

DIARY FOR JUNE.

4. SUN ... *Whil 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.
 2. 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 Assessment 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 back numbers of that one for which they do not wish to subscribe.

The Local Courts'

AND

MUNICIPAL GAZETTE.

JUNE, 1865.

THE TEMPERANCE ACT OF 1864.

Our attention has been directed to one of the clauses of this Act. A correspondent asks whether a wife having a cause of action under the 42nd section, can maintain the same in a Division Court. The words of the section on this point are in substance as follows:—The person giving the notice may, in an action as for a personal wrong, recover of the person notified such sum not less than twenty nor more five hundred dollars, as may be assessed by the court or jury as damages.

It is not easy to determine from the language used, whether the Division Courts can entertain such a case. Our impression is, that they can, at least if no more than forty dollars are claimed in the particulars, and we have arrived at this conclusion for the following reasons: If the mention of the larger amount in the clause excludes the jurisdiction of the Division Courts, it would also exclude that of the County Courts which never could have been intended by the Legislature. There are many cases where there would in effect be a denial of the remedy if the wife or relative of a person who is in the habit of drinking were compelled to resort to the superior courts. The expense, if nothing else, would be a bar to the remedy, for the wife of a drunkard has

seldom a dollar at command. She might be able to make up the small fees necessary to enter a suit in the Division Court, though not at all likely to have sufficient means to bring an action in the Court of Queen's Bench or Common Pleas, not to speak of the loss of time and necessity for travelling a considerable distance from home. These considerations we admit, will not determine the question of jurisdiction, but one cannot lose sight of them in considering the point.

Under the 55th section of the Division Court Act, these courts can entertain actions for "personal wrongs;" they come within the general term "personal actions." But do the words "such sum not less than twenty nor more than five hundred dollars," make it necessary to claim the larger amount in all cases? The action is not given as for a debt, or to recover a debt, but for a "personal wrong," and evidence of damage should be given. And therefore we think if a party has not sustained damages beyond forty dollars, he or she may limit the claim to that sum and so enable Division Courts to deal with the case.

Such sum "as may be assessed by the court or jury as damages"—the word "assessed as damages" implies a right to damages at all events to twenty dollars, with such further sum added as the plaintiff may, upon the evidence, appear to be entitled to. The words "by the court or jury" are very material in determining the point. In actions for personal wrongs none of the courts of record determine questions of damages without the intervention of a jury, but the Division Courts do. The judge is "sole judge in all actions," * * * and "determines all questions of law and facts in relation thereto," except in cases where a jury is demanded; and for this reason it seems clear that the Legislature must have had in view when passing the Act, the bringing of actions in the Division Courts. Otherwise why are the words "court or jury" which imply that in some cases it would belong to a court (without the intervention of a jury) to assess the damages—upon no other construction can effect be given to every part of the clause.

But it may be said if this argument has weight, and if in the clause under consideration the legislature by using the words "assessed by the court," must have meant the Division Court, that an action for one hundred