DIARY FOR AUGUST.

1. Wed... *Lammas.*
5. SUN... 10*th Sunday after Trinity.*
11. Friday *St. Lawrence.*
12. Satur. Articles, &c., to be left with Secretary Law Soc.
15. SUN... 11*th Sunday after Trinity.*
19. Wed... Last day for service for County Court.
22. SUN... 12*th Sunday after Trinity.*
24. Tues... Long Vacation ends.
25. Friday *St. Bartholomew.*
26. Satur. Declare for County Court.
27. SUN... 13*th Sunday after Trinity.*
31. Friday Paper Day Queen's Bench. New Trial Day C. P.

THE

Upper Canada Law Journal.

AUGUST, 1866.

SUGGESTIONS FROM THE BENCH.

We occasionally hear suggestions from judges as to the propriety of amendments in the laws. These hints are particularly valuable, as they are not the result of the one-sided feelings of a suitor, smarting under the sense of a supposed defect in the law, or what may indeed be, in his individual case, an actual defect. Nor are they the crude, ill-digested notions of a would-be law reformer, but they are the judicially weighed and carefully expressed opinions of men responsible for their words, and free from any taint of partiality or personal interest in the matter upon which they are called upon to abjudicate.

Our attention has been drawn to this by the remarks that lately fell from the bench upon two points; one with reference to taking evidence under commissions to examine witnesses, and the other as to relieving parties from mistakes of arbitrators upon compulsory references.

We refer to the judgment of the Court of Common Pleas in *Muckle v. Ludlow*, 16 U. C. C. P. 420, as regards the first of these points. The learned judge who delivered the judgment, after stating the exceptions taken to the mode of executing the commission, which was alleged to be defective, said: "It is very perplexing to the judge at the trial, and afterwards to the court, to decide what may be for the time the whole merits of the cause upon such strictly formal objections; and it is a very serious matter for the party, who may have gone to an enormous expense and trouble to procure the testimony which he has produced, to have it all nullified, and his rights involved in the litigation, perhaps, very seriously prejudiced by the rejection of his commission, for a cause which every one feels ought not to be allowed to prevail. While amendments are made so liberally in all cases criminal and civil, it might, at least, be left discretionary with the judge or court, notwithstanding the non-observance of some of the statutable formalities, to receive the commission and the evidence taken under it if there be no reason to believe that the commission, or any of the proceedings connected with it, has or have been improperly dealt with. This may introduce some laxity of practice in the execution of commissions; but it is no argument against the relaxation of the strict law, for all amendments may be equally condemned, and the law is full of provisions for relief against inevitable error."

There are few lawyers of any experience who have not at some time or other felt the difficulties here mentioned, and it is certainly strange that, in these days of law reform, no aspiring legislator of our profession has taken such an obvious way of doing good service to his brethren and the public as is here pointed out.

The other matter alluded to is also one of great importance and well worthy of consideration. As our readers are aware, it is only of comparatively late years that compulsory references to arbitration in certain cases have been introduced. There is a manifest difference between references by consent and these compulsory arbitrations which must not be lost sight of. There was a certain show of reason in the law which prevented any appeal from mistakes in an award made by arbitrators voluntarily chosen by the parties themselves when the award bore no error on its face, and whether the mistake were one of law or of fact. But where the arbitrator is not the choice of the parties, the reason, if any, for holding the reference binding, notwithstanding the mistake of law or fact, fails. And yet in this respect it is now held there is no difference between the two kinds of reference as to the effect of the reference. The Court of Common Pleas in at least two cases during last term, pointed out that some alterations of the existing law are necessary to enable them to do substantial justice between parties who have been compelled to leave their disputes to the unsatisfactory tribunal of arbitration.