DIARY FOR AUGUST.

2. SUNDAY ... *9th Sunday after Trinity.*
8. Saturday ..... Articles, &c., to be left with Secretary of Law Society.
9. SUNDAY ... *10th Sunday after Trinity.*
12. Wednesday... Last day for service for County Court.
16. SUNDAY .... *11th Sunday after Trinity.*
21. Friday ..... Long Vacation ends
22. Saturday .... Declare for County Court
23. SUNDAY...... *12th Sunday after Trinity.*
24. Monday........ TRINITY TERM begins.
28. Friday .... Paper Day, Q B.
29. Saturday ... Paper Day, C P.
30. SUNDAY...... *13th Sunday after Trinity.*
31. Monday........ Paper Day, Q. B. Last day for notice of trial for Co. Courts.

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 a liberal support, instead of allowing themselves to be sued for their subscriptions.

The Upper Canada Law Journal.

AUGUST, 1863.

THE LAW AS TO CUSTODY OF CHILDREN.

The father is at common law, to the exclusion of all others (including the mother), the guardian of and entitled to the custody of the child, even though the child be an infant at the breast of its mother (*Rex* v. *DeManneville*, 5 East. 221), provided the child be legitimate (*The King* v. *Soper*, 5 T.R. 278; *In re Doyle*, 1 Clark, 154; *Hudson* v. *Hill*, 8 N. Hamp. 417; *Regina* v. *Armstrong*, 1 U.C. Prac. R. 8). It has been held that if a father consents to his child remaining with another person, he may at any time revoke the consent and recover possession of the child, although the consent was given in consideration of an agreement by the third person to take charge of the child, and although the father had entered into an agreement with such third person to pay for the maintenance of the child (*Regina* v. *Smith*, 22 L. J. Q. B. 116). So the father may, either by deed executed in his life time or by his last will and testament in writing, executed in the presence of two or more credible witnesses, in such manner and from time to time as he shall think fit, dispose of the custody and tuition of his child, not being married, for such time as the child remains under twenty-one years or any lesser time (12 Car. II. cap. 24, s. 8). The mother has no such right (*Ex parte Glover*, 4 Dowl. P. C. 491), and the right itself is not assignable to the mother or to any one else (*In re Bedford Charity*, 2 Swanst. 538).

The power of the parent over the child is however subordinate to that of the state (*Blissett's case*, Loft 748). The acknowledged rights of the father are conferred by the law with the view to the performance by him of certain duties towards his children, and in a sense on condition of performing these duties, but there is great difficulty in closely defining them. It is substantially impossible to ascertain or watch over their full performance. A man may be in narrow circumstances; he may be negligent, injudicious and faulty; he may be a person from whom the discreet, the intelligent and the well disposed, exercising a private judgment, would wish his children to be for their sakes and his own removed. But he may be all this without rendering himself liable to judicial interference. Before this jurisdiction can be called into action the court must be satisfied, not only that it has the means of acting safely and efficiently, but also that the father is placed in such a position, or has shewn himself to be a person of such a description, or has so conducted himself, as to render it not merely better for the children, but essential to their safety or to their welfare in some very serious and important respect, that his right should be treated as lost or suspended (per Knight Bruce, V. C., *In re Fynn*, 2 De G. & S. 474.) Thus if the father be convicted of felony, the custody of the children will be taken from him (*Ex parte Bailey*, 4 Dowl. P.C. 311); or if, though not proved guilty of crime, he has so conducted himself that his children cannot associate with him without moral contamination (Anon, 2 Sim. N. S. 54); and yet it has been held that the father will not be deprived of his right on the ground that he has formed an adulterous connection which still continues, if it appear that he has never brought the adulteress to his house or into contact with his children, and does not intend to do so (*The King* v. *Greenhill*, 4 A. & E. 624; *S. P. Ball* v. *Ball*, 2 Sim. 35). Comparative destitution is certainly not sufficient (*Lyons* v. *Blenkin*, Jac. 245; *In re Pullbrook*, 11 Jur. 185); but such an habitual degree of cruelty as to render the father unfit to have the management of children may be a reason for the interference of the court (*Curtis* v. *Curtis*, 7 W. R. 474). So if it be shown that he is in constant habits of drunkenness and blasphemy, or low and gross debauchery; or that he professes atheistical or irreligious principles (2 Story's Equit. Jur. s. 134). It is not enough to show that the mere change would be a benefit to the infant. There must be some strong and weighty reason, rendering the same essential to their welfare. (Ib.)

In one case the court, on a representation by the wife of the father's profligacy and cruelty, referred the case to a barrister to determine as to the proper custody, the husband consenting to abide by the determination (*The*