

A FEW WORDS ABOUT BARRISTERS.

DIARY FOR JULY.

1. Thurs. Dominion Day. Long Vac. beg. Last day for Co. Clks. fin. to exam. Assm. Rolls, &c.
4. SUN.. 6th Sunday after Trinity.
5. MON.. Co. Ct. (exc. York) Term beg. Last day for notice of trial for Co. Ct. York. Heir and Devisee sittings commence.
10. SAT.. County Court Term ends.
11. SUN.. 7th Sunday after Trinity.
13. Tues.. General Sessions and Co. Ct. sit. Co. York.
18. SUN.. 8th Sunday after Trinity.
20. Tues.. Heir and Devisee Sittings end.
22. Thurs. St. Mary Magdalene.
25. SUN.. 9th Sunday after Trinity.

THE

Canada Law Journal.

JULY, 1869.

A FEW WORDS ABOUT BARRISTERS
PRIVILEGE FROM ARREST.

The attendance of parties and witnesses on courts of justice has always been protected from arrest. It is absolutely necessary that their attendance should be privileged, because without such a privilege justice cannot be properly administered; but the protection of legal officers is of a different character, and may well be confined within narrower limits.

The extent of the privilege of barristers as officers of the courts is not very clearly defined. When actually engaged in the business of the court they are certainly privileged; but how far the privilege extends to all courts, or even in the superior courts, to barristers not actually engaged, but in attendance in the expectation of being engaged, it is not easy upon decided cases to determine.

There are traditions in Westminster Hall to which reference is made in 1791, in *Meehins v. Smith*, 1 H. Bl. 636. The court, according to the report of that case, seemed much inclined to think that not only witnesses, but all persons who were coming to or returning from court, either directly on the business of the court or in any manner relative to that business, were entitled to freedom from arrest, and that to arrest them was a contempt of the court. Several cases were mentioned of barristers who were arrested on the circuit and discharged by the judge. Gould, J., recollected the instance of a Mr. Hippsley, a barrister who was discharged from an arrest on the circuit by Mr. Justice Birch, at Salisbury.

Heath, J., mentioned a similar thing having been done by Mr. Baron Burland.

The privilege, to whatever extent allowed, may be traced to the recognized position and duties of the bar in Westminster Hall and on the circuits where the same bar practice under the same judges. In 1833, it is true, a barrister who had been arrested on his return from sessions, was discharged on motion by the Court of Exchequer: *Lumley v. —*, 1 C. & M. 579. But in this case the privilege was admitted at the bar without any discussion, and was afterwards distinctly repudiated in *Newton v. Constable*, 2 Q. B. 157, so that it would seem that the privilege does not now extend to barristers by reason of their attendance at courts of sessions for the purpose of obtaining practice. It is difficult to rest the distinction on any solid ground of difference. One alleged ground of difference is that attorneys may act as advocates before courts of sessions, and the privilege of attorneys in this respect is less than the privilege which has been conceded to barristers: see *Jones v. Marshall*, 2 C. B. N. S. 615.

In 1846 it was held that a barrister of the home circuit who, while at his own house in London, was arrested after the close of the assizes at one place on the circuit and before the opening of the assizes at another place on the same circuit, for which he held retainers, was privileged: *Re Sheriff of Kent*, 2 C. & K. 197. It is said that a circuit is continuous from its commencement to its termination: *Re Sheriff of Oxfordshire*, *Ib.* 200. In such case it is not necessary to shew that the barrister, if in the habit of going the circuit, had, at the time of the arrest, retainers. If the barrister attend the circuit for the purpose of business, that is sufficient. It was said by Lord Tenterden in this case, that in the small counties, where the business is light, it often happens that some of the most eminent counsel of the circuit have no brief, and yet it could not be said on that account that they are not practicing barristers on the circuit.

The privilege has been held to extend to a barrister who had been attending in the Hall of the Four Courts of Dublin, and had there received a brief in a case set down for hearing on the day of his arrest, but which prior to his receiving the brief had been postponed till the next day: *Rubenstein v. —*, 10 Ir. C. L. R. 386. When a person goes to attend