DIARY FOR SEPTEMBER.

3. Saturday... Trinity Term ends.
4. SUNDAY... 11*th Sunday after Trinity.*
6. Tuesday ... { Chancery Ex. Term, Toronto and Cobourg, commences. / Last day for notice of Ex. Chatham and Kingston.
7. Wednesday Chancery Ex. Term, Goderich, commences.
10. Saturday . Chancery Ex. Term, Cobourg and Goderich, ends.
11. SUNDAY .. 12*th Sunday after Trinity.*
12. Monday..... Last day for serving of Writ for Toronto Fall Assizes.
13. Tuesday ... Quarter Sessions in each County and County Court Sittings.
17. Saturday... Chancery Examination Term, Toronto, ends.
18. SUNDAY... 13*th Sunday after Trinity.*
20. Tuesday ... { Chancery Ex. Term, Chatham and Kingston, commences. / Last day for notice Ex. Hamilton and Ottawa.
22. Thursday... Last day for declaring for Toronto Fall Assizes.
24. Saturday... Chancery Ex. Term, Chatham and Kingston, ends.
25. SUNDAY... 14*th Sunday after Trinity.*
27. Tuesday ... Ch'y Ex. Term, Brockville, com. Last d. for not. of Ex. [Cornwall. Barrie and

The Upper Canada Law Journal.

SEPTEMBER, 1859.

In this number we commence our new method of addressing copies of the *Law Journal* to subscribers. By this method subscribers will see at a glance the amount of their indebtedness, the charge in all cases being to the end of the *current* year, thus

W. E. Johnson, $10,—59,

signifies that W. E. J. owes $10 to the end of the year 1859. Where no amount appears there is nothing due, and the subscription is paid to the end of the year signified. We hope that by this plan all mistakes shall be avoided, and the heavy amount of arrearage considerably lessened.

THE LAW OF REGISTERED JUDGMENTS IN UPPER CANADA.

Mr. Williams, in his interesting and practical work on Real Property, has remarked that "the attainment of the ample power which is now possessed over real property, has been the work of a long period of time; that a common purchase deed of a piece of freehold land cannot be explained without going back to the reign of Henry VIII. (Statute of Uses, 27 Hen. VIII. cap. 10), or an ordinary settlement of land, without resource to the laws of Edward I. (Statute *De Donis*, 13 Ed. I. cap. 1)." The same is also true of the attainment of the ample power now possessed by judgment creditors, in enforcing their judgments against the interests of their debtors in real estate. This liability to what may be called an involuntary alienation, appears in the early periods of English history to have been binding on the heir of a deceased owner of lands, to pay such of the debts of his ancestor as such ancestor's goods and chattels were not sufficient to satisfy; and although from the reign of Edward I., it was held that the heir was not responsible for any debts of his ancestor except those to the king, or where by deed of such ancestor he was specially bound to answer for such, yet, when the power of testamentary alienation was granted, a debtor who had thus bound his heirs could defeat this liability by devising his estate to some other person than his heir, and then neither heir nor devisee was bound. Such was the case until the act 3 & 4 W. & M. cap. 14, made void all devises by will as against specialty creditors, to whom the heirs were bound. But the creditor who had taken legal proceedings and obtained a judgment during the lifetime of his debtor, had, by the old rule of the common law, no resource whatever against the lands of the debtor, by means of an execution. The statute of Westminster the Second (13 Ed. I. cap. 18), however, gave the judgment creditor the right to have one-half of them extended or delivered to him under a writ of *elegit*, as follows: "When debt is recovered or acknowledged in the king's court, or damages awarded, it shall be from henceforth in the election of him that sueth for such debt or damages, to have a writ of *fieri facias* unto the sheriff for to levy the debt off the lands; or that the sheriff shall deliver to him all the chattels of the debtor (saving only his oxen and beasts of his plough), and the one-half of his land, until the debt be levied upon a reasonable price or extent. And if he be put out of that tenement, he shall recover by a writ of *novel disseisin*, and after by a writ of *re disseisin* if need be."

Under this statute it was held (and these rules of decision will be hereafter adverted to), that if at the time of the judgment the debtor had lands, and afterwards sold them, the creditor could, nevertheless, under the writ, take a moiety of the lands out of the hands of the purchaser (*Sir John De Moleyn's case*, Year Bk., 30 Ed. III. 24 *a*); and also even take a moiety of any lands purchased by the debtor after the date of the judgment, and then sold again.

The question as to whether this writ of *elegit* was applicable to Upper Canada, was incidentally raised in the case of *Doe dem. Henderson* v. *Burtch* (2 O. S. Rep. 514), where it was held that a judgment was not a lien upon lands for the purpose of an *elegit*, so as to avoid the effect of a writ of *fi. fa.* against lands issued on another judgment, subsequently entered, but placed in the sheriff's hands prior to the *elegit* And in reference to the writ, the learned Chief Justice remarked, "It is not necessary, in such a case, to determine whether an *elegit* can be resorted to in this country, to the prejudice of the remedy of other creditors, upon 5 Geo. II. cap. 7, whose satisfaction from the sale of the land would be indefinitely postponed if a prior plaintiff could hold them until he was satisfied out of the annual profits." In the case of *Doe dem. Dempsey v. Boulton* (9 U. C. Q. B. 535), Robinson, C. J., referring to the same writ, said, "The Legislature cannot be supposed to have framed the provision for registering judgments (9 Vic. cap. 34, sec. 13), with a view to process of execution by *elegit*, which they knew was never resorted to in this Province, being considered to be superseded by the 5th