

## DIARY FOR JULY.

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|-----------------|---|
| 1. Friday.....  | { Trinity College, Easter Term ends. Long Vacation commences.                           |
| 3. SUNDAY...    | { Last day for County Councils finally to revise Assessment Rolls                       |
| 3. SUNDAY...    | 2nd Sunday after Trinity.   |
| 4. Monday...    | County Court term begins. Heir and devisee sittings commence.                           |
| 9. Saturday...  | County Court term ends.   |
| 10. SUNDAY...   | 3rd Sunday after Trinity.   |
| 14. Thursday... | { Last day for Judges of County Courts to make return of appeals from Assessment.       |
| 16. Saturday... | Heir. and Devisee sittings end.   |
| 17. SUNDAY...   | 4th Sunday after Trinity.   |
| 21. SUNDAY...   | 6th Sunday after Trinity.   |
| 22. Friday..... | { Last day for Clerks of Counties to certify County rate to Municipalities in Counties. |
| 31. SUNDAY...   | 6th Sunday after Trinity.   |

TO CORRESPONDENTS—See last page.

## IMPORTANT BUSINESS NOTICE.

Persons indebted to the Proprietors of this Journal are requested to remember that all our past due accounts have been placed in the hands of Messrs. Pulton & Arbligh, Attorneys, Barrie, for collection, and that only a prompt remittance to them will save costs.

It is with great reluctance that the Proprietors have adopted this course; but they have been compelled to do so in order to enable them to meet their current expenses, which are very heavy.

Now that the usefulness of the Journal is so generally admitted, it would not be unreasonable to expect that the Profession and Officers of the Courts would accord it a liberal support, instead of allowing themselves to be sued for their subscriptions.

## The Upper Canada Law Journal.

JULY, 1859.

### EQUITABLE JURISDICTION.—THE DIVISION COURTS.

There is a point of considerable importance upon which great diversity of opinion, and, what to the public is much worse, great diversity of decisions appear to prevail amongst the Judges of the local Courts, between whom the whole territorial inhabited surface of Upper Canada is divided. We mean as to whether the Division Court Judge has or has not equity jurisdiction—some Judges holding that they have, others that they have not.

Before entering upon this subject, we may be indulged perhaps with one preliminary remark, viz: that one of the worst faults of any system of jurisprudence—and a fault which every Judge and person entrusted with the administration of justice, should strain every nerve to counteract—is the want of universally applying comprehensive and certain rules, capable of producing under the same state of facts the same result in every instance. For it is apparent, whatever the rules may be, if only they be capable of being clearly understood and invariably followed; that people can calculate with certainty how they ought to act under any state of known facts, and so justice will in the end be attained and the business of the country be harmoniously conducted within those rules, which it is known must not be contravened. On the other hand, if the rules of decision are uncertain, no one can tell how he ought to shape his course; everything is left to accident, and there is no undisputed rule of right (or in other words of law) to measure the act by, and so prove how it ought to be decided.

Under such circumstances, no matter what the business capacity or habits of the people may naturally be, it is impossible for them to have their affairs in any other condition than that of confusion and uncertainty, owing to there being no superior regulating power to appeal to, and no means of intercommunication amongst the several local Judges whereby they could exchange their ideas or communicate their experience on the numerous cases coming before them. This want or uncertainty until lately was unavoidable.

The *Law Journal*, however, gives a very simple and inexpensive way of obtaining that much to be desired universal rule of decision; and it is to be hoped that the several Division Court Judges will willingly avail themselves of it as a means of intercommunication, leading to the adoption of some general rule on the point alluded to. If such be done it will much weaken the effect of the sneers at their expense, for we have often heard it said that "in most Division Courts a knowledge of law is useless, as hardly any two Judges adopt the same rules of decision, or even themselves decide twice the same way on the same state of facts."

Doubtless, there is much exaggeration in this, but that the remark is not altogether groundless as applied to some localities, the information in our possession compels us to admit.

With the purpose then, partly of directing attention to the existing evil and partly to aid in removing it, we submit the following observations which our experience in the working of some of the Division Courts leads us to believe, open the way to a solution of the difficulty. At all events, administration on the principles we are about to mention, has been attended with the happy results of uniformity of decisions on intelligible grounds.

The Division Court Act, as extended by 16 Vic., ch. 177, empowers "The Judge of every Division Court" to hold plea of all "claims and demands whatsoever of debt account, breach of contract, covenant, or money demand, whether payable in money or otherwise," and "all personal actions," with the exceptions, and to the amounts, mentioned in these enactments. It is provided also by the statute, that when deciding on such matters, the Judge "shall hear and determine the same, in a summary way, and shall have power to make such orders, judgments, and decrees thereupon, as shall appear to him to be just and agreeable, to equity and good conscience." Now to analyze this provision, is it not apparent that it embraces the two divisions of legal actions such as debt, covenant, &c., &c., on which the Judge is to give a legal judgment according to the Common Law, unless such law-judgment would, under the circumstance, be wholly or in part, contrary "to