

DIARY FOR JULY.

1. Friday.....Long Vacation commences. Last day for County Council to equalize Rolls of Local Municipalities.
3. SUNDAY ...6th Sunday after Trinity.
4. MondayHoir and Devises Sittings commence. County Court and Surrogate Court Term begins.
9. Saturday ...County Court and Surrogate Court Term ends.
10. SUNDAY ...7th Sunday after Trinity.
14. Thursday ...Last day for Judges of County Courts to make return of appeals [from Assessments.
17. SUNDAY ...8th Sunday after Trinity.
19. TuesdayHoir and Devises Sittings end.
24. SUNDAY ...9th Sunday after Trinity.
25. MondaySt. James.
30. Saturday .. Last day for County Clerk to certify County Rate to Municipalities in County.
31. SUNDAY ...10th Sunday after Trinity.

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. Ardagh & Ardagh, Attorneys, Barrie, 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 liberal support, instead of allowing themselves to be sued for their subscriptions.

The Upper Canada Law Journal.

JULY, 1864.

THE LAW OF REPLEVIN IN UPPER CANADA.

Replevin at common law was for the specific recovery of personal property, and that only under particular circumstances, and in no case for the recovery of damages.

Blackstone wrote that replevin "obtains only in one instance of an unlawful taking, that of a wrongful distress" (3 Com. 146).

If by this expression he meant that in practice it was not usual to have recourse to replevin except in the case of a distress alleged to be wrongful, he was probably justified by the fact; but there are not wanting authorities to shew that the remedy by replevin was not so confined, (per Coleridge, J., in *Mennie v. Blake*, 6 El. & B. 847).

In Comyn's Digest it is said that Replevin lies "of all goods and chattels unlawfully taken out of the possession of the owner, (Pl. 3 K. I.) but a mere wrongful detention was not held to be a taking within the meaning of this definition (*Mennie v. Blake*, 6 El. & B. 847).

Whether Replevin could at common law be sustained upon a mere tortious taking or detention, was at all times a question of considerable doubt (*Foster v. Miller*, 5 U. C. Q. B. 509).

The Legislature of Canada in 1851 removed the doubt by declaring that whenever any goods, chattels, deeds, bonds, debentures, promissory notes, bills of exchange, books of account, papers, writings, valuable

securities, or other personal property or effects, have been or shall be wrongfully detained, the owner, or person, or corporation who by law can now maintain an action of trespass or trover, shall have and may bring an action of replevin for the recovery of such goods, chattels, or other personal property aforesaid, and for the recovery of the damages by reason of such unlawful capture or detention, in like manner as actions are now by law brought and maintained by any person complaining of an unlawful distress (14 & 15 Vic. cap. 64, Con. Stat. U. C. cap. 29).

It was by s. 8 of the same act provided that where the original taking of the goods, chattels, or other personal property is not complained of, but the action is founded on a wrongful detention thereof, the declaration shall conform to the writ, and may be the same as in an action of detinue (s. 8—Con. Stat. U. C. cap. 29, s. 17).

So it was declared that the defendant should be entitled to the same pleas in abatement or bar as heretofore, and may plead as many matters in defence as he shall think necessary, and which would by law constitute a legal defence if the action were an action of trespass, when the taking be complained of, or were an action of detinue, when the detention only be complained of (s. 9—Con. Stat. U. C. cap. 29, s. 15).

The expression "the owner, &c., who by law can now maintain trespass for personal property, &c.," is not very distinct. It may mean that the owner who, under the circumstances, could maintain trespass or trover for the recovery of damages for the taking or conversion of goods, may in his option bring replevin, though the words "in like manner as actions are now brought and maintained by any person complaining of a wrongful distress" may seem to point to a restriction in the case of replevin (per Draper, C. J., in *Henderson v. Sills*, 8 U. C. C. P. 71).

Nor does the enactment enabling the defendant to plead as many matters of defence as he shall think necessary, and which would by law constitute a legal defence in trespass, trover or detinue respectively, throw much light on the question. The old plea denying property in replevin always prayed a return. The plea of not possessed in trespass or trover in terms prays no return, for in trespass or trover, as the action is for damages only, no prayer for return is necessary.

If a plea of not possessed in replevin assert property in defendant, and the plea be found for him, he would most assuredly be entitled to a return. But the rights of a defendant in replevin who pleads not possessed simply, are not so easily defined. It will probably be found that the object of the act is not so much to make replevin concurrent with trespass or trover as to extend the remedy, without altering it to cases other than those of wrongful