the gross receipts of the East Indian assets. There the Master of the Rolls laid it down, that by the custom of India, which the law of England will follow, Indian executors are entitled to five per cent. on the gross sum received by them. (A note to this case shews that this custom was abolished in 1849.) See also *Campbell v. Campbell*, 13 Sim. 168; and 2 *Y. & C.* 607. Similar allowances have been sanctioned as to West Indian estates on the ground among others that such was the constant course of practice in those colonies—a practice indeed in some of the islands which was recognized and regulated by the acts of colonial legislatures. See *Denton v. Davey*, 1 Moo. P. C. 15; *Chambers v. Goldwin*, 9 Ves. 254, 267. In this case it is said that the commission is the reward of personal care and attention, and if that care and attention are not administered, the unquestionable principle of the Court is that not being within the case, upon which the commission can be claimed, the executor is in the situation of a person entitled only to the commission actually paid to those who really managed the estate: *Forrest v. Elwes*, 2 Mer. 68.

The like principle of compensation to executors has been declared by the Legislatures of many of the States in the American Union. Thus for instance in New York State an Act was passed in 1817, declaring that in settling the accounts of guardians, executors and administrators, the Court of Chancery should make a reasonable allowance to them for their services over and above their expenses, to be