

DIARY FOR DECEMBER.

1. Tuesday ... The Clerk of every Municipality except County to return number of resident ratepayers to Receiver General.
6. SUNDAY 2nd Sunday in Advent.
8. Tuesday Quarter Sessions and Co. Court Sittings in each County.
12. Saturday Last day for services for York and Peel.
13. SUNDAY 3rd Sunday in Advent.
14. Monday Collector to return Roll to Chamberlain or Treasurer. Last day for collection of money for School Teachers.
20. SUNDAY 4th Sunday in Advent.
21. Monday Nomination of Mayors Recorder's Court sit.
22. Tuesday Declare for York and Peel.
24. Thursday Sittings of Court of Error and Appeal commence.
25. Friday CHRISTMAS DAY.
27. SUNDAY 1st Sunday after Christmas
30. Wednesday Last day for not. of Trial for York and Peel.
31. Thursday End of Mon. year. Last day on which rum. half of Grammar (School Fund payable).

BUSINESS NOTICE.

Persons who belong to the Proprietors of this Journal are requested to remember that all our paid advertisements 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.

DECEMBER, 1863.

SUMMARY PROCEDURE BEFORE MAGISTRATES.

Our attention has been directed to the very imperfect state of the law in reference to procedure before Magistrates, in cases in which they are authorized to convict summarily.

No branch of criminal administration is more frequently brought into operation than this, and the very extensive powers committed to Magistrates are little understood and very seldom exercised in the manner required by law. Occasionally cases are reported in the Superior Courts exhibiting this fact; but a vast number come before the Quarter Sessions in the form of appeals from the convictions of Justices, and in nearly every case the convictions are found to be insufficient in form or in substance, and are accordingly quashed. In some instances this arises from ignorance or carelessness of the convicting Justice, but in the great majority of cases the fault does not lie at the door of the Magistrates, but is in the system under which he is authorized to act.

The Magistracy are increasing in number, and the mischiefs we allude to increase in at least the same ratio. It is a great evil, when offenders are allowed to escape by reason of informality in the proceeding to convict them, and the constant recurrence of the evil is calculated to weaken the force, if not of all laws, at least of those for the

prevention and punishment of small crimes and misdemeanors. A notorious offender, a wilful Sabbath breaker, or one who violates the wholesome restrictions on innkeepers, for example, is charged with the offence before a Magistrate. He is summoned, appears, and, the evidence taken bringing the charge home to him, is convicted of the offence and a fine imposed upon him. The Magistrate from some cause fails to put the conviction in legal form. The defendant appeals to the Quarter Sessions, and the conviction is quashed. Surely this is calculated to encourage opposition to authority and to foster crime, and yet these things may occur without much fault on the part of the convicting Justice. True, it may be urged that men should not be appointed to an office the duties of which they are not fitted by education to perform; but if that rule were acted on in the present state of the law, not two Magistrates in each county in Upper Canada would be found equal to their work.

Attempts have been made by enactments from time to time to simplify procedure, and it was partially done up to a certain period; but there never has been any general law of procedure governing all cases of summary conviction, and no full set of forms has ever been given by the legislature, applicable to the various cases within the Magistrates' jurisdiction. If it be said that a treatise on the duties of Magistrates would remedy the evil, our reply is at best it would only do so in part, for few who have not been regularly trained can apply general rules and principles (which only could be given) laid down in a text book, to particular cases, if at all complex in their nature.

What would be the remedy? The first and most obvious one is to amend the law by establishing an uniform mode of procedure in all cases of summary convictions, and giving a full set of forms of convictions, or providing for the framing of such forms by authority. Another mode would be to transfer the jurisdiction in these cases to the Division Courts, leaving to Magistrates the ministerial duties of the office, including the arrest of offenders about to escape. And still another method we find suggested in the *English Law Times* (for in England, with a better educated and more experienced magistracy, the evil is felt, as well as with us), the leading feature of which is the appointment of a clerk, a barrister of five years' standing, in each petty sessional division, at a fixed salary.

We follow the course of the *Law Times* in drawing attention to the subject, soliciting suggestions from persons of experience as to the reform necessary.

Any one who has taken the trouble to examine the convictions returned by Magistrates will bear us out in the assertion that in nine of every ten special cases the convictions are bad, void or voidable for some defect. Magis-