

RETAINERS AND RETAINING FEES.

DIARY FOR DECEMBER.

1. Thur. Paper Day, C. P. Clerk of every Municipality except Counties to return number of resident rate-payers to Registrar General. Re-hearing Term in Chancery commences.
2. Frid. New Trial Day, Q. B.
4. SUN. 2nd Sunday in Advent.
5. Mon. Last day for notice of trial for County Court. Paper Day, Q. B. New Trial Day, C. P.
6. Tues. Paper Day, C. P. New Trial Day, Q. B.
7. Wed. New Trial Day, C. P.
9. Frid. New Trial Day, Q. B.
10. Sat. Michaelmas Term ends.
11. SUN. 3rd Sunday in Advent.
13. Tues. General Sessions and County Court Sittings in each County.
14. Wed. Grammar and Common School assessment payable. Collector's roll to be returned unless time extended.
18. SUN. 4th Sunday in Advent.
19. Mon. Nomination of Mayors in towns, Aldermen, Reeves, Councilmen, and Police Trustees.
24. Sat. Christmas Vacation in Chancery commences.
25. SUN. Christmas Day.
26. Mon. St. Stephen.
27. Tues. St. John Evangelist.
28. Wed. Innocents Day.
31. Sat. Last day on which remaining half General Sinking fund payable. School returns to be made. Deputy Registrar in Chancery to make return and pay over fees.

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(FIRST PAPER.)

In Bouvier's Law Dictionary the definition of the legal term "to retain" is this: "To engage the services of an attorney, or counsellor, to manage a cause, at which time it is usual to give him a fee called the retaining fee." According to Wharton's Law Lexicon "the retaining fee" is "a preliminary fee given to a counsel, along with the retainer, in order to ensure his advocacy." These definitions by American and English authors, respectively, mark the difference between American, and we may add Canadian, and English law on the subject of retainers. We propose to say a few words about retainers and retaining fees: first, in so far as barristers are concerned, and then, so far as pertains to attorneys and solicitors. A great deal of doubt exists upon the precise meaning and effect of a retainer as regards counsel, and this is chiefly occasioned by the fact that questions of disputed retainers are seldom referred to, and seldom, if ever, adjudicated upon by the court. The settlement of such matters is invariably left in the hands of the barristers themselves, and usually one of

Her Majesty's counsel is called in to arbitrate upon any question of conflicting retainers. In Ireland, the rules upon the subject were adjusted at a general bar-meeting in 1864, but we are not aware of any similar settlement touching this code of professional etiquette by the English or Canadian bar. We find references to the subject of retainers occasionally cropping up in the reports, and by the light of these and other guides, we shall seek to set forth the commonly received understanding of the profession thereupon.

A retainer may be either *general* or *special*: that is, it may have reference to all suits and causes in which the client shall be a party in every court wherein the counsel retained practises, or it may be limited to some particular cause against the client, and usually one in which proceedings have been already instituted. A general retainer is prospective in its character; not so the special retainer. On the part of the counsel, an acceptance of the retainer implies that he engages to assist the client with his advocacy; on the part of the client, the retainer amounts to an undertaking that he will send a brief to the barrister retained. The barrister cannot pick and choose his retainer, but is bound to accept any general retainer proffered, and he is also bound to accept any special retainer, provided always that he has not been previously retained, generally or otherwise, for the opposite party.

Some transactions, commonly supposed to amount to retainers, are not so really. For instance: the getting counsel's opinion on a case before the commencement of proceedings is not a retainer in such action when it is brought. The employment of the barrister here is simply as chamber counsel. Again: the getting counsel to draw pleadings does not involve a retainer in the suit or action. The barrister's employment in this instance is merely that of a draughtsman. And similarly, as to advising upon evidence. The very eminent counsel who appeared in *Earl Cholmondeley v. Clinton*, during argument, stated the rule thus: "a counsel advises on pleadings, not being retained, and is the next day retained on the opposite side, and may then advise for such opposite party." G. Coop. 80 S.C. 19 Ves. 261, and the court confirmed this representation made at the bar.

There are other practices as to retainers, which called down the reprobation of Sir