

## DIARY FOR FEBRUARY.

1. Sun.....*Sexagesima*. Sir Edw. Coke born, 1552.
2. Mon.....Hilary term commences. Criminal Assizes, Toronto. H.C.J., Q.B.D. and C.P.D. Sit-tings begin. County Court Non-Jury Sit-tings in York.
6. Fri.....W. H. Draper, 2nd C.J. of C.P., 1856.
8. Sun.....*Quinquagesima*.
9. Mon.....Union of Upper and Lower Canada, 1841.
10. Tues.....Canada ceded to Great Britain, 1763.
11. Wed.....Ash Wednesday. T. Robertson appointed to Chy. Div., 1887.
14. Sat.....Hilary Term and High Court of Justice Sit-tings end. Toronto University burned, 1890.
15. Sun.....*1st Sunday in Lent*.
17. Tues.....Supreme Court of Canada sits.
19. Tues.....Chancery Division High Court of Justice sits.
22. Sun.....*2nd Sunday in Lent*.
24. Tues.....St. Matthias.
27. Fri.....Sir John Colborne, Administrator, 1838.
28. Sat.....Indian Mutiny began, 1857.

## Early Notes of Canadian Cases.

## EXCHEQUER COURT OF CANADA.

BURBIDGE, J.]

[Jan. 19.

THE QUEEN v. THOMAS.

*Cancellation of a land patent—33 Vict., c. 3, s. 32, s-s. 4—38 Vict., c. 52, s. 1—Improvvidence in granting patent—Indian gratuity, effect of half-breed sharing in.*

T., a half-breed, was, on the 15th day of July, 1870, in actual peaceable possession of a lot of land in the Province of Manitoba, previously purchased by him, and of which he had been for some years in undisturbed occupancy. On the 3rd of August, 1871, he shared in the gratuity given to certain Chippewa and Swampy Cree Indians under a treaty then concluded with them, and in the years 1871, 1872, 1873, and 1874, he participated in the annuities payable thereunder. But before taking any monies under the treaty, he enquired of the Commissioner, who acted for Her Majesty in its negotiation, whether by accepting such money he would prejudice his rights to his private property, and was informed that he would not; and when in 1874 he learned for the first time that by reason of his sharing in such annuities he was liable to be accounted an Indian, and to lose his right as a half-breed, he returned the money paid to him in that year. Subsequently his status as a half-breed was recognized by the issue to him in 1876 of half-breed scrip.

*Held*, that under The Manitoba Act and amendments (33 Vict., c. 3, s. 32, s-s. 4, and 38

Vict., c. 52, s. 1) he was entitled to letters-patent for the lot mentioned.

*Aikins, Q.C., and Culver, Q.C., for Crown.*  
*Howell, Q.C., and Cumberland, for defendant.*

## BERTRAND v. THE QUEEN.

*Damages to property from government railway—The government Railway Act, 1881, s. 27—Claimant's acquiescence in construction of culverts, effect of—Negligence of Crown's servants—Estoppel.*

The suppliant sought to recover damages for the flooding of a portion of his farm at Isle Verte, P.Q., resulting from the construction of certain works connected with the Intercolonial Railway. The Crown produced a release under the hand of the suppliant, given subsequent to the time of the expropriation of a portion of his farm for the right of way of a section of the Intercolonial Railway, whereby he accepted a certain sum "in full compensation and final settlement for deprivation of water, fence rails taken, damage by water, and all damages, past, present, and prospective, arising out of the construction of the Intercolonial Railway," and released the Crown "from all claims and demands whatever in connection therewith." It was also proved that although the works which caused the injury were executed subsequent to the date of this release, they were undertaken at the request of the suppliant and for his benefit, and not for the benefit of the railway, and that with respect to part of them, he was present when it was being constructed and actively interfered in such construction.

*Held*, that he was not entitled to compensation.

2. The Crown is not under an obligation to maintain drains or back-ditches constructed under 52 Vict., c. 13, s. 4.

*Pouliot for claimants.*

*Hogg, Q.C., for the Crown.*

## BRADY v. THE QUEEN.

*Petition of right—Demurrer—Personal injuries received on public work—Negligence of Crown's servants—Liability of Crown therefor.*

Demurrer to petition of right.

Suppliant alleged in his petition that on a