

## RETAINERS AND RETAINING FEES.

## DIARY FOR FEBRUARY.

1. Wed. Last day for Co. Treas. to furnish to Ck of Mun. in Co's list of lands liable to be sold for taxes. Assessors to complete rolls, unless time ext.
2. Thur. Examination of Law Students for call to the Bar with Honors.
3. Frid. Examination of Law Stud. for call to the Bar.
4. Sat. Exam. of Art. Clerks for certificate of fitness.
5. SUN. Septuagesima Sunday.
6. Mon. Hilary Term begins. Articled Clerks going up for inter-examination to file certificate.
8. Wed. Inter-examination Law Students and Articled Clerks. New Trial Day, Queen's Bench.
9. Thur. New Trial Day, Common Pleas. Last day for setting down and giving notice of re-hearing in Chancery
10. Frid. Paper Day, Q. B. New Trial Day, C. P.
11. Sat. Paper Day, C. P. New Trial Day, Q. B.
12. SUN. Sexagesima Sunday.
13. Mon. Paper Day, Q. B. New Trial Day, C. P.
14. Tuces. St. Valentine's. Paper Day. C. P. New Trial Day, Q. B.
15. Wed. Paper Day, Q. B. New Trial Day, C. P.
16. Thur. Paper Day, C. P. Open Day, Q. B. Re-hearing Term in Chancery commences. Last day for service of summonses for Co. Court, York.
17. Frid. New Trial Day, Q. B. Open Day, C. P.
18. Sat. Hilary Term ends. Open day.
19. SUN. Quinquagesima Sunday.
22. Wed. Ash Wednesday.
24. Frid. St. Matthias.
26. SUN. 1st Sunday in Lent.
27. Mon. Last day for declaration County Court York.

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## SECOND PAPER.

In olden times counsellors dealt directly with the client, and a general retainer sometimes assumed the form of a grant by way of annuity *pro consilio impenso et impendendo* (Rolle's Abr. p. 486, pl. 10). In such a case the claim of the barrister for remuneration was a legal one, recoverable by suit. But in cases of special retainer, *with a view to advocacy in litigation*, the relationship of counsel and client precluded the making of any contract, so as to give the former a legal claim to compensation: *Kennedy v. Brown*, 13 C. B. N.S. 677. In other matters of counsel business, outside of the courts and not with a view to advocacy therein, it is necessary in order that a barrister may be able to recover his fees from a client that the client should have made an actual and express promise to pay them, inasmuch as nothing more than a moral obligation arises from the mere existence of the relation of counsel and client: *Mostyn v. Mostyn*, L. R. 5 Ch. Ap. 457.

In subsequent years it became, as it still continues, the customary etiquette to retain counsel through the medium of the solicitor or attorney in the particular suit: *Doe d. Bennet v. Hale*, 15 Q. B. 171. In such cases special retaining fees to counsel are always taxable between solicitor and client, and attorney and client, and there is even a case reported in which under extraordinary circumstances this item was allowed in a party and party taxation: *Nickells v. Halsam*, 9 Jur. 649. The solicitor under his general retainer is authorized to pay the counsel this and other fees, and after payment he can recover them from his client: *Morris v. Hunt*, 1 Chit. R. 544. Usage has established the course of dealing to be, that counsel is so employed by the solicitor not upon a preliminary traffic for his services in consideration of future payment, but upon a preliminary payment of his fees before those services are obtained: *Hobart v. Butler*, 9 Ir. C. L. R. p. 166. It may be noted (as Mr. Harrison has omitted it in his book) that in Ontario counsel fees are to a limited extent a legal claim and recoverable by action. This is by virtue of the enactment which is consolidated in section 382 of the Common Law Procedure Act and the tariff of costs framed in pursuance thereof, providing for counsel fees: *Baldwin v. Montgomery*, 1 U. C. R. 283; *Leslie v. Bull*, 22 U. C. R. 512.

The payment of retaining fees to attorneys and solicitors is a practice for which no modern English authority can be found, although there is reference made to such a fee in an anonymous case reported in 1 Salk. 87. (It is just possible that this may refer to the charge for drawing the retainer, which is taxable: *Browne v. Diggle*, 2 Chit. 312.) In the United States retaining fees to attorneys are sanctioned by the tariffs and claimable by law. It has been a usual practice in this Province to charge and in some cases to stipulate for such a fee, though some uncertainty exists as to its being taxable against the client when called in question. In an unreported case of *Wooler v. Carroll*, this practice was adverted to during the argument by Mowat, V. O., who said that in his time practitioners very often required a small fee, such as ten dollars, to be paid them at the commencement of a suit, with the view of covering the expense of miscellaneous non-taxable items during the progress of the cause.