

DIARY FOR MAY.

1. Sat... *St. Philip & St. James*. Gram. & Com. Sch.
2. SUN. *Rogation*. [Fund app. Co. Tr. to make up books and enter arrears. Articles &c., to be left with Sec. Law S.
6. Thur. *Ascension*.
9. SUN. *1st Sunday after Ascension*.
12. Wed. Last day for service for County Court.
14. Fri... Exam. of Law Students for call to the Bar.
15. Sat... Exam. of Art. Clerks for certificates of fitness.
16. SUN. *Whit Sunday*.
17. Mon. Easter Term begins.
19. Wed. Interm. Exam. of Law Stud. & Art. Clerks.
22. Fri... Paper Day, Q.B.; New Trial Day, C.P.
22. Sat... Paper Day, C.P.; N. T. Day, Q.B. Declare for County Court.
23. SUN. *Trinity Sunday*.
24. SUN. Queen's Birthday. P. Day, Q.B.; N.T. Day. C.P.
25. Tue. Paper Day, C.P.; New Trial Day, Q.B.
26. Wed. Paper Day, Q.B.; New Trial Day, C.P.
27. Thur. Paper Day, C.P.
28. Fri... New Trial Day, Q.B.
30. SUN. *1st Sun. of Trin.* [Last d. not. of trial Co. Ct.
31. Mon. P. Day, Q.B.; N.T. Day, C. P. Last d. for Ct. of Revision finally to revise Assm. Roll.

The Local Courts'

AND

MUNICIPAL GAZETTE.

MAY, 1869.

PAYMENTS BY INSOLVENTS.

Any person unacquainted with the working of the Insolvent Acts might suppose, without shewing any marked want of common sense, that where a creditor in good faith receives a sum of money from a debtor without knowledge of the fact that at the time of such receipt a writ of attachment had been issued against the debtor, the money so received could safely be called his own. But the law says otherwise, and when we consider it and look at the act, it is clear that such money cannot either equitably or legally be held by this creditor, in preference to the other creditors of the insolvent. The 22nd sub-section of section 3 of the Insolvent Act provides that, "upon the appointment of the official assignee (in compulsory liquidation) the whole of the estate and effects of the insolvent, *as existing at the date of the issue of the writ of attachment*, and which may accrue to him by any title whatever, up to the time of his discharge under this act, and whether seized or not seized under the writ of attachment, shall vest in the said official assignee in the same manner and to the same extent, and with the same exceptions, as if a voluntary assignment of the estate of the insolvent had been at that date executed in his favor by the insolvent."

Sub-section 7 of section 2 declares the effect of a voluntary assignment to be, "to convey and vest in the assignee the books of account of the insolvent, all vouchers, accounts, letters and other papers and documents relating to his business, *all moneys* and negotiable paper, stocks, bonds and other securities, as well as all the real estate of the insolvent, and all his interest therein, whether in fee or otherwise, and also all his personal estate, and movable and immovable property, debts, assets and effects, which he has or may become entitled to at any time before his discharge is effected under this Act, *excepting only* such as are exempt from seizure and sale under execution, by virtue of the several Statutes in such case made and provided."

These sections are evidently intended to operate to pass all the insolvent's estate to the official assignee on the issue of the writ; the estate thereby becomes, for certain purposes, the property of the assignee, and no part of it, whether cash or goods, can be disposed of by the insolvent, and certainly cannot, in fairness to the creditors in general, be applied to any one or more creditors so as to give them a preference. There is no protection given in the act to payments made by an insolvent after the issue of a writ of attachment, and if there were, it would be inconsistent with the spirit and intention of the act, which is to make an equal distribution of the estate of any one who is found to be unable to pay his debts in full.

It was therefore held in the late case of *Roe v. Royal Canadian Bank*, in the Court of Common Pleas, on reasoning such as this, that a payment made by an insolvent, after the issue of a writ of attachment against him, on account of a draft discounted by defendant for him, and which was dishonoured by non-acceptance, was recoverable back by the official assignee, though the defendants were ignorant of the insolvency when they received the money from him.

The money, though paid to a *bona fide* creditor, is nevertheless money belonging to the estate, and must be held by the assignee in his official capacity for the equal benefit of all; and if in reality the money of the creditors in general, the assignee who represents them has a right to recover it by action from the person withholding it.