

## DIARY FOR DECEMBER.

1. SUNDAY ..... Advent Sunday.  
 2. Tuesday ..... Last day for notice of Trial County Court.  
 3. SUNDAY ..... 2nd Sunday in Advent  
 10. Tuesday ..... Q. Sessions and County Court Sittings in each County.  
 12. Thursday ..... Sittings of Court of Error and Appeal begin. Last day for service of Writ for York and Peel Assizes.  
 14. Saturday ..... Last day for collection of money for School Teachers' Salaries. Collectors to return Assessment Roll to Treasurer or Chamberlain.  
 16. SUNDAY ..... 3rd Sunday in Advent  
 22. SUNDAY ..... 4th Sunday in Advent.  
 23. Monday ..... Nomination of Mayors. Last day to declare for York & Peel Assizes.  
 25. Wednesday ..... CHRISTMAS DAY.  
 26. SUNDAY ..... 1st Sunday after Christmas.  
 29. SUNDAY ..... End of Municipal year. Last day on which remaining half of Grammar School Fund is payable. Last day for motion of Trial for York and Peel Assizes.  
 31. Tuesday .....

## IMPORTANT BUSINESS NOTICE.

Persons indebted to the Proprietors of this Journal are requested to remember that all our past due accounts have been placed in the hands of Messrs. Fulton & Ardagh, Attorneys, Barristers, for collection; and that only a prompt remittance to them will save costs.

It is with great reluctance that the Proprietors have adopted this course; but they have been compelled to do so in order to enable them to meet their current expenses, which are very heavy.

Now that the usefulness of the Journal is so generally admitted, it would not be unreasonable to expect that the Profession and Officers of the Courts would accord it a liberal support, instead of allowing themselves to be sued for their subscriptions.

## The Upper Canada Law Journal.

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## TO SUBSCRIBERS.

Subscribers are reminded that the present No. completes Volume Seven of the Upper Canada Law Journal. Those, indebted to the Journal are requested to make an immediate settlement of our demands against them. All such, by looking to the covers of their paper will ascertain the amount demanded. Remittances to be addressed to our publishers, Messrs. W. C. CHEWETT & Co.,

King St. East, Toronto.

## COUNSEL FEES.

The profession of an advocate is in every civilized community esteemed one of distinction, as it is of influence.

In some respects akin to the "orator" of the Romans, it partakes of many of its characteristics.

One feature in common is, that the advocate of modern no more than the orator of ancient times, is allowed to sue for his services.

Sir John Davis, in the sixteenth century, wrote as follows: "The fees or rewards which they (barristers) receive are not of the nature of wages or pay, or that which we call salary or hire, which are indeed duties certain and grow due by contract for labour or service; but that which is given to

a learned counsellor is called *honorarium*, and not *merces*, being indeed a gift which giveth honor as well to the taker as to the giver; neither is it certain or contracted for; no price or rate can be set upon counsel, which is invaluable and inestimable; so it is more or less according to circumstances—namely, the ability of the citizen, the worthiness of the counsellor, the weightiness of the cause, and the custom of the country. Briefly, it is a gift of such a nature, and given and taken upon such terms, as albeit the able client may not neglect to give it without note of ingratitude (for it is but a gratuity or token of thankfulness), yet the worthy counsellor may not demand it without doing wrong to his reputation, according to that moral rule, *Multa honeste accipi possunt, quæ tamen honeste peti non possunt.*" (Preface Davis' Reports.)

Quaint as this language may sound, and absurd as it may appear in this utilitarian age, it is law, almost as inflexible to-day as when first written.

On 10th June, 1858, Sir R. T. Kindersley, upon reading the petition of a barrister, for payment of his fees by a solicitor, and upon the argument being addressed to him that a barrister has a right in law to recover fees paid to a solicitor for him, said, "I hope the time will never come when such a rule is established. I will never make a precedent. If you bring me precedents and establish your case, I must make the order; but I will never willingly derogate from the high position in which a barrister stands, and by which he is distinguished from an ordinary tradesman." (*In re May*, 4 Jur. N. S. 1169.)

Barristers however, like other men, must live, and in modern times at least it has been found imprudent for them to trust to the gratitude of clients for subsistence. In what way, therefore, is the difficulty overcome? The same law which says they "shall not sue for their fees," says they shall in all cases "receive them in advance," and, worse still, "keep them though no service is performed for them."

On an application to compel an attorney in a cause to pay counsel fees collected by him, Erle, C. J., said, "I do not mean to sanction in any degree the notion of such applications. It may be that an attorney is wrong in delivering a brief with fees marked on it without their being paid; but then counsel are equally wrong who accept it on these terms, and we cannot be called on to entertain any proposition for us to interfere in such a case" (*In re Angell* 6 Jur. N. S. 1373.)

So where a person had given a brief with a fee to counsel on an expected trial, and the counsel neglected to attend, it was held that the fee could not be recovered back, because the fee was a present to the barrister by the counsel,