

## 1868.—MEMORIALS AS SECONDARY EVIDENCE.

## DIARY FOR JANUARY.

1. Wed.. *Circumcision*. Taxes to be computed from this date.
2. Th. .. Error and Appeal Sittings.
3. SUN.. *2nd Sunday after Christmas*.
6. Mon.. *Epiphany*. County Court and Surrogate Court Term begins. Municipal Elections. Heir and Devisee Sittings commence.
7. Tues.. Last day for Township, Village and Town Clerks to make returns to County Clerk.
8. Wed.. Election of School Trustees.
11. Sat. .. County Court and Surrogate Court Term ends.
12. SUN.. *1st Sunday after Epiphany*.
13. Mon.. Election of Police Trustees in Police Village.
15. Wed.. Treasurer and Chamberlain of Municipality to make return to Board of Auditors. School Reports to be made to Local Superintendent.
18. Sat. .. Articles, &c., to be left with Secretary of Law Society.
19. SUN.. *2nd Sunday after Epiphany*.
20. Mon.. Members of Municipal Councils (excepting Co's) and Trustees of Police Villages to hold first meeting.
21. Tues. .. Heir and Devisee sittings end.
25. Sat. .. *Conversion of St. Paul*.
26. SUN.. *3rd Sunday after Epiphany*.
28. Tues.. 1st meeting County Council.
29. Wed.. Appeals from Chancery Chambers (except in all cases during Examination Term).
30. Th. ... School Financial Report to Board of Auditors.
31. Fri. ... Last day for Counties and Cities to make returns to Provincial Secretary.

THE

## Canada Law Journal,

JANUARY, 1868.

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Great changes have taken place in the political aspect of this country during the past year. These changes call for notice from us only so far as they affect ourselves. Upper Canada and Lower Canada are, in name, no more. Nova Scotia and New Brunswick have cast in their lot with us, and Canada as a unit, comprising four provinces, has become a dominion.

As the oldest legal periodical in the four provinces, and as the organ of the profession in the largest and wealthiest of them, we may claim, without fear of contradiction, or, we think, without the danger of being considered presumptuous, the right of representing not only the profession of Ontario, but that of the Dominion at large.

Earnestly desiring to increase as well the usefulness as the sphere of usefulness of this journal, we shall spare no exertion on our part to do what lies in our power to effect the desired end. We at the same time think we have the right to call upon all those interested in their profession to assist

us in our exertions, and the more so as our work has hitherto been almost entirely a labour of love. We are willing that it should so continue, if need be, but we hope nevertheless that the good sense of the profession will induce them to do their part of the work with more regard to our right to an increased measure of support (not only as to the number of our subscribers, but as to the payment of what they owe after they have subscribed), and with more regard to their own interests, by furnishing us with such information as may be interesting and instructive to our readers in general.

In this latter respect we have to thank many earnest friends for material assistance, and amongst these several rising men who will hereafter, we doubt not, be ornaments to their profession.

## MEMORIALS AS SECONDARY EVIDENCE

It is hoped that the following remarks may be of service in those very numerous cases wherein evidence has to be given of conveyances which are not forthcoming. The subject is treated of, 1st, as to the search requisite to let in secondary evidence; 2nd, how far a memorial executed by a grantor is evidence of the matters therein stated; 3rd, how far it is evidence if executed by a grantee; 4th, the distinction between the evidence furnished by a memorial in ejectment, and as between a vendor and purchaser, or under the act for quieting titles; and 5th, as to proof of execution.

It frequently happens that secondary evidence of a missing document or title deed is rejected in consequence of the insufficiency of the search for the original.

Parties who search for a missing conveyance with a view to let in secondary evidence should bear in mind that the person entitled to the first immediate estate of freehold is the person entitled to retain the custody of the title deeds as against those entitled to ulterior estates in remainder or reversion; and that the deeds are presumed to follow the title and to go into the custody of those entitled. (*Moriarty v. Grey*, 12 Ir. C. L. Rep. 141, per O'Brien, J.; Sug. Vendors, ch. 11, s. 4; see also *Marvin v. Hales*, 6 U. C. C. P. 211, post; but see Sug. ch. 11, sec. 4, cl. 23, as to the right to the deeds of the mere grantee or releasee