

DIARY FOR DECEMBER.

1. Fri. New Trial Day, Q. B. Open Day, C. P. Last day of determining by Councils of municipal from value of land. Clerk of every municipal except Counties, to return res. rate-payers.
2. Sat. Open Day.
3. SUN. 1st Sunday in Advent.
4. Mon. Paper Day, Q. B. New Trial Day, C. P.
5. Tues. Paper Day, C. P. New Trial Day, Q. B. Last day of notice of trial in Co. Courts: Consolidated Statutes came into force 1859.
6. Wed. New Trial Day, C. P. Open Day, Q. B.
7. Thur. Open Day. Re-hearing Term in Chancery com.
8. Fri. New Trial Day, Q. B. Open Day, C. P.
9. Sat. Open Day. Michaelmas Term ends. Last day for Attorneys to take out certificates.
10. SUN. 2nd Sunday in Advent.
12. Tues. General Sess. and Co. Court Sitt. in each Co.
14. Thur. Grammar and Common School assessment payable. Collector's roll to be returned unless time extended.
17. SUN. 3rd Sunday in Advent.
18. Mon. Nomination of Mayors, Aldermen, Reeves, Co. and Police Trustees.
19. Thur. St. Thomas.
24. SUN. 4th Sunday in Advent.
25. Mon. Christmas Day. Christmas vacat. in Chan. beg.
26. Tues. St. Stephen.
27. Wed. St. John the Evangelist. Nomination of School Trustees in Toronto.
31. SUN. 1st Sunday after Christmas. Last day for School Trustees to make half-yr. report to Loc. Sup.

THE

The Local Courts'

AND

MUNICIPAL GAZETTE.

DECEMBER, 1871.

EXECUTIONS IN DIVISION COURTS.

The case of *Davy v. Johnson*, recently decided in the Court of Queen's Bench, will be read with interest by those of our subscribers who are concerned in the administration of justice in Division Courts.

The question involved was in strictness a matter of pleading, but the remarks of the learned Judge who delivered the judgment of the court should be noted by Clerks and Bailiffs. We shall publish the case in full: the head note by the reporter is as follows:

"A declaration against a Division Court bailiff for not levying under an execution, alleged that the plaintiff recovered a judgment in the First Division Court of the county, and thereupon sued out an execution directed to defendant as bailiff of the Second Division Court, commanding him to make the money out of the goods of defendant in the suit, wheresoever the same might be found; and that there were goods of such defendant within the bailiwick of defendant, out of which he could have levied.

"Held, that the count was bad: that the writ was not shown to be within the Act 23 Vic

cap. 23, secs. 18, 19, for it was not alleged that the *fi. fa.* was to be executed in the defendant's division or near to it, or that the goods were within such division, the defendant's 'bailiwick' extending to the whole county."

SECURED CREDITORS IN INSOLVENCY.

The right of secured creditors to prove and rank on the estate of their insolvent debtor, has recently been the subject of discussion in the Court of Queen's Bench, and the result has been to upset some of the views entertained by assignees and lawyers on the subject.

The facts of the case we allude to (*In re Hurst*, 31 U. C. Q. B. 116) were, that the insolvent in February, 1866, executed a mortgage on lands and an assignment of goods to trustees for the benefit of R. G. & Co., and other creditors named; and in August following he made a voluntary assignment under the Insolvent Act. The trustees, after this assignment, sold part of the real estate under the power of sale, and received part of the proceeds of the goods. B. G. & Co., then claimed to prove against the estate for the balance due to them above what they had received from the trustees.

The official assignee held that they had lost their right, having elected to look at their security instead of bringing it in under section 5, sub-section 5, of the Insolvent Act of 1864; and his award was confirmed by the County Judge on appeal.

The case was twice argued before the Court. On the first occasion the two Judges then present differed in their view of the law, and the case was re-argued before the three Judges, when it was held by the majority—Mr. Justice Morrison dissenting, and upholding the opinion entertained by the official assignee and the County Judge—that "the mere fact of the sale did not necessarily exclude them from proof, but that the securities sold might yet be valued; and if the estate had not been prejudiced, or were recompensed for any loss thereby, they should still be allowed to prove."

Our Sheet Almanac for 1872, which has become so popular, contains much new and useful information, and is ready for distribution: extra copies can be had at the office of publication at a small price. The Index for the *Local Courts Gazette* for 1871 is in the printers' hands, and will be issued shortly.