

PAYMENT OF EXECUTORS.

DIARY FOR MAY.

1. Mon. *St. Philip and St. James.* Last day for County Treasurer to make up books and enter arrears, and to make yearly settlement. Last day for apportionment of Gram, and Com. Sch. fund.
6. Sat. *St. John.*
7. SUN. *4th Sunday after Easter.*
11. Thur. Examination of Law Students for call to the Bar with Honors.
12. Frid. Examination of Law Students for call to the Bar.
13. Sat. Examination of Articled Clerks for certificates of fitness.
14. SUN. *Rogation Sunday.*
15. Mon. Easter Term begins. Articled Clerks going up for interim-examination to file certificates.
17. Wed. Interim-examination of Law Students and Articled Clerks.
18. Thur. *Ascension Day.* Last day for service for County Courts except York.
19. Frid. Paper Day, Q. B. New Trial Day, C. P.
20. Sat. Paper Day, C. P. New Trial Day, Q. B.
21. SUN. *Sunday after Ascension.*
22. Mon. Paper Day, Q. B. New Trial Day, C. P.
23. Tues. Paper Day, C. P. New Trial Day, Q. B.
24. Wed. Paper Day, Q. B. New Trial Day, C. P.
25. Thur. Paper Day, C. P. Open Day, Q. B.
26. Frid. New Trial Day, Q. B. Open Day, C. P.
27. Sat. Open Day.
28. SUN. *Whit Sunday.*
29. Mon. Paper Day, Q. B. New Trial Day, C. P. Declare for County Courts except York.
30. Tues. New Trial Day, Q. B. Paper Day, C. P.
31. Wed. Open Day, Q. B. New Trial Day, C. P.

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PAYMENT OF EXECUTORS.

THIRD PAPER.

IV. *Privilege of executors and preference accorded to their compensation.*—In England a trustee and an executor will be allowed his expenses, even though he has a legacy as a reward for his trouble: *Wilkinson v. Wilkinson*, 2 Sim. & St. 237. In the case of an East Indian estate, where the executor had a legacy for his trouble, he was held disentitled to any commission; and he was not allowed, after a lapse of time, during which he had dealt in a contrary manner, to renounce his legacy and claim the usual compensation: *Freeman v. Fairlie*, 3 Mer. 24; see *Cockerell v. Barber*, 1 Sim. 23. In accord with this is the rule of the New York Revised Statutes, where it is laid down that when a provision shall be made by any will for specific compensation to an executor, the same shall be deemed a full satisfaction for his services in lieu of the statutory allowance, unless the executor shall renounce in writing all claim to the legacy: Tit. 3, Part ii, cap. 6, sec. 66. This rule has not been observed in this country; on the

contrary, in *Denison v. Denison*, 17 Gr. 311, it is said that the executor being here entitled to compensation for his services, his acceptance of a legacy by way of compensation does not bar his right to further compensation in a proper case, where it is made to appear that the amount bequeathed is not a fair and reasonable allowance within the meaning of the statute; but if it is a sufficient compensation, then nothing more should be allowed.

Further, the executor is privileged to receive his commission before debts are paid; and in case of a deficiency of assets, he is to be preferred to all the creditors of the estate. This is upon the ground, that the allowance is for services which form part of the expense incurred in administering the estate, forming, therefore, a primary charge upon the assets before the payment of debts: *Harrison v. Patterson*, 11 Gr. 105, 112. It was held in *Anderson v. Dougall*, 15 Gr. 405, that a legacy by way of compensation to executors, though larger in amount than the sum which the court would have awarded for compensation, was entitled to priority over legacies which were mere bounties; and this for the reason that in cases of deficiency of assets, legacies for which there is valuable consideration are entitled to rank before others which are mere matters of bounty. This decision is, however, only applicable to cases in which the will in question has been made or republished after the passing of the statute giving the right to compensation.

V. *Right of compensation, and manner of allowing and apportioning the same.*

In the earliest case under the statute—*McLennan v. Heward*, 9 Gr. 279—it was held that, generally speaking, five per cent. was a fair commission to be allowed on all moneys collected and paid over, or properly applied; but that on all moneys received and paid over only under the compulsion of the decree in the administration suit (however honest the contention as to liability therefor may have been), no more than two-and-a-half per cent. should be allowed.

In fixing the quantum of allowance, regard should be had to the size of the estate, the care, judgment and circumspection required and exercised in its management, and the length of time over which the supervision extends: *Denison v. Denison*, 17 Gr. 310. Although the duties do not involve much