

nor can they say that a party shall appear on the *eleventh day* after service, where the Act says (the original Act as well as the new Act), that a defendant is bound to appear on the tenth day after service, not counting the *day of service or the court day*—So that if a party is served on the 28th day of May—for a court to be held in Toronto on the 8th June—he is legally bound to appear at that court on any summons served on him, because he has *ten clear days*, not counting the day of service or the court day. Does the new or old Act give the Board of County Judges any power to take away this right of the plaintiff? Do these Acts give the Board the right to say a defendant shall appear within nine days?

On the contrary, Section two of the new Act says that the summonses mentioned therein, “*shall be served according to the practice of such Courts,*” which practice we know means, as I have said—that the defendant has only “*ten clear days to appear in,*” *not eleven*. The effect of the new rules is to give him eleven days.

Now let us see what the 22nd section says :

“It only says the ‘Board of County Judges’ shall have authority, from time to time, in addition to their present powers to make *rules* also for the guidance of clerks and bailiffs in relation &c., to their duties and fees &c., not in relation to suitors, either enlarging or abridging their rights. I have before me a copy of the new form of summons addressed to the defendant thus :

“You are hereby required to appear in the said court on the (the rule requires the clerks to fill in the) eleventh day after the day of service of this summons on you.” By this form a party summoned to appear on the 28th May is within its meaning, and is right if he appear on the eleventh day after its service, that is, on the 8th June—at any time in that *day*—having duly filed his defence or denial within eight days—thus throwing the plaintiff over that court—and depriving him of one day’s privilege—perhaps causing the loss of his debt—since the case must necessarily stand for trial at the next sitting of the court, unless the court sits two days. In the after part of the summons it is stated that “in case you give such notice (that is, any notice of defence on such eighth day), disputing the claim, the cause will be tried at the sittings of this court, to be held at (say Toronto), next

after the return day first above-named, (which means next after the eleventh day after service).

Then on this new form of summons we find a notice endorsed—making in effect the return day thereof to be the eleventh day—and authorising the clerk to sign final judgment on the (say the ninth day), after service, or at any time within a month thereafter, if no defence be filed within eight days.

Now this authority of course nullifies the meaning of the second section of the new Act if that section meant by the “*return day,*” the court day—and abridges the defendant’s rights, as the first part of that summons abridges the plaintiff’s rights. I should be sorry to set up my judgment against the judgment of the “Board of County Judges,” or in any way to question their ability, but I respectfully submit that this form of summons is not in accordance with the meaning of the Acts—in other words, abridges the meaning of section two in one way, whilst it enlarges it in another. In other words, does the Act give the judges *legislative power*, or, are they not obliged to *frame rules* in consonance with the enactments of the old Act and the new Act? I cannot see that section sixty-two of the old Act gives any other power than to frame rules to carry out the will of the Legislature.

The garnishee sections of the new Act, have since my letter signed “*Lex,*” come under review in various courts in Canada west. In one instance (it may be important to say), in the case of *Warmoll v. Gearing*, and *Thompson v. Wright*, in the Toronto courts, it has been held by Judge Duggan, the County Judge—and on appeal by Judge Morrison in Chambers, that a garnishee summons duly served, takes *precedence* if first served over an attaching order issued from the Queen’s Bench against the same garnishee—(see section nine of the new Act.) It may be as well to mention here too, that under section six (sub-sec. 4), of the new Act, the judge has power to make a garnishee summons returnable before him in chambers, or on any special day named by him. Further, it may be mentioned, that many suitors have thought that, under the words of the Act, a *debt not due or an accruing debt*, such as the *partly earned salary* of a clerk—or rent accruing, but not fully due may be garnisheed. This, however, is not so—the same construction, would be put, and has (to my knowledge), been put on the words of the