

## LAST AMENDMENTS OF THE COMMON LAW PROCEDURE ACT.

## DIARY FOR DECEMBER.

1. Fri. New Trial Day, Q. B. Open Day, C. P. Last day of determining by Councils of appeal from value of land. Clerk of every municip. except Counties, to return res. rate-payers.
2. Sat. Open Day.
3. SUN. 1st Sunday in Advent.
4. Mon. Paper Day, Q. B. New Trial Day, C. P.
5. Tues. Paper Day, C. P. New Trial Day, Q. B. Last day of notice of trial in Co. Courts. Consolidated Statutes came into force 1859.
6. Wed. New Trial Day, C. P. Open Day, Q. B.
7. Thur. Open Day. Re-hearing Term in Chancery com.
8. Fri. New Trial Day, Q. B. Open Day, C. P.
9. Sat. Open Day. Michaelmas Term ends. Last day for Attorneys to take out certificates.
10. SUN. 2nd Sunday in Advent.
12. Tues. General Sess. and Co. Court Sitt. in each Co.
14. Thur. Grammar and Common School assessment payable. Collector's roll to be returned unless time extended.
17. SUN. 3rd Sunday in Advent.
18. Mon. Nomination of Mayors, Aldermen, Reeves, Co. and Police Trustees.
21. Thur. St. Thomas.
24. SUN. 4th Sunday in Advent.
25. Mon. Christmas Day. Christmas vacat. in Chan. beg.
26. Tues. St. Stephen.
27. Wed. St. John the Evangelist. Nomination of School Trustees in Toronto.
31. SUN. 1st Sunday after Christmas. Last day for School Trustees to make half-yr. report to Loc. Sup.

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## LAST AMENDMENTS OF THE COMMON LAW PROCEDURE ACT.

SECOND PAPER.

It remains now to advert to the provisions contained in the last five sections of 34 Vic. cap. 12.

The 9th section is valuable as defining the law in regard to the exclusion of witnesses, and parties who propose to make themselves witnesses, which had theretofore been in a remarkably fluctuating state. It would be unprofitable to review these changes; it will be enough to state the result of the cases sanctioned by the best judges, in order to manifest that this section is certainly an "amendment" of the law. There was always the right to require that the unexamined witnesses should withdraw from court; but parties could not be ordered out, as long as they behaved with propriety. If either party or witness remained in court after being ordered out by the presiding judge, there was no power to exclude his evidence on that account. All that the judge could do was to observe upon such perversity to the jury, and to recommend them to weigh well the credit

due to testimony given under such circumstances. Reference may be made to the following cases, which contain most of the law on the subject: *Constance v. Brain*, 2 Jur. N. S. 1145; *Parker v. Williams*, 6 Bing. 683; *Attorney-General v. Bulpit*, 9 Pri. 4. The case of *Cobbett v. Hudson*, 1 E. & B. 11, is very instructive; and it shows that at common law the judge had the power to fine a witness for disobeying his order to leave the court. The present Act leaves it to the judge's discretion as to directing the witnesses to go out (see *Taylor v. Lawson*, 3 C. & P. 643), and also leaves the punishment for disobedience to his discretion. It has been urged by some that this section should have declared in express terms that a witness or party refusing to withdraw should be *ipso facto* rendered incompetent to give evidence in the case. This, however, would seem to be involved in the last proviso, if the judge considers it advisable to exclude the testimony of such persons, and probably will answer all the purposes intended.

Section 10 of the Act is framed to get over the ruling of the court in a late case, the reference to which we have mislaid. The same point was held in *McGuire v. Laing*, 19 U. C. Q. B. 508, not cited in the later case; and it is no doubt a provision in furtherance of a laudable desire to shorten litigation.

Section 11, providing for the service of papers on the agents of certain corporations, and defining who are such agents, is a very beneficial enactment, and effectuates to a legitimate extent what was contemplated in section 17 of the Consolidated Common Law Procedure Act. The case of *Taylor v. Grand Trunk Railway Company*, 4 Prac. R. 300, and others of a similar kind not reported, but well known in the profession, show the necessity for such an amendment in the law, in order to avoid the needless expense of effecting service in the common law courts. It would be well if the Court of Chancery were to adopt the provisions of this section, as they have already done, in General Order 91, the clause we refer to of the Common Law Procedure Act.

Section 12, extending for two clear additional days the time for service of pleadings and notices in country causes when the Toronto agent is served, seems to be lessening the expenses of interlocutory proceedings in the suit, *e. g.*, by applications for