

## DIARY FOR DECEMBER.

1. Monday ..... Last day for notice of trial County Court.  
 7. SUNDAY ..... 2nd Sunday in Advent.  
 9. Tuesday ..... Quarter Sessions and County Court Sittings in each County.  
 11. Thursday ..... Sittings of Court of Error and Appeal commenced.  
 13. Saturday ..... Last day for coll. of money for School Teach. Last day for serr. [of writ for York & Peel Assizes.  
 14. SUNDAY ..... 3rd Sunday in Advent.  
 21. SUNDAY ..... 4th Sunday in Advent.  
 22. Monday ..... Nomination of Mayors.  
 23. Tuesday ..... Declares for York and Peel Assizes.  
 25. Thursday ..... CHRISTMAS DAY.  
 26. SUNDAY ..... 1st Sunday after Christmas.  
 30. Tuesday ..... End of Municipal year. Last day on which\*rein half of Grsm [School Fund payable. Last d. for not. of trial Y. & P. Assizes

## 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, 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 as well as 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.

DECEMBER, 1862.

## THE LAW OF SEDUCTION.

The action for seduction is in form a fiction,—in substance a snare. It is pregnant with inconsistencies; it cannot be defended on principle; it is most unsatisfactory in practice.

The aim of the law is to furnish a remedy for every wrong. Some wrongs are of such enormity as to be deemed public wrongs, and as such treated as crimes, and so punished. Others, of apparently minor import, are left to be redressed at the instance of the sufferer in action for compensation.

It is not right for a man to have connection with a woman against her will—this is a public wrong, and punishable as a crime. It is not right for a man to have connection with a woman by artifice—this is a private wrong, and punishable by action.

To defraud another of his property is a crime, but to defraud a woman of her virtue, as the law stands, is something less than a crime.

Marriage is the state in society to which all women look forward. To attain this state, character is necessary: the loss of character is the loss of earthly prospects. No compensation can be awarded adequate to the loss of virtue under such circumstances.

The injury is at least twofold—pain which the woman suffers from shame—and loss of reputation. The sense of shame must be strong indeed when we know it frequently causes the woman to destroy her offspring—to murder her

own flesh and blood. The loss which she sustains by the ruin of her reputation defies computation. The consequence at times is a life of prostitution, loathsome disease—in a word, a living death.

Besides, there is an injury to her family. Nothing is so destructive of domestic comfort and earthly happiness as the ruin of a fond daughter or a loved sister. The contemplation of it is awful. The realization of it is maddening. The complication of miseries which arise from this cause cannot be computed.

We do not assert that in all cases the man only is to blame; but we do assert that in the majority of cases he is the sole delinquent.

In what manner therefore does the law afford redress for this wrong? It neither punishes the wrong doer as a criminal, nor gives an action to the woman, who is the real sufferer.

It is true that an action lies against the wrong doer, but not at the instance of the woman seduced, nor for her seduction, but at the instance of her parents, for the loss of service arising from the fact of seduction followed by pregnancy.

The foundation of the action at common law is loss of service. The mere relationship of parent and child is not sufficient to support the action. There must be the real or presumed relationship of master and servant: the action at common law is not maintainable without some proof of loss of service. (*Thompson v. Ross*, 5 H. & N. 16.)

Slight evidence of service is sufficient, such as milking of cows, pouring out tea, or the performance of similar domestic duties. (*Bennett v. Allcott*, 2 T. R. 168; *Carr v. Clark*, 2 Chit. R. 261; *Mann v. Barrett*, 6 Esp. 32.)

If the daughter live with her parents, the relationship of master and servant is presumed (*Maunder v. Venn*, M. & M. 323); but if living in the service of another at the time of the seduction her parent cannot at common law maintain the action. (*Dean v. Peel*, 5 East. 45.)

The consequence is that a great hardship arises. The law based on fiction works real injustice. For the seduction of the daughter of the rich man, who resides with her father, and whom the law presumes to be the servant of her father, though she perform no service whatever beyond that of living in luxury at his expense, the law provides a remedy. But for the seduction of the daughter of the poor man, whom necessity compels to be the servant of others, at common law there is no remedy whatever. (*Carr v. Clark*, 2 Chit. R. 260.)

The master himself with whom she is hired may be her seducer, and as no loss of service arises therefrom to her father or mother, the action at common law cannot