

DIARY FOR NOVEMBER.

6. Saturday .. Articles, &c., to be left with Secretary of Law Society.
 6. SUNDAY... 20th Sunday after Trinity.
 7. Monday ... Chancery Hearing Term commences.
 13. SUNDAY... 21st Sunday after Trinity.
 19. Saturday .. Chan. Hearing T. ends. Last day for serv. of Writ for Co. Court.
 20. SUNDAY... 22nd Sunday after Trin. y.
 21. Monday..... MICHAELMAS TERM begins.
 23. Friday Paper Day, Q. B.
 26. Saturday... Paper Day, C. P.
 27. SUNDAY... 1st Sunday in Advent.
 28. Monday..... Paper Day, Q. B.
 29. Tuesday .. Paper Day, C. P. Last day for declar. for Co. Court.
 30. Wednesday Paper Day, Q. B.

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 & Arlagh, Attorneys, Barrre, 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.

TO CORRESPONDENTS—See last page.

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ASSIGNMENTS TO CREDITORS.

In the absence of a Bankruptcy law in this Province, the law regulating debtor and creditor in general, and that branch of it which relates to assignments in trust for creditors in particular, is deserving of close attention.

Of late years there have been signal changes in this branch of the law—changes made, so far as one can see, without system and without connexion, and consequently by no means free from confusion and doubt.

Under this state of the law, the questions, what is a legal assignment, when such an assignment ought to be executed, the effect of it when executed, and what shall be done with it when executed, are not easily answered. We propose to make some remarks on decided cases, to show as far as possible the true answers to these questions.

What is a legal assignment.—An agreement between creditors and their debtor may be by parol, that is, oral (*Norman v. Thompson*, 4 Ex. R. 757), but under certain circumstances writing is positively required. If the property intended to be assigned is such that an executory agreement in respect thereof is by the Statute of Frauds required to be in writing and signed by the party to be charged therewith, it would seem that the statute applies, and must be complied with. Thus, if the subject matter of the assignment be real estate, or goods exceeding £10 in value, or something not to be performed within a year, the assignment ought to be in writing. (Per Macaulay, C.J., in *Brunskill v. Metcalf et al.*, 3 U. C. C. P. 153.) The

consideration of such an assignment is the fact that a number of creditors sign, each acting on the faith of the engagements of the others—each having the undertaking of the rest as a consideration for his own authority. (Per Sullivan, J., *ib.* 2 U. C. C. P. 451.)

When to be executed.—Though it is enacted by statute, 22 Vic. cap. 99, sec. 19, that if any person, being at the time in insolvent circumstances or unable to pay his debts in full, or knowing himself to be on the eve of insolvency, shall make or cause to be made any gift, conveyance, assignment or transfer of any of his goods, chattels or effects, &c., with intent to defeat or delay the creditors of such person, &c., every such gift, conveyance, assignment, transfer, &c., shall be deemed and taken to be absolutely null and void as against the creditors of such person; yet, it is expressly declared that nothing in the act contained shall be held or construed to invalidate, &c., “any deed of assignment made and executed by any debtor for the purpose of paying and satisfying, ratably and proportionably, and without preference or priority, all the creditors of such debtor their just debts.” Until the assignment is executed by some creditor or creditors, it is a mere voluntary conveyance, revocable at the pleasure of the debtor, and consequently void against a subsequent purchaser for value or an execution creditor. (*Harland v. Bucks*, 15 Q. B. 713; *Siggers v. Evans*, 5 El. & B. 367; *Maulson v. Topping et al.*, U. C. Q. B. 183.)

The effect, when executed.—The assignment is to be for the benefit of creditors, and not of the debtor. If, therefore, the effects assigned be of much greater value than the debts due, and the transaction appear to be an attempt to tie up the property as against creditors, it will be void. (*Bulkwell v. Beddome et al.*, 16 U. C. Q. B. 203; *Cuming v. McNaughton*, 16 U. C. Q. B. 194.) Or if the debtor exact benefits for himself—such as the retention and enjoyment of his furniture or other part of his property; a release from his debts in full, though payment be only of part; or the payment of the surplus, if any, after dividend—in these and other cases the better opinion appears to be that the assignment would be void as against non-executing creditors. (*Wilson v. Kerr et al.*, 17 U. C. Q. B. 183; *Maulson v. Topping et al.*, *ib.* 163.) Speaking of an assignment of this kind, the Chief Justice of Upper Canada is reported to have said: “In my opinion, it was also fraudulent, by reason of the stipulation contained in the assignment that no creditors should share in the proceeds except such as should execute the assignment within forty days, which assignment contained the release by the creditors who should execute of all the debts in full, on condition of their getting the dividend out of what the effects might produce, and a provision that after the executing creditors