DIARY FOR APRIL.

1. Sat. Last day for Collector to return roll to Treasurer. Clerks and Deputy Clerks of Crown and Master and Registrar in Chancery to make quarterly return of fees.
2. SUN. *Palm Sunday.*
3. Mon. County Court (York) Term begins.
7. Frid. *Good Friday.*
8. Sat. County Court Term ends.
9. SUN. *Easter Sunday.*
11. Tues. Last day for Master and Registrar in Chancery to remit fees to Provincial Treasurer.
16. SUN. *1st Sunday after Easter.*
23. SUN. *2nd Sunday after Easter. St. George.*
25. Tues. *St. Mark.*
29. Sat. Last day for Articles, &c., to be left with Secretary Law Society. Last day for Clerk to return occupied lands to County Treasurer.
30. SUN. *3rd Sunday after Trinity.*

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PAYMENT OF EXECUTORS.

SECOND PAPER.

It remains now to consider the scope and application of the enactment in the Consolidated Statutes of Upper Canada, and the rates of compensation which have been sanctioned thereunder by the Court of Chancery in the administration of estates. There are no reported decisions of the practice pursued in the Surrogate Courts; but there is little doubt that those tribunals follow the rules laid down by the Superior Court, in passing executors' accounts.

I. *Jurisdiction of Chancery as to compensation.*—In one of the first cases after the statute, Vankoughnet, C., laid down lucidly the grounds upon which his Court fixed the rates of compensation to executors. He says:

"Until the statute, no administrator, as such, could claim any allowance for his services. This rule, in regard to persons holding fiduciary relation, was established early in Courts of Equity, and was inflexible; but it was a rule forged, as it were, by the Court itself, and which the Legislature has broken.

"I have been asked whether the Court would refer it to the Judge of the Surrogate Court to fix the rates of remuneration. As a rule, this Court does not leave its work incomplete, nor ask the aid of other tribunals to perfect it. Seised of the subject-matter of litigation or dispute, it disposes of it entirely; and in this particular of remuneration, almost more than any other, the Court which has surveyed the conduct of the trustee, has taken the accounts, and has adjudicated upon them, is the most competent to form an opinion. Being relieved from the restriction which in this respect it had imposed upon itself, it will not seek elsewhere for an opinion as to whether remuneration should be allowed to the trustee for his labours, or what the amount of that remuneration should be:" *McLennan* v. *Heward*, 9 Gr. 279.

It has been the settled practice of the Court of Chancery for the Master, in passing the accounts of executors, to allow them compensation under the Statute, instead of putting the executors to the expense of procuring an order for such compensation from the Surrogate Judge. This new principle of compensation to executors being introduced, it became a principle of the law, which the Court of Chancery has uniformly acted upon in the administration of estates. It is now the duty of the Master, in taking accounts and making all just allowances, to make a just and proper allowance for such compensation, which he can better do, from his knowledge of the estate, than the Surrogate Judge: *Biggar* v. *Dickson*, 15 Gr. 233. It is not competent, therefore, for an executor, who is passing his accounts in the Court of Chancery, to intercept the judgment of the officer of this Court who has cognizance of the matter, by an application to the Surrogate Judge for an allowance. Any order made under such circumstances by the Surrogate will not be binding in the Court of Chancery as fixing the amount, but the Master must exercise his own judgment as to the propriety and reasonableness of the allowance: *Long* v. *Wilmot*, cited in 15 Gr. 236; and *Biggar* v. *Dickson*, 15 Gr 233. By making such application to the Surrogate, pending a suit in Chancery, unnecessary expense is incurred, and the Surrogate cannot tell what the conduct of the executor has been, or in what manner he has administered the estate. At the instance of any party interested, the Court of Chancery will restrain any such application by the executor: *Cameron* v. *Bethune*, 15 Gr. 486.

It would seem, however, that if the parties have allowed the amount to be fixed by the Surrogate Judge, and make no objection thereto, the Court will adopt it. And the same result would follow if the allowance had been made before the institution of the suit