DIARY FOR SEPTEMBER.

1. Tuesday..... Paper Day, C. P.
2. Wednesday... Paper Day, Q. B.
3. Thursday.... Paper Day, C. P.
5. Saturday ..... TRINITY TERM ends.
6. SUNDAY..... 14*th Sunday after Trinity.*
7. Monday..... Recorder's Court Sits.
8. Tuesday ..... Quarter Sessions and County Court Sittings in each County.
13. SUNDAY .... 15*th Sunday after Trinity.*
15. Tuesday ..... Last day for service for York and Peel.
20. SUNDAY..... 16*th Sunday after Trinity.*
25. Friday ..... Declare for York and Peel.
27. SUNDAY..... 17*th Sunday after Trinity.*

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. Ardagh & Ardagh, Attorneys, Barrie, 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.

The Upper Canada Law Journal.

SEPTEMBER, 1863.

THE LEADING STATUTES AS TO COSTS.

At common law costs were not recoverable *eo nomine* either by plaintiff or defendant. They were generally considered by the jury and estimated in the amount of damages. If the verdict was for defendant plaintiff was amerced to the king *pro falso clamore* (3 Bl. Com. 399.)

The statute of Gloucester, 6 Ed. 1, c. 1, passed in 1278, in substance enacts, that the demandant shall recover damages in certain forms of action specified, and that the demandant may recover against the tenant the costs of his writ purchased, together with the damages; and that the act shall hold place in all cases where the party is entitled to recover damages.

Though the costs of "the writ" only is mentioned in the statute, the statute has been held to extend to all the costs of the suit without reference to any particular scale of taxation, (2 Inst. 288, Witham v. Hill, 2 Wils. 91.) But where the damages are newly given by a statute subsequent to that of Gloucester where no damages were formerly recoverable, the plaintiff can recover no costs unless given by the statute which gives the damages, (Pitfold's case, 10 Co. 116 a; Gilb, C. P. 268; 1 Lill Abr. 467, b; Barnes 140; Cowp. 368.) If a statute subsequent to that of Gloucester gives double or treble damages in a case where single damages only were recoverable formerly, the costs also as parcel of the damages shall be doubled or trebled though no costs be given by the subsequent statute, (Cowp. 368, Hull, costs, 17; Tidd's Pr. 945.)

Costs were first given to a defendant on a writ of right of ward, (statute of Marleberge,) which became obsolete by the extinction of the military tenures; but now a defendant, by virtue of the 23 Hen. VIII., c. 15, s. 1, passed in 1535, and 4 Jac. 1, c. 3, s. 2, passed in 1606, is in general entitled to costs on judgment in his favor in all cases where a plaintiff would have been entitled to costs in case judgment had been given for the plaintiff.

The superior courts of law have jurisdiction in all actions great or small. Under the statute of Gloucester, a plaintiff in a superior court recovering any amount of damages, no matter how trifling, was entitled to full costs of suit. So long as this was permitted without limitation there was much vexatious litigation. The legislature, as we shall presently see, has from time to time endeavored to discourage vexatious actions, and to restrict trifling actions to courts of inferior jurisdiction.

The first act of the kind 43 Eliz. cap. 6, s. 2, passed in 1601, enacted, that "If upon any action personal to be brought in any of Her Majesty's courts at Westminster, (not being for any title or interest of lands, nor concerning the freehold or inheritance of any lands, nor for any battery) it shall appear to the judges for the same court, and so signified or set down before the justices before whom the same shall be tried, that the debt or damages to be recovered therein in the same court shall not amount to the sum of forty shillings, or above, that in every such case the judge and justices before whom any such action shall be pursued, shall not award for costs to the party plaintiff any greater or more costs than the sum of the debt or damages so recovered shall amount unto, but less at their discretion."

When this act was passed the County or Sheriff's court had exclusive cognizance of all personal actions (not being for trespass *vi et armis* or for lands of freehold) under the value of *forty shillings* (6 Ed. 1, c. 8, *Vennard* v. *Jones*, 4 T. R. 495, Com. Dig. County C. 8), and therefore for the purpose of taking a case out of the inferior jurisdiction it was a common device to lay the damages in the declaration at an amount above forty shillings. The object of the statute of Elizabeth, and of other statutes of a like nature to which we shall presently refer, is to make such a device of none effect, and so compel plaintiffs' to elect the proper tribunals for their suits at the risk of losing either the costs of the suit or the great bulk of the costs. (Ib.)

Payment into court of a sum exceeding forty shillings, takes the case out of the statute and deprives the judge of the power to certify to deprive the plaintiff of costs, in the event of his recovering a sum less than forty shillings,