

DIARY FOR JUNE.

2. Thursday... Ascension Day.
 6. SUNDAY... Sunday after Ascension.
 9. Thursday... Last day for Notice of Trial for County Court.
 12. SUNDAY... Whit Sunday.
 14. Tuesday... Quarter Sessions for each County, and County Court sittings.
 19. SUNDAY... Trinity Sunday.
 26. SUNDAY... 1st Sunday after Trinity.

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. Patton & Arlagh, Attorneys, Barrer, 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 Others of the County would accord it a liberal support, instead of allowing themselves to be sued for their subscriptions.

The Upper Canada Law Journal.

JUNE, 1859.

IMPRISONMENT FOR DEBT, "THE 91ST CLAUSE."

"Abolish imprisonment for debt!" "Relieve the poor debtor!" are cries we have been accustomed to hear of late years.

At times indeed, they were feeble enough, when more effective political material was at hand; on other occasions, when they served a purpose, the key note was given and taken up throughout the whole country.

We do not deny that the law of debtor and creditor needed improvement, and the wisdom and justice of the Legislature in the changes made we readily admit. But men run wild on the subject, and in their anxiety to relieve the "poor debtor" forget what was due to the poor creditor. "I really pity you," said a person to a man who had just failed,—"you need not pity me," he replied, "pity my creditors, if you please, they stand more in need of your commiseration."

And so it is, we believe, in many cases—the creditor oftener suffers by the fraud and misconduct of his debtor than does the purely unfortunate debtor by harsh treatment at the hands of a merciless creditor.

Persons also frequently take a very superficial view of the subject, forming their opinion as to what the law is, from the manner in which it happens to be administered by some particular functionary on a certain occasion. A few cases of hardship are hunted up, a pitiable tale is echoed from the lips of a prisoner, possibly with some heightened color thrown in by the sensitive and imaginative narrator himself, and upon this and such like foundations, a law is pronounced to be a cruel law—a bad law—and its repeal demanded.

Nothing can be more absurd and unreasonable; and yet

the melodramatic expressions recently so much indulged in respecting the power of Division Courts to imprison ("the 91st clause.") had no better base of reality.

Recorder A., or Judge B., were said to have committed poverty-stricken men, having large families dependant upon their day's labor for support, merely because they did not do that which they were quite unable to do—pay their debts. Well, suppose they did,—what then? It by no means follows that the law is in fault. The fault may be wholly in the administration of it; and if any Division Court debtor was sent to jail simply because he did not pay a debt—if he was imprisoned for inability to meet his engagements merely, we are bold to say the judge who ordered it acted upon a grossly mistaken view of the law.

The total abolition of the power to imprison by the Division Courts was advocated by many members on the discussion of this subject in the House last session—though all appeared to agree that fraud on the part of debtors should render them liable to very severe punishment.

If the provision of the Division Courts' Act had been referred to and fairly examined at the first, much discussion might have been avoided. As the agitation may be again renewed, we desire to place the subject in its proper light before the public, and with some statistics from the Clerks of the Division Courts, to show the practical value of this 91st clause.

The credit system is universal in the business of this Country, and we speak the opinion of men well informed as to the Courts, when we say, that the repeal of that clause would strike a fatal blow at the small debt courts, and give scope to the genteel swindler—the low swindler—swindlers of all sorts, in their operations upon the pockets of tradesmen and storekeepers and others.

It is probable that the claims entered for suit amount to not less than \$7,000, (as an average) in each County, or over two million of dollars, for the whole of Upper Canada, and legislation affecting rights of such magnitude, and as the sums sued for do not we think average over \$30 each, touching so many individuals, should be very delicately handled. How it could have been supposed that the 91st clause warranted imprisonment for debt, as popularly understood, we cannot conceive. As early as 1847, the grant of power to the Division Courts for the examination of defendants and to imprison for fraud or unfair dealing was strongly urged by Mr. Justice Burns, then judge of the County of York.

The want of such a power in this Country, "he declared, had been felt as a real grievance by a large portion of the community."

He spoke of the existing act for the punishment of fraud as affording inadequate remedy to creditors, and that "the