

DIARY FOR AUGUST.

4. SUNDAY 10th Sunday after Trinity.
 10. Saturday Articles, &c., to be left with Secretary Law Society.
 11. SUNDAY 11th Sunday after Trinity
 14. Wednesday Last day for service of writ County Court.
 18. SUNDAY 12th Sunday after Trinity.
 20. Tuesday Last day for notice for Chancery Examination, Toronto.
 21. Wednesday Long vacation ends.
 24. Saturday Last day to declare County Court.
 25. SUNDAY 13th Sunday after Trinity.
 26. Monday Trinity Term begins.
 30. Friday Paper Day, U. B.
 31. Saturday Paper Day, C. P.

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. Patten & Ardagh, Attorneys, Barristers, 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.

The Upper Canada Law Journal.

AUGUST, 1861.

THE ACT FOR THE BETTER ASSIGNMENT OF DOWER.

The law of Dower in Upper Canada has always been a subject of much perplexity to the lawyer, and of more or less oppression to the land-owner.

While dower was, in theory, for the support of the widow, in practice it yielded her little or nothing, and, worse still, caused much loss to the owner of the fee.

This being the case, the aim of the doweress was rather to levy a money compensation than to have the enjoyment of one-third of a bush-lot, which, owing to the existence of the primeval forest, she could not cultivate, or even one-third of a lot partly cleared, of which, for want of means, she could make no use.

In truth no greater punishment could, in many cases, be inflicted upon the claimant than to admit her claim, and to permit her to take possession of that which apparently she so earnestly prized. But even here there was a difficulty: parties, owing probably to the fact that the claim for one-third of the land was only a pretence, could not agree upon the portion to be assigned, and an action for dower, with its attendant expenses, was the consequence.

Then, suppose the right to dower conceded, was it just to allow the widow to have not only one-third of the lot as left by her deceased husband, but at the same time, in consequence of her own neglect to claim immediate dower, to give her, by way of damages for detention, the benefit

of subsequent improvements? Was it fair to carve out of the centre of a farm one-third of it, so as to render the working of the remainder ruinously expensive? Was it right for the law capriciously to impoverish any of her Majesty's subjects without, at least, a corresponding benefit to her who put the law in motion? These, and similar questions without number, were daily asked, but owing to the vexatious state of the law, could not be satisfactorily answered.

The Legislature has at length made an attempt to place the law of dower upon a more satisfactory footing in passing the act 24 Vic. cap. 40, intitled "An Act for the better assignment of Dower in Upper Canada." It is confined to Upper Canada, and does not affect cases where the right to dower has become consummate by the death of the husband before 18th May, 1861: (s. 16.)

It is by this act enacted that "In estimating damages for detention of dower nothing shall be allowed for the use of permanent improvements made after the alienation by, or death of, the husband of the claimant" (s. 17); and that "no action for dower shall be brought but within twenty years from the death of the husband of the person claiming dower, nor until one calendar month's notice, in writing, demanding the same, has been given by the claimant to the tenant of the freehold:" (s. 18.) It is also, very properly enacted, that no such action shall be hereafter brought "in case the claimant joined in a deed to convey the land or release dower therein to a purchaser, though the acknowledgment required by law at the time may not have been had, or though any informality may have occurred in respect thereof:" (s. 19.)

The leading features of the act, however, are two: first, to provide facilities for the issue of a writ of assignment of dower; and, secondly, to provide a means whereby the assignment of dower may be, as far as possible, reasonable and just.

Facilities for issue of writ.—Where there exists an outstanding claim for dower in any real estate in Upper Canada, and the owner of the real estate acquiesces therein and is willing to assign dower, but the parties are not agreed as to the admeasurement, it is made lawful for either of the parties to apply to a judge of either of the superior courts of common law, or to the judge of the county court of the county in which the lands lie, out of which dower is demanded, for a writ of assignment of dower: (s. 2.) It must be made to appear to the satisfaction of the judge, by evidence on affidavit, (intitled, it is presumed, in one of the courts) that the parties agree as to the existence of the right of dower. This is the foundation of the summary jurisdiction. When it is established to the satisfaction of the judge he is authorized, without