

DIARY FOR DECEMBER.

1. Friday N. T. Day Q. B. Clerk of every Mun. ex. Co. to
[ret. number of res. rate-payers to R.G.]
2. Satur. Michaelmas Term ends.
3. SUN. .. 1st Sunday in Advent.
4. Mon. .. Last day for notice of trial for County Courts.
8. Friday *Ann. B. V. Mary.*
9. Satur. Last day of service of York and Peel.
10. SUN... 2nd Sunday in Advent.
12. Tues... Qr. Sess. and Co. Ct. sittings in each County.
14. Thurs. Last day for Coll. to ret. roll to Chamb. or Treas.
17. SUN... 3rd Sunday in Advent.
18. Mon. .. Recorder's Court sits. Nomination of Mayors.
19. Tues... Declare for York and Peel.
21. Thurs. *St. Thomas.*
24. SUN... 4th Sunday in Advent.
25. Mon. .. Christmas Day.
26. Tues... *St. Stephen.* [York and Peel.]
27. Wed. .. *St. John Evang.* Last day for notice of trial for
28. Thurs. *Innocents.* Sitt. Court of Error and Appeal com.
30. Satur.. Last day on which remain. half G. S. F. payable.
31. SUN... 1st Sunday after Christmas. End of Mun. year.

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.

DECEMBER, 1865.

LIEN ON TIMBER FOR PURCHASE MONEY.

In these days of timber and cordwood, it may not be amiss to direct the attention of such of our readers as may be thereby interested to some decisions as to the position of persons owning timber lands, with respect to any supposed lien on the timber cut thereon.

It is a well known principle of equity, that a vendor of real estate has a lien on the property sold for the unpaid purchase money, and so long as trees are standing, they are considered as part of the realty. So far well; but it is also clear, that when these trees are cut down or severed from the realty, they become personal property, and the right of lien as far as they are concerned, is gone. And it is also well established that when once the possession of a thing is lost, any right of lien upon it goes with it. The result of these propositions sometimes, as will be seen, works a great injustice, and should be guarded against.

In *McCarthy v. Oliver*, 14 U. C. C. P. 290, the plaintiff, having by parol agreed with the defendant for the sale to and purchase by the latter of certain standing trees, permitted defendant to cut the same down and to manufacture them into square timber. Subsequently, a dispute having arisen, and the defendant in the meantime having removed the timber from the land, plaintiff replevied same. Upon this state of facts the court held that by permitting defendant to cut down and manufacture the timber, the plaintiff thereby gave up possession thereof, and his lien for purchase money was lost to him in consequence.

Thus much for courts of law. But the owner of timber lands will probably think that this was a hard case, and that the Court of Chancery would under like circumstances grant him the relief which he probably thinks he is entitled to. Such, however, is not the case, as may be seen from the recent case of *Smith v. Bell*, 11 U. C. Chan. R. 519. The plaintiff sold wood land to the defendants on credit; and the agreement stipulated that any cordwood or timber removed from the premises by the defendants, should be paid for at specified rates, if the plaintiff should demand such payment, the sums so paid to be credited to the defendants on instalments due or to become due. The defendants cut a quantity of cordwood and were removing it, before making the stipulated payments. The plaintiff thereupon applied for an injunction to restrain the defendant from removing this cordwood, but his application was refused,—the Vice-Chancellor, in giving judgment, saying, “The cordwood in question was manufactured before the first instalment of the purchase money became due; and it was not contended that the defendants were bound to pay for it before cutting down the trees, or that cutting down the trees was a wrongful act. But the trees when cut down became chattels; and the lien in equity for unpaid purchase money in the case of chattels is not, as a general rule, more extensive than at law. Now it seems clear that, under the agreement, the plaintiff had no lien at law on the cordwood; the defendants having been in rightful possession of the land at the time they cut down the trees, and having been authorised to cut them down, and having ever since been in possession of them and of the cordwood manufactured from them, I cannot distinguish the case from *McCarthy v. Oliver*.”