

DIARY FOR JANUARY.

1. SUNDAY { 1st Sunday after Christmas. Circumcision. Taxes to be computed from this day.
County Court Term begins. Surrogate Court Term begins. Recorder's Court begins. Heir and Devisee Sittings commence. Municipal Elections.
2. Monday.....
5. Thursday..... Toronto Winter Assizes begin.
6. Friday..... Epiphany.
7. Saturday..... County Court and Surrogate Court Term ends.
8. SUNDAY..... 1st Sunday after Epiphany.
11. Wednesday..... Election of School Trustees.
14. Saturday..... Heir and Devisee Sittings ends.
15. SUNDAY..... 2nd Sunday after Epiphany.
21. Saturday..... Articles, &c., to be left with the Secretary of Law Society.
22. SUNDAY..... 3rd Sunday after Epiphany.
23. Monday..... Last day for notice for Examination, Toronto.
29. SUNDAY..... 4th Sunday after Epiphany.
31. Tuesday..... { Last day for Cities and Counties to make returns to Government.
Day for Grammar School Trustees to retire.

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.

TO CORRESPONDENTS—See last page.

The Upper Canada Law Journal.

JANUARY, 1860.

OUR CALENDAR.

We have to apologize for the delay in the issue of this number. The delay is thus explained:—it is our practice to issue the Law Journal Calendar for each year with the first number of the year. We had prepared the Calendar for 1860 in the usual manner, and sent it to our Printers for publication. When partly in type, the Court of Chancery made new rules, entirely altering the periods for hearing and examination terms. This rendered necessary a corresponding alteration of our Calendar, which alteration has been attended with much delay. We hope, in future numbers, to make up for lost time.

MORTGAGES.—POWER TO DISTRAIN.

The most common security for money loaned in Upper Canada is a mortgage on real estate.

Almost every man in this section of the Province is the owner of some real estate, and is either a mortgagor or mortgagee.

When land is bought it is usual to pay only a portion of the purchase-money and to give a mortgage for the balance. The mortgagee converts his mortgage into cash at a discount, and by this means receives cash for his land.

So in the case of direct loans, the security generally taken is a mortgage on land. Now that the usury laws are abolished the direct loans on mortgage are more frequent than the indirect, by the sale of mortgages made for sale. In every aspect the mortgage is an important mode of conveyance, and one which ought to be well understood.

It is an object with the capitalist to ensure regular and prompt payments, more especially of interest—in all probability the source whence his living is derived. Formerly this was sought to be accomplished by a threat of the known powers of a mortgagee, such as to eject to for money due and to foreclose. In later times mortgagees receive greater powers, that is of sale upon default, without any recourse to Courts either of Law or Equity. Still delays are created, either by defences, for time, or specious promises of performance, and still lenders are without their interest.

It has often occurred to us that where the parties are willing a power of distress might be given, and by this step more gained towards regular collection of monies due than by any other course usually adopted. English capitalists must have regular payments of interest, and owing to the irregular mode of paying interest in Canada are frequently deterred from risking their money among us. This is a misfortune to them and to us. Were we to acquire more exact business habits, especially in money engagements, money would be less scarce than it is at present. Abroad there would be more confidence in us, followed by a flow of capital from the Mother Country seeking investment here.

We have had occasion to examine the cases as to distress, and, in the expectation of our research being of some benefit to others, proceed to note the results.

To enable a mortgagee to distrain on the mortgagor in possession, Coote, in his work on mortgages, says an agreement to that effect should be inserted in the mortgage deed, and a sum certain be stated by way of rent. Let us refer to the cases:

The first is *Doe Dem. Garrod v. Olley et al*, 12 A. & E. 481.

It was an action of ejectment on the part of the plaintiff, who produced and proved the Court Rolls of the manor of which the *locus in quo* was copyhold of inheritance. The rolls contained a presentment of the admittance of Garrod, the lessor of the plaintiff, on the conditional surrender, therein vested, of Burgess, a copyholder out of Court. On the part of the defendants a mortgage deed between Burgess of the one part and Garrod of the other, was put in evidence and recited the title of Garrod to the copyhold in question, and an agreement for a loan of £850 by Garrod to him to be secured by a sur-