DIARY FOR FEBRUARY.

1. Monday ..... HILARY TERM commences.
2. Tuesday .... *Purification B. V. Mary*
3. Wednesday.. Grammar School Trustees to meet
5. Friday ..... Paper Day, Q. B.
6. Saturday ... Paper Day, C. P.
7 SUNDAY .... *Quinquagesima.*
8. Monday ..... Paper Day, Q. B.
9 Tuesday ..... *Shrove Tuesday.* Paper Day, C. P.
10 Wednesday . *Ash Wednesday* Paper Day, Q. B. Last day for service for
11. Thursday ... Paper Day, C. P. [County Court.
13. Saturday..... HILARY TERM ends.
14. SUNDAY ..... *1st Sunday in Lent.*
20. Saturday..... Declare for County Court.
21. SUNDAY ..... *2nd Sunday in Lent.*
24. Wednesday .. *St. Matthias.*
28. SUNDAY .... *3rd Sunday in Lent.*
29 Monday ..... Last day for notice of Trial for County Court.

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.

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MERGER OF BILLS AND NOTES IN SPECIALTIES.

By a happy fiction of law, all men are supposed to know the law, and all men are supposed to know the great importance attached by the law to "a seal." But ignorance of law notwithstanding, and ignorance of the effect of taking a promise under seal to secure a debt for which a promise not under seal exists, is the cause of much litigation. And we must admit that on this branch of the law common sense is anything but a reliable guide.

Ignorance, therefore, on the part of laymen, of the doctrine of merger, as applied to bills and notes, is not only pardonable, but excusable. Common sense does not tell a man that simply taking an ordinary mortgage on real estate to secure the payment of a bill or note, destroys his remedy on the bill or note. But the law tells us that such may be the effect of taking an ordinary mortgage containing the ordinary covenant to pay the money, and that such apparently may be the effect, although there be a clear verbal understanding to the contrary between the parties.

The bill or note is generally handed to the lawyer without one word being mentioned as to a mortgage or special security being held for the same debt. The suit is commenced, and a plea from the defendant's attorney setting up the mortgage by way of merger, is the first intimation the lawyer receives of it.

Much of the trouble and expense occasioned to the creditor by his ignorance of the law might have been avoided by his telling his attorney *all* the facts of the case. But he will find that much the most satisfactory thing for him, both to save costs and prevent delay, would have been to have inserted in the mortgage a stipulation in writing to the effect that it was only intended to operate as a collateral security to the note, and every careful practitioner would insert such a provision; but it is equally certain that all practitioners do not do so.

Perhaps, however, the creditor, by way of saving expense, draws the document himself, or goes to a "conveyancer," who does business on cheap principles; and then the chances are largely in favor of there not being the necessary clause, from the want of which arise the evils to which we are about to refer.

If a creditor sometimes gets into trouble in this way, so does occasionally his debtor, as fully appears from the case mentioned at the conclusion of this article. It therefore behoves the debtor as well as the creditor to be careful as to the manner in which the mortgage is drawn, when taken as security for the payment of a previously existing debt, secured by bill or note.

We "take it to be a clear principle of law, that 'if a man accepts an obligation for a debt due by simple contract, this extinguishes the contract, though the acceptance of an obligation for a debt due by another obligation is no bar to the first obligation' (Bac. abr. Debt G.); because it is not a higher security." (See the judgment delivered by Robinson, C. J., in *Matthewson* v. *Brouse*, 1 U. C. Q. B. 272.) All the decisions in this country on this subject keep this principle in view throughout. But the maxim, *Conventio vincit legem* is equally true, and it will be necessary, therefore, to enquire how this *conventio* must appear.

1. If the mortgage or other specialty state that it is given as collateral to the bill or note upon which the action is brought, it is clear that the action may be maintained even though the mortgage be not due (*Matthewson* v. *Brouse*, 1 U. C. Q. B. 272; *Shaw et al.* v. *Crawford*, 16 U. C. Q. B. 101; *Commercial Bank* v. *Cuvillier et al.*, 18 U. C. Q. B. 378).

2. Even if the statement in the mortgage be not explicit, still if it appear from the face of the instrument that it is taken as a further security, and intended to give the payee of the note a better remedy against the maker in case he should be obliged to have recourse to it, and not intended to cancel the note, the right of action on the latter is not extinguished. *Murray* v. *Miller* (1 U. C. Q. B. 353) is our authority for this proposition. In this case the proviso in the mortgage was, that the same should