

DIARY FOR JULY.

1. SUN... 5th Sunday after Trinity. Long Vacation com.
2. Mon ... Co. Court and Surrog. Court Term begins. Heir
[and Devisee Sittings commence.
7. Satur. County Court and Surrogate Court Term ends.
8. SUN... 6th Sunday after Trinity.
14. Satur. Last day for Judges of Co. Ct. to make return of
15. SUN... 7th Sunday after Trinity. [ap. from asscesm'te.
17. Tues. ... Heir and Devisee Sittings end.
22. SUN... 8th Sunday after Trinity.
25. Wed... St. James.
29. SUN... 9th Sunday after Trinity.
31. Tues. ... Last day for County Clerk to certify County rate
[to municipalities in counties

The Local Courts'

AND

MUNICIPAL GAZETTE.

JULY, 1866.

CONVEYANCES TO MUNICIPAL CORPORATIONS.

Many of our non-professional readers may not be aware of the restrictions placed upon the holding of land by corporations, particularly ecclesiastical corporations, by the statutes of mortmain. By the Common Law it was incident to every corporation to have a capacity to purchase lands for themselves and successors. But as it was considered inexpedient by the Legislature that property should be held in what was termed a "dead hand," the possession of land by corporations was restricted by several statutes, the main provisions of which are still in force.

Of late years when there are so many corporations constituted for a variety of purposes, it has been almost universally found advisable to limit their powers with reference to the purchase of real estate. Thus banks are only allowed to purchase land for building purposes or for the purpose of securing a debt, and Municipal Councils may, by section 243 of the Municipal Institutions Act, pass by-laws for obtaining such real property as may be required for the use of the corporation and disposing of the same when no longer required. In fact every corporation is in general terms only empowered to deal in such matters as come within the legitimate limits of the purpose or purposes for which it was originated.

It was questioned in a late case to which we now desire to direct attention, whether a Municipal Corporation could take a mortgage to secure the payment of moneys due thereto.

The case referred to is *The Corporation of Belleville v. Judd* (25 U. C. Q. B. 397.)

It was admitted that one Alexander Judd, before the 29th day of April, 1859, was the treasurer of this corporation, and was on that day indebted to it in the sum of £1,214 19s. 10d.; that the defendant was his surety to the plaintiffs for this money; that on the same day the plaintiffs recovered a judgment in the Court of Queen's Bench for Upper Canada against the defendant for this amount and for £112 6s. 9d. costs; that this judgment was registered against the lands of the defendant; that on the 5th July, 1849, the defendant requested time from the plaintiffs to pay £500 of this amount, and, to secure its payment executed a mortgage on his lands; that this mortgage contained a covenant that the defendant would pay the plaintiffs the sum of £500, in manner and at the time therein mentioned, which was the covenant upon which the action was brought.

The defendant in answer to the action pleaded that the plaintiffs had no power to take the conveyance and that they could receive no benefit from the covenant therein contained. The mortgage was in law a conveyance of the land, though subject to an equity of redemption by the mortgagor, and it was contended that the corporation was not a trading corporation or entitled to hold land otherwise than for the use of the corporation, and that the corporation could not give time for the payment of the debt or take this mortgage as security.

The judgment of the court was in favour of the plaintiffs and is best given in its own words.

"That the indebtedness arose in the legitimate business of the corporation is clear. Their treasurer had made default; the defendant was his surety, against whom a judgment had been obtained. We think it was within the scope of the plaintiffs' authority to give day of payment, and if so to take a covenant to pay at the day given. When this day came, was it an answer for the defendant to say, 'You could not take my covenant that I would pay you the money which at my request, you gave me time to pay?'

This is not a trading corporation: but it has powers to manage its own lawful affairs. If the defendant's contention were to prevail the plaintiffs would have no discretion respecting the enforcing of their debts. They would be bound to enforce their judgments without mercy, even if it resulted in a loss. In this very case, sup-