

DIARY FOR APRIL.

1. Thur. Local School Supt. term of office begins.
4. SUN. 1st Sunday after Easter.
5. Mon. County Court of York Term begins.
7. Wed. Local Treasurer to return arrears of taxes due to County Treasurer.
10. Sat... County Court of York Term ends.
11. SUN. 2nd Sunday after Easter.
18. SUN. 3rd Sunday after Easter.
23. Fri... St. George.
25. SUN. 4th Sunday after Easter. St. Mark.
30. Fri... Last day for non-residents to give list of lands or apportionments from assessment. Last day for Local Clerks to return occupied lands to County Treasurer.

The Local Courts'

AND

MUNICIPAL GAZETTE.

APRIL, 1869.

"SPECIAL" SUMMONS.

It is to be expected that when a new mode of procedure is introduced into any Court, difficulties, or, at least, apparent difficulties will present themselves—and this in a greater or less degree, according to circumstances. In Courts where the practice is so plain and simple as in Division Courts, one would expect that a change in the mode of entry of judgments would be very easily provided for, and more easily understood. When the changes made by the Common Law Procedure in the practice of the Superior Courts had to be worked out, comparatively little difficulty was felt by the judges or practitioners; and thus, comparing small things with great, it seems strange that, in such a simple matter as the recovery of a judgment in a Division Court in certain cases, at the expiration of a certain number of days instead of a day certain, any difficulty could arise. If half the care and ability displayed in the framing of the analogous clauses in the Superior Court Act had been spent on the late Division Court Act, there would be nothing for us now upon which to comment.

By the Act, as it stood before the passing of the late rules, it was doubtful whether it was the intention of the Legislature that judgments coming within the second section of the Act could, in case no notice of dispute should be filed within the proper time, be entered at the expiration of the time limited for the putting in such notice, or whether it was not necessary

that the plaintiff should wait until the Court day—the former *return day* of a summons—before he could obtain a judgment. In fact, so doubtful was it that whilst we believe it was the intention of the *framer* of the Act to refer it to the former period, the ordinary rules for the construction of statutes might lead to the supposition that the intention of the *Legislature* was to make a plaintiff wait until the Court day.

Under these circumstances the Board of County Judges came at once to the rescue, and under the ample powers given to them gave the Act a sensible interpretation. The forms given by the Act are altered by the Board, and rules have been made which in the matter spoken of carry out the reasonable intention of the *framer* of the fact. The special summons is now to be issued in any case coming within the second section of the Act, and is returnable on the eleventh, sixteenth or twenty-first day, as the case may be, after the day of service; and on the succeeding day the plaintiff, unless the defendant has filed a notice disputing the claim, may require the clerk to sign judgment for the amount claimed. This notice of dispute is not, we apprehend, necessary when the case is one not falling within the second section, as no judgment by default can be entered except it comes within the class of cases therein described. Some persons have been under the impression that the notice of dispute should be filed whenever it was the intention of the defendant to contest the plaintiff's right to recover, even though the claim did not come within the second section. But this is incorrect; there are now, in fact, two kinds of summons, one for all claims within the second section, under which judgment by default may be entered, after the time limited for notice of dispute, and another for all other cases, the practice as to which is the same as it was before the Act.

In another respect also the Board had to remedy not a defect, but rather a mistake in this Act. Section 17 repeals section 93 of the Division Courts Act and makes a provision in lieu thereof. Now it is quite evident that it was intended, as will be seen on comparing the sections, to repeal section 95, and not section 93. The effect was to do away with notices of statutory defences altogether. The Board of Judges, to prevent any mistake on the point and to keep alive the very proper