

## DIARY FOR JULY.

1. Thurs. Dominion Day. Long Vac. beg. Last day for Co. Clks. fin. to exam. Assm. Rolls, &c.
4. SUN.. 6th Sunday after Trinity.
5. MON.. Co. Ct. (exc. York) Term beg. Last day for notice of trial for Co. Ct. York. Heir and Devisee sittings commence.
10. SAT.. County Court Term ends.
11. SUN.. 7th Sunday after Trinity.
13. Tues.. General Sessions and Co. Ct. sit. Co. York.
18. SUN.. 8th Sunday after Trinity.
20. Tues.. Heir and Devisee Sittings end.
22. Thurs. St. Mary Magdalene.
25. SUN.. 9th Sunday after Trinity.

## The Local Courts'

AND

## MUNICIPAL GAZETTE.

JULY, 1869.

### THE ACT AMENDING THE DIVISION COURTS ACT.

We do not agree with our correspondent LEX that the day for the ordinary sittings of the court is necessarily the return day of the summons—within the intention of the amendment act of last Session,—that does not seem to have been the construction placed upon the act by the Board of County Judges, as indicated by their rules; nor can we allow the explanation vouched for by our correspondent as a proper test of its meaning, whatever might have been in the mind of the legal gentleman who framed the act. Such solutions would never be considered as of any weight in legal circles. Acts of Parliament speak for themselves after their framers are dead and unable to speak of their meaning. Under the Imperial Act 30 & 31 Vic. cap. 142, the form of summons is essentially the same as the special summons prescribed by our Board of County Judges,—the court day is not by that Act considered or made the return day; on the contrary, the summons in that particular, consists simply of a notice to the defendant; that unless at least six days before the day of appearance he returns to the registrar of the court at his office the notice for which a form is subjoined, he will not afterwards be allowed to make any defence to the plaintiff's claim,—that the plaintiff may, without giving any proof in support of his claim, proceed to judgment and execution; and if the defendant does give the notice of his defence within the time specified he must appear at the court

day on the day and at the place named for the sittings, when and where the cause will be heard. If the notice is not given the registrar, without the intervention of the judge, signs judgment at the end of one month.

Under the acts which were in force in England previously to the passing of 30 & 31 Vic. cap. 142, the return day of the summons was without doubt the court day, but now, "*at the option of the plaintiff,*" he may cause a summons to issue, in an English County Court suit, in the "*ordinary form,*" for a cause of action coming within its provisions, or a "*special summons*" such as we have described. Under the acts which were in force in this Province before the last Session of the Legislature the day of sittings was without doubt the return day here, but the Board of County Judges very possibly, having the summons by special indorsement under the Common Law Procedure Act,—the change of practice introduced under it, and the Imperial Statute in amendment of the County Courts procedure in England, and the rules and forms prescribed for carrying its provisions into effect before them when they formed their rules and forms, might have been induced to the conclusion that the Provincial Legislature aimed at the introduction into our Division Courts of a mode of procedure similar to that recently introduced into the English County Courts system from which ours is copied.

With regard to the work of the Board of County Judges it is well understood that whatever rules have been passed so far are only provisional; it is not therefore quite fair to condemn by anticipation what they may finally decide upon with reference to the whole subject of our correspondent's communication until their work has undergone full consideration, the duties to be performed savour somewhat of legislative powers, at least as regards details, subject however, to the revision of the judges of the Superior Courts of Common Law, and after the new rules and orders shall have passed through the scrutinizing ordeal of the two sets of judges, our correspondent may fairly anticipate that all interests will be duly weighed with a single eye to carrying out the intentions of the legislature.