DIARY FOR OCTOBER.

1. Wednesday...Clerk of Municipality to deliver Assessment Rolls to Collector.
4. Saturday. . ..Last day for notice of trial York & Peel Assizes.
5. SUNDAY......*16th Sunday after Trinity.*
6. Monday . . County Court and Surrogate Court Term begins.
7. Tuesday........Chancery Ex. Term London & Belleville com. Last day for notice [Hamilton and Belleville.
11. Saturday . . Co Court & Surrogate Ct. Term ends.
12. SUNDAY......*17th Sunday after Trinity.*
13. Monday...... .York and Peel Fall Assizes.
14. Tuesday........Chancery Ex. Term Brantford and Kingston com Last day for [notice Barrie and Ottawa.
19. SUNDAY .....*18th Sunday after Trinity.*
21. Tuesday .... .Ch Ex. Term Hamilton and Brockville com Last day for notice [Goderich and Cornwall.
26. SUNDAY......*14th Sunday after Trinity.*
28. Tuesday ....Chancery Ex. Term Barrie and Ottawa commences.

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. Patton & 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.

OCTOBER, 1862.

LIABILITY OF MASTER FOR ACCIDENTS TO SERVANT.

The branch of law which we propose to consider is one of modern growth. It partakes of refinements unknown to our ancestors. Owing to the increase of labor-saving machinery, and consequent use of machinery, accidents to workmen are much more frequent than formerly. Owing to this circumstance, combined with the change of law which allows the representative of a person killed by accident to sue for damages, actions to recover damages for accidents resulting in injuries to the body are become very numerous.

Most accidents are attributable to some cause or combination of causes. In the case of an employee injured by accident, the cause may be—

1. Neglect of fellow servant.
2. Neglect of master.
3. Neglect of person injured.

As to these, severally.

1. *Neglect of fellow servant.*

The mere relation of master and servant never can imply an obligation on the part of the master to take more care of the servant than he may reasonably be expected to do of himself. He is bound to provide for the safety of the servant, in the course of his employment, so far as he reasonably can. The servant is not bound to risk his safety in the service of the master. If he accept service, he undertakes to run all the ordinary risks incident to it. The negligence of a fellow-servant in the course of common employment, is held to be a risk of that description. When we use the term "servant," its application is not to be restricted to that of a menial. It extends to tradesmen and contractors. It extends not only to persons directly employed by the master, but to persons indirectly employed, such as persons employed by sub-contractors, provided all are employed for one and the same common work: (*Wiggett* v. *Fox*, 11 Ex. 832). A person who volunteers to assist the servants of defendant is no better position than a hired servant, so far as his remedy against the master for injuries received while in employ of the master is concerned: (*Degg* v. *Midland R. Co.*, 1 H. & N. 781; *Potter* v. *Faulkner*, 10 W. R. 93; *Abraham* v. *Reynolds*, 5 H. & N. 143). It would be absurd to hold the master liable to the servant for the neglect of a fellow-servant in putting the former into a damp bed; for the negligence of the cook in not properly cleaning copper vessels used in the kitchen; of the butcher for supplying meat injurious to health; of the upholsterer for supplying a crazy bedstead; or to hold the builder liable for the falling of a brick by a bricklayer, an axe by a carpenter, or stone by a mason. The servant must use ordinary diligence to protect himself from misadventures of this kind; and if from no fault of the master he suffers, the master is clearly not responsible.

The first case to which we shall advert is *Priestley* v. *Fowler*, 3 M. & W. The declaration stated that plaintiff was a servant of defendant in his trade of a butcher; that defendant had desired plaintiff to convey some meat in a van driven by a fellow-servant; that the van broke down, whereby the plaintiff was injured, &c. The action was held not to be maintainable. The plaintiff's right to recover was rested on the supposed obligation of the master to supply a proper van, or to take care that it was not overloaded; but the court held that the master was not liable for damage to the servant, arising from any vice or imperfection, unknown to the master, in the carriage, or in the mode of loading and conducting it. In conclusion the court said—"To allow this sort of action to prevail would be an encouragement to the servant to omit that diligence and caution which he is in duty bound to exercise on behalf of his master, to protect him against the misconduct or negligence of those who serve him; and which diligence and caution, while they protect the master, are a much better security against any injury the servant may sustain by the negligence of others engaged under the same master, than any recourse against his master could possibly afford."

So where a servant of a railway company in the discharge of his duty as such, was proceeding in a train under the guidance of others of their servants, through whose negligence a collision took place, and he was killed, the action