

## DIARY FOR FEBRUARY.

1. Tues. Last day for Co. Tr. to furnish to Clks of Mu. in Court's lists of land liable to be sold for taxes.
2. Wed. *Purification of B. V. M.* Meet. Gr. Sch. Board.
4. Fri. Exam. of Law Students for call to the Bar.
5. Sat. Exam. of Articled Clerks for certificate of fitness.
6. SUN. *5th Sunday after Epiphany.*
7. Mon. Hilary Term begins.
9. Wed. Last day for service for Co. Ct. York. Interim Exam. of Law Stud. and Art. Clks. New T. Day, Q. B. Last day for setting down and giving notice for rehearing. New T. D., C. P.
11. Fri. Paper Day, Q. B. New Trial Day, Common P.
12. Sat. Paper Day, C. P. New Trial Day, Queen's B.
13. SUN. *Septuagesima.*
14. Mon. *St. Valentine.* P. Day, Q. B. N. T. Day, C. P.
15. Tues. Paper Day, C. P. New Trial Day, Queen's B.
16. Wed. Paper Day, Q. B. New Trial Day, Common P.
17. Thur. P. D. C. P. Re-hearing Term in Chancery com.
18. Fri. New Trial Day, Queen's Bench.
19. Sat. Hilary Term ends. Dec. for County Ct. York.
20. SUN. *Sexagesima.*
24. Thur. *St. Matthias.*
27. SUN. *Quinquagesima.*
28. Mon. Last day for Notice of Trial County Court, York.

# The Local Courts'

AND

## MUNICIPAL GAZETTE.

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 FEBRUARY, 1870.
 

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### ISSUE OF WRITS OF ATTACHMENT IN DIVISION COURTS.

The simplicity so necessary to the working of Division Courts, has, in some cases, had the effect of allowing thoughtless or unscrupulous persons to work injuries, which are not so likely to occur in courts of higher jurisdiction. In the higher courts to which we refer, the preliminary steps must come before the judge, whereas in Division Courts many important measures are taken under the supervision of the clerks only, or even indeed before a justice of the peace. Of course when process is issued by the clerks, there is a strong element of safety and almost a certainty that the proceedings will be regular in form; but, in the case of justices no such security exists, as the records of the courts plainly show.

Our attention has been called more especially to the issuing of writs of attachment as well at the instance of thoughtless persons, who do not sufficiently consider the step they are about to take, as by unscrupulous creditors who use the ready machinery of the court as an instrument to terrify those with whom they have to deal into submitting to such terms as they may think proper to impose. The Board of County Judges in preparing

their forms have studied to provide that all the requisites of the statute should be complied with, and have made it necessary that the party seeking to have the writ issued should swear positively to the fact and nature of the indebtedness and that the debtor has absconded, or has *attempted* to remove his property out of the Province or County, or that the debtor keeps concealed with intent to defraud the creditor of his debt; and the creditor must also swear that he does not act from a vexatious or malicious motive. Now if the requirements of the statute are carefully considered, and the affidavit carefully read over before swearing, much of the evil that has arisen would be avoided; of course this would not deter persons who were so disposed from wilfully using the writ as, we might almost say, an instrument of torture.

When looking over some cases recently decided in the Court of Queen's Bench, we noticed a case, *Hood v. Cronkite*, p. 98, which shews what serious trouble and expense a man may incur who improperly sets the machinery of the court in motion. In that case the defendant had a writ of attachment issued out of the Division Court, merely because he believed that the plaintiff *intended* to remove his goods out of the county. Upon it being proved that the defendant had no sufficient reason to believe that the plaintiff had made any *attempt* to do so, the court considered that the issuing of the writ was not warranted, and gave judgment against the defendant. In the same case it was also held that the defendant, having caused the writ to be issued for a larger sum than he afterwards obtained judgment for, was liable for having maliciously issued the writ for too large an amount. It will thus be seen that persons, unless they exercise a great deal of care, may find themselves saddled with an action, resulting in their being mulcted in a large sum in the shape of damages and costs, to say nothing of the expense and annoyance of defending a suit. We cannot expect that anything we could say in the matter, would have the effect of entirely suppressing a careless use of the facilities afforded by the machinery of the Division Courts in such cases as the present, but our object will be obtained if it causes a more general carefulness in those who find it necessary to use these facilities in order to accomplish a desired end.