

COMMON CARRIERS.

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.
5. Friday *Con. B. V. Mary*.
6. Satur... Last day of service of York and Peel.
7. SUN... 2nd Sunday in Advent.
8. Satur... Qr. Sess. and Co. Ct. sittings in each County.
9. Thurs. Last day for Coll. to ret. roll to Chamb or Treas.
10. SUN... 3rd Sunday in Advent.
11. Mon... Recorder's Court sits. Nomination of Mayors.
12. Tues... Declare for York and Peel.
13. Thurs. *St. Thomas*.
14. SUN... 4th Sunday in Advent.
15. Mon... Christmas Day.
16. Tues... *St. Stephen*. [York and Peel.
17. Wed... *St. John Evang.* Last day for notice of trial for
18. Thurs. *Innocents*. Sitt. Court of Error and Appeal con
19. Satur... Last day on which remain. half G. S. F. payable
20. 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

Upper Canada Law Journal.

DECEMBER, 1865.

COMMON CARRIERS.

The necessity for some legislative enactment on this subject, as connected with the too common practice, to which common carriers, particularly railway companies, are addicted, of exempting themselves from liability by imposing special and unreasonable conditions, has lately been again discussed in the court of Queen's Bench.

Whilst admitting that some of the principal reasons, in which originated the strict rule of law as to the liability of common carriers, have passed away with the change of customs and means of transit and traffic that have taken place of late years, it cannot, on the other hand, be denied that it is going to the other extreme to allow public companies to bind the travelling and trading community by all sorts of unreasonable and unfair conditions—conditions not only unreasonable in themselves, but, generally speaking, practically unknown to any but the managers or servants of the company imposing them.

These conditions are, generally, kept in the background; they are often printed in

small type in some inconspicuous place in a way-bill, bill of lading or receipt, or whatever the document may happen to be called. Even if the forwarder is aware of them, he is not generally in a position to help himself, and must submit to them or else give up business altogether, as there is probably only the one means of transit. In fact, he is, under such circumstances, the victim of a monopoly.

Our attention has been drawn to this subject by the late cases of *Hamilton v. The Grand Trunk Railway Co.* 23 U. C. Q. B. 600, and *Bates v. The Great Western Railway Co.* 24 U. C. Q. B. 544 (also published in another place in this *Journal*.) In the former case the company received certain plate glass to be carried for the plaintiff, who signed a paper, partly written and partly printed, requesting them to receive it upon the conditions endorsed, which were that the company would not be responsible for damage done to any glass, &c., and the defendants gave a receipt for the glass with the same conditions upon it. The evidence shewed that the damage sued for arose from the gross negligence and improper conduct of the defendants' servants. The court yielded to the authority of decided cases, and held that such a delivery and acceptance formed a special contract, which was valid at common law and exempted the defendants from liability. But the Chief Justice, in giving judgment, intimated that, if it had not been for the weight of authority, he would have decided that such special contracts are a violation of the principles of the common law, which imposed and enforced duties on common carriers for the protection of the public; but though he could not shake off the impression that they are contrary to the public policy so frequently enunciated and so much lauded in the older cases, he was obliged to hold that they are binding.

In the latter case, the declaration stated that the defendants, being common carriers by their railway, received from the plaintiff certain cattle to be carried from Ingersoll to Toronto; and the breach of duty alleged was, that they negligently and improperly detained the cattle at Ingersoll, and kept them in an open and exposed place, owing to which two of them died on the journey, and that, by the unreasonable delay in the carriage and delivery of the others, the plaintiff lost a market, &c.