

## DIARY FOR DECEMBER.

1. Satur... Michaelmas Term ends. Clerk of every Municipality except Counties to return No. of resident ratepayers to Registrar General.
2. SUN.... 1st Sunday in Advent.
3. Mon.... Last day for notice of trial for County Court.
8. Satur... Conception of the Blessed Virgin Mary.
9. SUN.... 2nd Sunday in Advent.
11. Tues.... Quarter Sessions and County Court Sittings in each County.
13. Thurs. Last day for service for York and Peel. Last day for Collector to return Roll to Chancery.
16. SUN.... 3rd Sunday in Advent.
17. Mon.... Recorder's Court sits.
21. Friday. St. Thomas.
23. SUN.... 4th Sunday in Advent.
24. Mon.... Declare for York and Peel.
25. Tues.... Christmas Day.
26. Wed.... St. Stephen.
27. Thurs... St. John the Evangelist. Sittings of Court of [Error and Appeal.
29. Friday. Innocents.
30. SUN.... 1st Sunday after Christmas.
31. Mon.... Last day on which remaining half of G. F. S. payable. End of Municipal year.

## The Local Courts'

AND

## MUNICIPAL GAZETTE.

DECEMBER, 1866.

### EXEMPTIONS IN ATTACHMENT CASES.

A correspondent requests our opinion as to whether goods which are exempt from seizure under 23 Vic. Cap. 25 on an execution against the goods of a debtor are also exempt from seizure under a writ of attachment. The point though of great importance, has never, so far as we know, been finally determined.

Section 199 of the Division Courts Act empowers the bailiff or constable "to attach, seize, take, and safely keep all the personal estate and effects of the absconding, removing, or concealed person within such County liable to seizure under execution for debt." This, therefore, is the guide that we must follow. It does not say that the bailiff is to attach, &c., all the property, but only, all that is liable to seizure under execution for debt; that is, such property as is liable to seizure under execution for debt, and no more.

Property seized upon any warrant of attachment is liable to seizure and sale under the execution to be issued upon the judgment to be obtained against the debtor. (sec. 204.) So here again, attachments and executions are in this matter placed upon the same footing; and goods which are exempt under the former writ would also appear to be exempt under the latter.

Section 4 of the 23 Vic. cap. 25, is as follows: "The following chattels are hereby declared exempt from seizure under any writ issued out of any Court whatever in this Province, namely," &c., describing certain articles. The statute speaks both of "the debtor and his family"—"provided for family use"—"tools and implements, &c., in the debtor's occupation"—and "the debtor may select," &c. We do not at present see (notwithstanding the apparent allusion to these exceptions in a case hereafter referred to) that any argument can be drawn from the use of the word "debtor" in these connections, as implying that the debtor's presence is in any way necessary. Nor does it follow that every case where an attachment has issued from a Division Court that the debtor has absconded, and this is perhaps material in reading the judgment in the case alluded to.

In the Superior Courts the wording of the Act authorising the sheriffs to seize an absconding debtor's property are more general, and may reasonably be said to include all his property, no limitation being expressed, and no reference being made which would imply that only goods liable to seizure under execution can be taken on an attachment.

In *Regina v. Davidson*, 21 U. C. Q. B. 41, certain property, which had been left by the defendant on his absconding from the Province, in the possession of his wife and family, and all of which would, under ordinary circumstances, have been exempt, was seized under a writ of attachment. The wife claimed the goods, and the question was submitted to the court, whether or not this exemption could be claimed by the wife, the defendant at the time being an absconding debtor. *Robinson, C. J.*, said, "It is my opinion at present, looking at the whole statute, 23 Vic. cap. 24, that when a debtor has absconded from his dwelling in this Province, the bed, bedding, &c., which would have been exempt from execution against him in ordinary cases, if he had been residing with his family, will not be exempted when they are no longer in his use, but only in the use of his family whom he has left behind. There are several expressions in the statute which lead to that conclusion, but perhaps on further consideration I might come to a different conclusion on that point, though it is material to consider that in cases of attachment against the goods of absconding debtors there is no exemption."