

# Canada Law Journal.

VOL. XXI.

DECEMBER 1, 1885.

No. 21.

## DIARY FOR DECEMBER.

1. Tues.....County Court Sittings (York) begin.
3. Thur.....Divisional Court Sitt., Chan. Div. H.C.J., begin.
4. Fri.....Armour, J., Q.B., sworn in, 1877.
5. Sat.....Michaelmas Sitt. Com. Law Div. H.C.J., end.
6. Sun.....and Sunday in Advent.
8. Tues.....Gen. Sess. and Co. Court Sitt. (ex. York) begin.
11. Fri.....Blake, V.C., sworn in, 1872.
13. Sun.....3rd Sunday in Advent.
14. Mon.....Christmas vac. in Sup. Ct. and Excheq. Ct. begin.
15. Tues.....Morrison, J., Court of Appeal, 1877.

TORONTO, DECEMBER 1, 1885.

WE call attention to the letters of a correspondent on the subject of "Ultra Vires" in connection with judicial appointments and quasi-judicial appointments in the Provinces since Confederation, in which several points of interest are discussed. The first letter will be found *ante*, p. 340, and the second in this issue, *post*, p. 421.

## THE LAW OF DOWER.

"THE avowed object of the Legislature in passing an Act, as made known to the public by the discussion that takes place upon the Bill in its passage through the Legislative Assembly, and the intention of the Legislature in passing the same Act, as extracted by the judicial process, are often widely different." Thus said Mr. Justice Armour in *Clarke v. Creighton*, 45 Q. B. 518, and the truth of the remark must be admitted by all.

Many confirmations of its correctness might no doubt be cited, but as "the latest case" is always the one that lawyers are most concerned about, we prefer to confine our attention to *Smart v. Sorenson*, 9 O. R. 640, and of which a note appears *ante*, p. 320.

In that case Mr. Justice Ferguson had to consider the effect of the statute 42 Vict. c. 22 (O.), by which it was supposed an important alteration had been made in the law of dower. Previous to the passage of that Act, the law undoubtedly was that a woman joining in a mortgage of the legal estate and barring her dower therein, rendered her concurrence in any subsequent mortgage or conveyance of the equity of redemption by her husband unnecessary; and that, so long as the mortgage remained undischarged, he alone had complete dominion over the equity of redemption; and that it was only in such equity of redemption as he might die seized of that the wife could claim dower. This was felt to be an injustice to the wife, because the husband might procure his wife's release of dower to a mortgage of a small amount upon an estate worth thousands of dollars; and having done so, he thereby became enabled immediately to dispose of the whole estate so as to cut out her dower entirely. It was argued that the wife's bar of dower in a mortgage should only be a bar for the purpose of the particular mortgage in which it was contained, and so far as it might be necessary to effectuate that, and should not be for any other purpose an unlimited bar of dower.

Two things had to be considered; first, the rights of the wife as against the mortgagee in whose mortgage she had joined; and, secondly, the rights of the wife as against her husband and those subsequently claiming under him. As regards the first, it was felt the rights of the mortgagee should not be disturbed or encroached upon; but, as regards the second, it was thought desirable to interpose some