

DIARY FOR DECEMBER.

2. Sun.....1st Sunday in Advent.
4. Tues....General Sessions and C.C. sittings for trials in York.
6. Thur....Chancery Division H.C.J. sits.
8. Sat.....Sir W. Campbell, 6th C.J. of Q.B., 1885. L. S. Michaelmas term and H.C.J. sittings end.
9. Sun.....2nd Sunday in Advent.
11. Tues....General Sessions and Co. Ct. sittings for trials, except in York.
16. Sun.....3rd Sunday in Advent.
21. Fri.....Shortest day. St. Thomas.
23. Sun.....4th Sunday in Advent.
24. Mon....Christmas vacation begins.
25. Tues....Christmas day. Sir M. Hale died, 1676, æt. 67.
26. Wed....St. Stephen.
27. Thur....J. F. Sprungie, 3rd Chan., 1869.
30. Sun.....1st Sunday after Christmas. Holt, C.J., born, 1642.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE
FOR ONTARIO.

COURT OF APPEAL.

Re OSTRAM AND THE CORPORATION OF THE
TOWNSHIP OF SYDNEY.

Municipal Act, R. S. O. c. 184, s. 546—Notice of by-law to open road—Computation of time—Quashing by-law.

The Municipal Act, s. 584, enacts that no council shall pass a by-law for establishing a public highway until written or printed notices of the intended by-law have been posted up one month previously in six of the most public places in the neighbourhood of such road, etc.

The defendants on the 29th of July, 1887, published notices of their intention to pass a by-law on the 29th of August, 1887, to open a road across nine lots on the first concession of the township. On that day the council met and passed a by-law establishing a road across only four of the lots mentioned in the notice. The date of putting up the notice was recited in the by-law, and was admitted by the affidavits filed by the defendants on showing cause to the motion to quash the by-law.

Nothing had been done under the by-law.

Held, that the giving of the prescribed notice is a condition precedent to the right of the council to pass such a by-law; that the month is to be computed exclusive of the first and last day, and, therefore, that a notice on

the 29th of July of an intention to pass a by-law on the 29th of August, was insufficient.

Authorities as to computation of time in such a case considered.

Laplante v. Peterborough, 5 O. R. 634; *Wannamaker v. Green*, 10 O. R. 547, approved of.

Quære, whether the council could pass a by-law to open up or establish a road other than the road as described in the notice.

Baker v. Saltfleet, 31 U. C. R. 386, referred to.

Judgment of the court below reversed.

STUART *v.* GROUGH *et. al.*

Attachment of debts—Equitable debt—Payment by garnishee to attaching creditor after appointment of receiver—Receiver.

The interest of a debtor in a trust estate consisting of the right to a share of the proceeds of the sale of such estate when made by the trustees, is not attachable under rule 370 (Consol. Rule 935) relating to the attachment of debts. It is only a debt legally or equitably due, or accruing due, that is to say, *debitum in presentie solvendum in futuro*, which is capable of attachment; moneys which may or may not become payable by a trustee to his *cestui que* trust are not debts.

The case of *Leeming v. Woon*, 7 A. R. 42, is not to be followed, being founded on *Re Cowan's Estate*, 18 Chy. D. 638, which is now overruled by *Webb v. Stenton*, 11 Q. B. D. 530.

Judgment of FERGUSON, J., reversed.

The proper course in a case like this is to obtain equitable execution against the debtor's interest by the appointment of a receiver. For this purpose it is now unnecessary that the creditor should issue writs of *fi. fa.* against goods or lands.

After an order to pay over had been made upon the garnishee summons, but before the property had been sold by the trustees, an order for a receiver had been obtained by another judgment creditor, under which a receiver was duly appointed, and notice thereof given to the garnishees (the trustees) and the attaching creditor. Notwithstanding this, the garnishees subsequently, without further compulsion or threat of execution, paid the money to the attaching creditor without moving