

DIARY FOR NOVEMBER.

1. Thur.... Co. Ct. non-jury sittings in York. All Saints' Day. Sir Matthew Hale born, 1609.
3. Sat.... O'Connor, J., Q.B.D., died, 1887.
4. Sun.... 23rd Sunday after Trinity.
6. Tues.... First intermediate examination.
8. Thur.... Second intermediate examination.
9. Fri.... Prince of Wales born, 1841.
11. Sun.... 24th Sunday after Trinity.
12. Mon.... W. B. Richards, 10th C.J. of Q.B., 1868. J. H. Hagarty, 18th C.J. of Q.B., 1878.
13. Tues.... Ct. of Appeal sits. Solicitors' examination.
14. Wed.... Barristers' examination. Falconbridge, J., Q.B.D., appointed 1887.
15. Thur.... Sir M. C. Cameron, J., Q.B., 1878. Macaulay, 1st C.J. of C.P., 1849.
17. Sat.... Lord Erskine died, 1823, æt. 73.
18. Sun.... 25th Sunday after Trinity.
19. Mon.... L. S. Michaelmas Term begins. H.C.J. sittings begin. Armour, J., gaz. C.J., Q.B.D., 1887. Galt, J., gaz. C.J., C.P.D., 1887.
21. Wed.... J. Elmsley, 2nd C.J. of Q.B., 1796. Princess Royal born, 1840.
25. Sun.... 26th Sunday after Trinity.
30. Mon.... J. A. , appointed C.J. of Appeal, 1877. Street, J., Q.B.D., and McMahon, J., C.P.D., appointed 1887.

Reports.

ONTARIO.

COUNTY OF ONTARIO.

[Reported for the CANADA LAW JOURNAL.]

BROWN v. BROWN.

Married Woman's Maintenance for Desertion
Act — Evidence of desertion — Rule of decision.

Order of magistrates set aside, where the evidence does not show a wilful desertion, ability to support, in whole or in part, and wilful refusal or neglect to do so.

[WHITBY, October, 1888.]

The facts of this case appear in the judgment.

DARTNELL, J.J.—I do not think that the provisions of the above Act were either meant or intended to give the magistrates any larger powers than a court would have in decreeing alimony. The evidence shows that the alleged desertion could be explained as arising from an accident and illness, and that when the husband did return he was received by his wife in such a way as to justify his leaving his home again and going to live with his daughter. The wife says she never asked him to return, and the husband swears that she told him to go, and that if he stayed she would not cook his meals for him; and she

carried out this threat, so that he had to board at a neighbour's. The house and eight acres of land belong to the husband, and the wife is in occupation of it without molestation. The pair are poor and well advanced in years, and their joint exertions afford them but a scanty living. There appear to be faults on both sides, and it is impossible to say who is most to blame. I am satisfied from the authorities that no court would decree alimony upon such evidence as here adduced, and it seems to me this new court has no greater power.

The question of what amounts to desertion is one of great difficulty. The statute, as taking away in certain cases an ancient prerogative of Equity Courts, must be considered strictly.

The husband, from the evidence, is almost a pauper, and from age and infirmity is not capable of earning a living by manual labour. But for his daughter he would be homeless. The order made for payment of \$5 a week is excessive, or impossible of fulfilment.

Under these circumstances, and for the reasons above stated, I allow the appeal.

The Act provides that the husband shall pay the costs, and the procedure of the Masters' and Servants' Act (R. S. O. c. 139), being made applicable to this Act, I suppose they are collectable in the manner therein provided.

R. McGee, for the appellant.

N. F. Paterson, Q.C., for the respondent.

MUNICIPAL LAW.

VOTERS' LISTS ACT.

Voters' Lists—Non-compliance with directions as to advertising—"Next" municipality.

The Clerk of Brock certified to the County Judge the due posting and distribution of the Voters' Lists for 1888, and the insertion of the advertisement of such in the *North Ontario Observer*, a newspaper published in the "village of Port Perry."

Held, under the circumstances detailed in the judgment, that the statute had not been complied with as to advertising.

[WHITBY, October 15th, 1888.]

Sec. 9 of R. S. O. c. 8 (the Voters List Act), provides that in case no newspaper be published within the municipality for which the lists are prepared, notice of the date of