

## WRITS AGAINST LANDS AND GOODS.

## DIARY FOR FEBRUARY.

1. Friday Clergymen to make yearly return of marriages to County Registrar.
2. Satur. Purification of B. V. M.
3. SUN... 4th Sunday after Epiphany.
4. Mon. .. Hilary Term commences.
6. Wed. .. Meeting of Grammar School Boards.
8. Friday Paper Day Q. B. New Trial Day C. P.
9. Satur. Paper Day Q. B. New Trial Day Q. B.
10. SUN... 5th Sunday after Epiphany.
11. Mon. .. Paper Day Q. B. New Trial Day C. P.
12. Tues... Paper Day C. P. New Term Day Q. B.
13. Wed. .. Paper Day Q. B. New Term Day C. P. Last day for service for County Court.
14. Thur... St. Valentine's Day. Paper Day Common Pleas.
15. Friday New Term Day Queen's Bench, Last day for County Treasurers to furnish to Clerks of Municipalities in Counties list of lands liable to be sold for taxes.
16. Satur. Hilary Term ends.
17. SUN... Septuagesima.
23. Satur. Declare for County Court.
24. SUN... Sexagesima.
27. Wed. .. Appeals from Chancery Chambers.
28. Thurs. Sub-Treasurer of School Moneys to report to County Auditors.

## NOTICE.

Subscribers in arrears are requested to make immediate payment of the sums due by them. The time for payment so us to secure the advantages of the lower rates is extended to the 1st April next, up to which time all payments for the current year will be received as cash payments.

## THE

## Upper Canada Law Journal.

FEBRUARY, 1867.

## WRITS AGAINST LANDS AND GOODS.

Some time ago, referring to the cases of *Ontario Bank v. Kirby*, 16 U. C. C. P., 135, and *Ontario Bank v. Muirhead*, 24 U. C. Q. B. 563, we remarked upon the unsatisfactory state of the law with regard to writs of execution against goods and lands, and expressed a hope that a bill on the subject introduced into Parliament in the previous session by Mr. M. C. Cameron would become law. Another provision, however, found favor in the eyes of the Legislature, and was passed, and now forms cap. 42 of 29 Vict.—“An Act to amend the Common Law Procedure Act of Upper Canada”—the 5th and 6th sections of which are intended to remedy some of the inconveniences which previously existed, or at all events definitely to settle the law as to the concurrent issue to several counties of different writs of execution.

As the law stood before this Act it was sufficient to procure a return of *nulla bona* from

the sheriff of the county in which the venue was laid, (*Oswald v. Rykert*, 22 U. C. Q. B. 305;) and as many writs of execution against lands to as many sheriffs could then be issued as the creditor might think proper.

The *bonâ fides* of this return was secured by section 26 of cap. 28, 27 & 28 Vict.—“An Act to make further provision for the office of sheriff in Upper Canada,” which enacts that if any sheriff shall wilfully make any false return upon any writ, unless by consent of both parties, he shall be liable to forfeit his office. The lands of the debtor were thus protected from sacrifice before the creditor had made some attempt to realize his debt from the fund which has always been declared by the Legislature primarily liable to pay it. The Act of last session above referred to enacts (sec. 5) that no execution shall issue against lands to the sheriff of any county until after the return of an execution against goods in the same suit by the same sheriff, and (sec. 7) that no sheriff shall make any return of *nulla bona*, either in whole or in part, to any execution against goods until the whole of the goods of the execution debtor in his county shall have been exhausted, and that then such return shall be made only in the order of priority in which the writs have come to his hands. In these enactments the interests of the debtor appear to be kept in view, and those of the creditor ignored. The effect of sec. 5 is in many cases needlessly to delay the creditor by compelling him to ground a *fi. fa.* lands on a *fi. fa.* goods, although his debtor may not reside in the county, and may not have chattel property there to the value of a dollar, or the cost of the writ. As, however, the sheriff must exhaust the goods, and upon penalty of forfeiture of his office may not wilfully make a false return, except by a consent not likely to be obtained, ample time is afforded to the debtor during the investigation, for the disposal of the lands which it is the creditor's object to reach, and in such a case he may either lose the benefit of them altogether, should the sale be *bonâ fide*, or is driven to the risk, expense and delay of a Chancery suit for equitable execution. But it is the latter part of sec. 6 which it may with force be argued is specially unreasonable. The sheriff's return is only to be made in the order of priority in which the writs have come to his hands. Take the frequent case of several