DIARY FOR MAY.

1. Thu.....St. Philip and St. James.
2. Fri......J. A. Boyd 4th Chy., 1881.
3. Sat......Mr. Justice Henry died, 1888. Last day for filing papers and fees for final exam.
4. Sun.....*Fourth Sunday after Easter.*
6. Tues...Supreme Court of Canada sits. Lord Brougham died 1868, æt. 90.
10. Sat......Indian Mutiny 1857.
11. Sun.....*Rogation Sunday.*
13. Tues...Court of Appeal Sits. General Sessions and County Court Sittings for trial in York begin. Solicitors' Examination.
15. Thu.....Barristers' Examination.
18. Sun.....*Sunday after Ascension.*
19. Mon....Easter Term commences. High Court Justice Q.B. and C.P.D. Sittings.
21. Wed....Confederation proclaimed 1867. Lord Lyndhurst born, 1772.
24. Sat......Queen Victoria born 1819.
25. Sun.....*Whitsunday.* Princess Helena born 1846.
27. Tues....Habeas Corpus Act passed 1679.
28. Wed....Battle of Fort George 1813.
29. Thu.....Restoration of Charles II., 1660.

Reports.

IN THE THIRD DIVISION COURT OF THE COUNTY OF ONTARIO.

WILCOX *v.* COLTON, LAING, AND MAHONEY.

Claimant's chattel mortgages—After acquired property—Erroneous statement of consideration—R.S.O., c. 125.

When a chattel mortgage contains no agreement to charge afte acquired property, a second chattel mortgage upon such property intended to be collateral to the renewal of the first cannot be supported, the more because on its face it is not shewn to be collateral, but apparently in respect of a new advance.

[Whitby, April 8.

Interpleader. The claimant's case rested upon two chattel mortgages. The first was dated 13th January, 1888, and properly filed and renewed in 1889 and 1890, securing $381.20. Nothing was contained therein affecting after acquired property.

The second was dated 6th January, 1890, properly filed, securing $263.

It was shewn or admitted that the last mortgage was given to secure the unpaid balance of the first, and was intended to be collateral to its renewal, but did not so state, and on its face appeared to be given in consideration of a new advance. It included various chattels not set out in the first mortgage, and excluded certain others which the mortgagor had in the meantime sold or exchanged.

DARTNELL JJ.—There is no question as to the sufficiency or *bona fides* of the first mortgage, it having been given for monies actually advanced to the mortgagor by the claimants for the purpose of carrying on certain lumbering operations on their behalf.

It remains to be considered whether the claimants can hold the after acquired property under their second chattel mortgage.

It was conceded, and I think correctly, that there is no decision governing the point.

A conclusion can only be arrived at by applying the principles of other rulings to the matter now in question.

It appears that an agreement as to future chattels gives no legal rights, and does not pass the after acquired property; but that in a proper case it can be made effectual on the ground that a Court of Equity will enforce it as attaching upon that property when it is ascertained. *Clark* v. *Scottish Imperial Insurance Co.*, 4 S.C.R., 709. And also that the Chattel Mortgage Act was not intended to cover agreements creating equitable interests in non-existing and future acquired property. *Banks* v. *Robinson*, 15 O.R., 618.

"Effect can only be given to words in a conveyance as they are found, and the Court cannot carry out the intention of the parties under such instruments if the words do not shew *verbatim* such intention," *Tapfield* v. *Harman*, 13 U.C.C.P., 311.

"If it be the intention of the parties to affect future acquired property, that intention must clearly appear on the face of the deed," *Mason* v. *McDonald*, 25 U.C.C.P., 439.

In this view the claimants cannot hold that the after acquired property, cannot be held as against the defendants' execution creditors, and the second mortgage not being given in pursuance of any agreement contained in the first mortgage which cannot aid the claimants, in addition to which there is the fact that the consideration as expressed was not true, and that the mortgage was given for an antecedent debt by a mortgagor, insolvent with the knowledge of the claimants.

My judgment, therefore, is for the claimants in respect of the chattels now existent, contained in their first mortgage, and against them in respect of those acquired by the mortgagor after its execution. Costs of interpleader to be paid out of proceeds of sale.