

## DIARY FOR DECEMBER.

1. Tues... General Sessions and County Court sittings for Trial in York.
3. Thur... Chancery Division High Court of Justice sits.
4. Fri... Last day for paying fees for Annual Certificates.
5. Sat... Michaelmas Term ends.
6. Sun... 2nd Sunday in Advent. Rebellion broke out, 1837.
7. Mon... Rebels defeated at Toronto, 1837.
8. Tues... County Court sittings for Trial except in York. Sir W. Campbell, 6th C.J. of Q.B., 1825.
10. Thur... Niagara destroyed by U.S. troops, 1813.
13. Sun... 3rd Sunday in Advent.
15. Tues... J. B. Macaulay, 1st C.J. of C.P., 1849.
17. Thur... First Lower Canadian Parliament met, 1792.
18. Fri... Slavery abolished in the United States, 1863.
19. Sat... Fort Niagara captured, 1813.
20. Sun... 4th Sunday in Advent.
21. Mon... St. Thomas. Shortest day.
24. Thur... Christmas Vacation begins.
25. Fri... Christmas Day.
26. Sat... St. Stephen. Upper Canada made a province, 1791.
27. Sun... 1st Sunday after Christmas. St. John. J. G. Byrnes, 3rd Chan., 1869.
28. Mon... Innocent's Day.
31. Thur... Montgomery repulsed at Quebec, 1775.

## Reports.

## ONTARIO.

## COUNTY COURT, COUNTY OF YORK.

(Reported for THE CANADA LAW JOURNAL.)

## JONES v. PAXTON.

*Division courts — Transcript of judgment — R.S.O. (1887), c. 51, s. 223 — Nullity or irregularity — Negligence of sheriff.*

Where a judgment was obtained in a Division Court in one county, and, without execution being issued thereon, a transcript was issued to a Division Court of another county and an execution issued thereon and returned *nulla bona*, and a transcript then obtained to the County Court of the latter county, it was

*Held*, that the judgment of the County Court was a nullity, since the transcript did not show the return to the writ in the original Division Court, as required by R.S.O., c. 51, s. 223; and

*Held*, also, that a sheriff sued for negligence in making a return to an execution from the County Court can set up as a defence the nullity of the judgment.

[Toronto, Oct. 30th, 1891.]

This was an action against a sheriff for false return and negligence. The jury found negligence, and fixed the damages at \$80. A motion was made for a new trial or verdict for the defendant.

It was admitted, upon the argument, that the judgment upon which the writ of *fi. fa.* issued, and in respect of the due execution of which the negligence is assigned, was a transcript from the Fourth Division Court of the County of Ontario. Upon the original Division

Court judgment, no execution was issued in the Fourth Division Court of Ontario. Prior to the Division Court judgment being made a judgment of the County Court, a transcript had been sent to the Fifth Division Court of the County of York, and execution issued thereon, and duly returned *nulla bona*; but nothing was done in the home court until the transcript was issued to the County Court of York. The defendant contended that the so-called County Court judgment was and is utterly void, and all proceedings thereon; and that the defendant, a sheriff, can avail himself of this fact as a defence to the present action against him for damages for negligence.

The plaintiff contended that, at most, the defects complained of were mere irregularities and that being such the sheriff cannot avail himself of them as a defence, he being a stranger to the proceedings: *Macdonald v. Crombie*, 2 O.R. 246; *Glass v. Cameron*, 9 O.R. 715.

*Aylesworth, Q.C.*, for the plaintiff.

*E. D. Armour, Q.C.*, for the defendant.

MCDUGALL, CO. J.:—Let us first consider whether the failure to issue execution in the Division Court where the judgment was first obtained is a mere irregularity, or whether in consequence of the failure to do so the judgment is a nullity. *Farr v. Robins*, 12 C.P. 35, decided that where the transcript to the County Court did not contain a statement that a *fi. fa.* against goods had issued in the original Division Court the transcript was informal and the judgment a nullity, and that no *fi. fa.* lands could issue thereon. Draper, C.J., stated: "The legislature having adopted the principle that an execution against lands must be founded on a record, and as the Division Court is not a court of record, they have provided a method by which its judgment may be made a record of the County Court, and thereupon an execution against lands may issue; but in order that the transcript may become a judgment of record, they have required that it should, amongst other things, show the date of issuing execution against goods, and the return to that writ. The objection is not to irregularities in the proceedings anterior to the judgment, nor can I look upon this transcript as having become the judgment of the County Court, because it is not such a transcript as, upon filing and entry, the statute clothes with that character.