

DIARY FOR MAY.

1. SUNDAY.....	Ascension. St. Philip and St. James.
6. Thursday.....	Ascension.
8. SUNDAY.....	1st Sunday after Ascension.
13. SUNDAY.....	Whit Sunday.
15. Monday.....	EASTER TERM begins.
18. Wednesday..	Last day for service for County Court.
20. Friday.....	Paper Day, Q. B.
21. Saturday.....	Paper Day, C. P.
22. SUNDAY.....	Trinity Sunday.
23. Monday.....	Paper Day, Q. B.
24. Tuesday.....	Queen's Birthday. Paper Day, C. P.
25. Wednesday..	Paper Day, Q. B.
26. Thursday.....	Paper Day, C. P.
28. Saturday.....	EASTER TERM ends.
29. SUNDAY.....	1st Sunday after Trinity.
31. Tuesday.....	Last day for Court of Revision finally to revise Assessment Rolls, and for County Court to revise Township Roll.

BUSINESS NOTICE.

Persons indebted to the Proprietors of this Journal are requested to remember that all our *passive* accounts have been placed in the hands of Messrs. Ardagh & Ardagh, Attorneys, Barris, 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.

MAY, 1864.

RIGHT OF SHERIFFS TO POUNDAGE.

The office of Sheriff was for a long time purely honorary, and Sheriffs were bound as the King's deputies to execute his writs, without making them the subject of any charge whatever.

The duties of the office, however, by degrees becoming more onerous, and the dignity of the position more expensive, Sheriffs' fees became the subject of legislative enactment; and under the statute of 29 Eliz. cap. 4, Sheriffs were first entitled to poundage.

The right to poundage did not exist at common law, but is purely a creature of statute. (*Yates v. Meach*, 11 Ir. C. L. Rep., Appendix 1.)

The Statute of Elizabeth cannot be considered as being in force in this province, Sheriffs' fees and poundage being regulated entirely by our own statutes and tariffs. (*Morris v. Boulton*, 2 U. C. Cham. R. 60.)

The first statutory provision in this colony was 40 Geo. III. cap. 4, sec. 3. This referred only to poundage on executions against goods. It was followed by 2 Geo. IV. cap. 1, sec. 19, which enacted that it should be lawful in any execution against the person, lands, or goods of any debtor, for the Sheriff to levy the poundage fees and the expense of the execution, over and above the sum recovered by the judgment, &c.

Under the authority of sec. 45 of this act, the court made a tariff of fees (Hilary Term, 10 Vic.) which regulated the fees to be taken by the plaintiff. The words used in the tariff are "poundage on executions when the sums levied and made," &c.; thus explaining the meaning of the expression "poundage fees," as used in the statute.

Before proceeding further it will be necessary to ascertain the meaning of the words "levied and made," used in this tariff. All the learning upon this point, up to the time of the decision in *Morris v. Boulton*, 2 U. C. Cham. R. 60, will be found in the very careful judgment of the late Mr. Justice Burns in that case.

After dividing the subject into (1) writs of execution against persons and writs against goods, and (2) writs against lands, he decided with respect to the former that "there must be a taking to entitle the Sheriff to poundage; that if the money be paid before the taking, either to the plaintiff or the Sheriff, the right to poundage does not attach; that the meaning of the tariff in these cases is that the Sheriff's right to poundage begins with his taking the person or goods, and the words "and made" are to be interpreted in favor of the Sheriff, whether the money go through his hands or not, if it be forced as the consequence of his act."

We now propose to examine more in detail, the law as it stands with reference to the several kinds of executions, confining ourselves to cases decided in our own courts.

1st. As to executions against the person.

A question arose before the case of *Morris v. Boulton*, but under the same statutes and tariff, as to whether the taking a party into custody by a Sheriff on a *ca. sa.* was such a making of the money as to entitle him to poundage. We refer to *Corbett v. McKenzie*, 6 U. C. Q. B. 605. The court there held that "the debt was in a legal sense satisfied while the party was in custody, and the Sheriff's right to poundage was then complete, and could not be divested by any act of the law or the court, or by the death of the party, being all matters over which the Sheriff has no control." In this case the debtor had been discharged under the Insolvent Act of 10 & 11 Vic. cap. 15; and, referring to this, Robinson. C. J., remarked, "It may be said with truth by the execution creditor that he has not been satisfied, for the debtor has been discharged because he has satisfied the court that he was wholly unable to pay. And there is an apparent hardship if he has to pay poundage when he has received nothing. But the hardship would have been the same here as in England, where the party died in execution, or is rescued, or remained in custody without paying; and yet in all such cases I take the claim for poundage by the law of England to be clear." The English legislature has however thought fit, by 5 & 6