

DIARY FOR FEBRUARY.

1. Wed.... Sir Edw. Coke, born 1552. C. C. non-jury sittings in York. Barristers' Examination.
5. Sun.... *Sezagesima Sunday*. W. H. Draper, 2nd C. J. of C. P., 1856.
6. Mon.... L. S. Hilary Term begins, H. C. J. sit. begin.
7. Tues.... Maritime Court sits.
10. Fri.... Canada ceded to G. B., 1763. Union of Upper and Lower Canada, 1841.
11. Sat.... T. Robertson appointed to Chy. Div., 1887.
12. Sun.... *Quinquagesima Sunday*.
15. Wed.... Ash Wednesday.
16. Thur.... Chy. Div. H. C. J. sits. end.
18. Sat.... L. S. Hilary Term ends. H. C. J. sits. end.
19. Sun.... *Quadragesima Sunday*. 1st Sunday in Lent.
21. Tues.... Supreme Court of Canada sittings begin.
24. Fri.... St. Matthias.
26. Sun.... 2nd Sunday in Lent.

Reports.

[REPORTED FOR THE CANADA LAW JOURNAL.]

STEVENSON v. MCHENERY.

Irregularity—Notice of motion—Premature hearing of motion—Defence filed after pleadings noted closed—Rule 596.

Where a notice of motion is given, returnable at a certain hour, "or so soon thereafter as the motion can be heard," it is irregular to bring the motion on to be heard at an earlier hour, even though the court may have appointed such earlier hour for its sittings.

Two days' notice of motion for judgment is sufficient. *Martens v. Birney*, 10 P. R. 368, approved.

When a defence is filed after the pleadings have been noted closed under Rule 596, it is a nullity.

[Boyd, C.—January 10, 1888.]

Motion to set aside judgment for irregularity.

The defendant being in default of defence, the plaintiff duly filed a precipe with the proper officer, under Rule 596, requiring him to note that the pleadings were closed. Subsequently the defendant tendered, and the officer received and filed, a statement of defence, and, afterwards, on discovering that the pleadings had been closed, returned it to the defendant's solicitor.

The plaintiff, disregarding the defence, gave two days' notice of motion for judgment in default of defence, which notice was returnable on 7th December, at 11 a.m., "or so soon thereafter as the motion could be heard." On the 7th December, owing to the Divisional Court being in session, the court for the hearing of motions for judgment sat at 10 a.m., of which public notice was given by the Registrar. The motion came on and was disposed of at 10 a.m. The defendant's counsel was ignorant of the change in the hour of holding

the court, and attended at 11 a.m., when he found the motion had been disposed of.

Nelson, for defendant, now moved to set aside the judgment for irregularity, on the ground that the notice should have been a seven days' notice under Chy. Ord. 418; and that the motion had been heard prematurely and before the notice of motion was returnable; and also on the ground that the motion for judgment in default of defence could not properly be made, a statement of defence having been filed, and the Clerk of Records and Writs having no right to take it off the files.

Hoyles, for the plaintiff. The two days' notice of motion was sufficient, *Martens v. Birney*, 10 P. R. 368. The filing of a statement of defence after the note had been entered under Rule 596, was a nullity. The defendant was bound to take notice of the change in the time of holding the court.

The CHANCELLOR.—The plaintiff might have avoided the difficulty which has arisen by given notice returnable at the time named, "or at such other hour as the court may on that day sit"—owing to the form in which the notice was given, the motion appears to have been heard prematurely. But the defendant was no doubt then in default of defence, and if he had appeared he could only have obtained relief by an appeal to the indulgence of the court. This fact is entitled to weight in disposing of the costs. The judgment must be set aside, and the defendant allowed to defend, but the plaintiff's costs of noting the pleadings closed, and of the motion for judgment, and of this motion, must be costs in the cause to him in any event. The two days' notice of motion for judgment was sufficient.

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

THE CONFEDERATION LIFE ASSOCIATION v. MILLER.

Life insurance—Application for policy—Declaration by assured—Basis of contract—Warranty—Misdirection.

An application for a life insurance policy contained the following declaration after the applicant's answer to the question submitted: