

## BRITISH OATHS' ACT.

## DIARY FOR JUNE.

4. SUN ... *Whit Sunday.*  
 5. Mon ... Recorder's Court sits. Last day for notice of trial  
 11. SUN ... *Trinity Sunday St. Barnabas.* [for Co. Ct.  
 13. Tues ... Quar. Sess. and Co. Ct. sitt. in each Co.  
 18. SUN ... *1st Sunday after Trinity.*  
 20. Tues ... Accession Queen Victoria, 1837.  
 21. Wed ... Longest Day.  
 22. Thurs. Sittings Court of Error and Appeal.  
 24. Sat ... *St. John Baptist Midsummer Day.*  
 25. SUN ... *2nd Sunday after Trinity.*  
 29. Thurs. *St. Peter.*  
 30. Frid.... Last day for County Council finally to revise As-  
 [essment Roll.]

## NOTICE.

Owing to the very large demand for the Law Journal and Local Courts' Gazette, subscribers not desiring to take both publications are particularly requested at once to return the exact numbers of that one for which they do not wish to subscribe.

## THE

## Upper Canada Law Journal.

JUNE, 1865.

## BRITISH OATHS' ACT.

Notwithstanding the numerous reformatioas and amendments that have of late years been made in the law of evidence, both in this country and in England, there is, at least, one provision remaining, which does not redound to the credit of its original introducer, or of those who at a subsequent period effected some very important and beneficial changes in this important branch of the law.

The statute alluded to was not the production of our own legislators, who, being only Provincials, might be expected to do childish and thoughtless acts, but of that full-grown and almost immaculate assemblage, the House of Commons in England.

In the year 1835 an act was passed by the Imperial Parliament, entitled, "An act to repeal an act of the present session of parliament, intituled, an act for the more effectual abolition of oaths and affirmations taken and made in various departments of the state, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths." (5 & 6 Wm. IV. cap. 62.)

With the expediency or propriety of substituting declarations for oaths and affidavits, in England or any other country, we have, of

course, nothing to do. The inhabitants of each country must be the best judges of what is suitable to themselves. For our part we have not yet come to the conclusion that a simple declaration, made without the sanctity of an oath, would conduce to public interests, or indeed to the advancement of public morality; though this latter is a more debatable question, and there is much force in the argument of those who contend that persons, who are long in the habit of taking what are in most cases merely formal oaths, such for instance as custom-house oaths, become indifferent and careless as to the sacred nature of the obligation they take upon themselves. But whilst we might admit that a change in this respect would be grateful to the feelings of many right-thinking men amongst us, we may naturally demur to another country, even though it be our own mother country, attempting to compel us to receive in our courts as evidence, the simple statement of a witness subject to, and fearful of no searching cross-examination, signed before some unknown magistrate, and uncontrolled by even the semblance of any thing that might remind him that his statement, whether true or false, was the subject of divine omniscience.

One very noticeable inconsistency of the act is, that whilst it enacts, that in any suit brought in any colony for or relating to any debt or account wherein any person residing in Great Britain and Ireland shall be a party, or for or relating to any lands, &c., situate therein, it may be lawful for the plaintiff, or defendant, or any witness, to verify or prove any matter relating thereto by a declaration in writing to be made before a justice of the peace, &c., (sec. 15) it carefully provides in another place (sec. 7) that nothing in the act shall apply to any oath or affidavit which is required to be taken in any suit or judicial proceeding in any court of justice in Great Britain or Ireland.

The utter want of caution, and the carelessness evinced, and the inconsistencies apparent in this act so far as it applies to the colonies, are most able and fully commented upon in the judgment of the late Sir John Beverly Robinson, in *Smith v. McGowan*, 12 U. C. Q. B., 287, but like the present Chief Justice of Upper Canada, at that time sitting as a puisne judge in the Court of Queen's Bench, we do not "desire to weaken by further observations,