

LAST AMENDMENTS OF THE C. L. P. ACT.

DIARY FOR OCTOBER.

1. SUN. 17th Sunday after Trinity.
2. Mon. Clerks and Deputy-Clerks of Crown and Master and Reg. in Chan. to make quarterly returns.
8. SUN. 18th Sunday after Trinity.
11. Wed. Last day for Reg. & Mas. in Chan. to remit fees.
15. SUN. 19th Sunday after Trinity. Law of England introduced into Upper Canada 1792.
18. Wed. St. Luke the Evangelist.
22. SUN. 20th Sunday after Trinity.
28. Sat. St. Simon and St. Jude.
29. SUN. 21st Sunday after Trinity.
31. Tues. All Hollow Eve.

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LAST AMENDMENTS OF COMMON LAW PROCEDURE ACT.

The Ontario Statute, 34 Vic. c. 12, has effected some changes in the practice, upon which it is now our object briefly to comment.

The repeal of the sections in the Common Law Procedure Act requiring the order of a Judge to plead several matters, and the extension of the powers of the County Court Judges in certain interlocutory matters in the Superior Courts, have arisen, we suspect, out of the agitation of country practitioners, who desire to reduce their agency fees. No doubt the former practice as to pleading occasioned needless expense in some cases, where no cause could be shown to the allowance of the several matters proposed to be pleaded, or where a consent was given to the granting of an order. We think that the evils intended to be guarded against by the former practice will be sufficiently provided for in section 8 of this Act. Whenever pleas are seen to be embarrassing, or frivolous, or founded upon the same matter, practitioners will always be astute enough to get relief under this provision.

The power conferred upon the county judge of changing the venue in actions in his court, we regard as a most beneficial change in the law. Where the cause of action was transitory, it was competent for a plaintiff to sue the defendant in any County Court; and we have known instances where most vexatious litigation has been instituted by a plaintiff choosing a county remote from the residence of the defendant's witnesses. One of the leading rules now observed by the courts in regulating the place of trial is that, as far as possible, a matter shall be disposed of within the jurisdiction in which it arose: JAMES, V. C., in

Baker v. Wait, L. R. 9 Eq. 105; and, see *Levy v. Rice*, L. R. 5 C. P. 119. Under the old practice, a defendant in the county court had no possible means of relief, unless he could persuade one of the superior court judges to grant him a certiorari, as was done in *Patterson v. Smith*, 14 U. C. C. P. 525.

We incline to doubt whether the Chamber business in Toronto will be much lessened by the extension of the jurisdiction of the county court judges in interlocutory applications. Great confidence is felt in the decisions of the gentleman presiding in Common Law Chambers, and the uniformity of decision secured by coming before the same officer in all such matters, will counterbalance the facility with which such applications can be made in the country before the local Judge. The result will be, perhaps, that all consent applications will be made to the county judge, and all contested motions will be disposed of, as before, at Toronto.

The provision as to obtaining an order to replevy before a county judge, is likewise a benefit, for in many cases expedition is of the essence of the relief. We have known valuable articles to be eloiigned during the delay occasioned by an application to the Superior Court Judge.

The seventh section of this Act changes the law in actions against officers for an escape. It is a copy *verbatim* of the English Statute, 5 & 6 Vic. c. 98, s. 31. In fact its effect is just to leave the Common Law as it was before the statute 1 Ric. c. 12, which was held to give by construction an action of debt against sheriffs and other officers of like powers, in cases of escape from final process; *Jones v. Pope*, 1 Wms. Saund. 38. The change is a beneficial one, for it does away with the cast-iron rule, that the precise amount of the original judgment shall be recovered against the sheriff, (*Bonafous v. Walker*, 2 L. R. 126), and enables the Court and jury to deal equitably, by proportioning the damages to the value of the custody at the time, and to the wilful misconduct or unwitting error of the officer in charge. As to the mode of estimating the value of the body, and so fixing the damages, refer to *Savage v. Jarvis*, 8 U. C. Q. B. 331; *Kinloch v. Hall*, 25 U. C. Q. B. 141; *Macrae v. Clark*, L. R. 1 C. P. 403. And as to the mode of procedure in such cases in a court of equity, see *Moore v. Moore*, 25 Beav. 8.