

DIARY FOR MARCH.

1. Sun.....3rd Sunday in Lent. St. David.
2. Tues.....General Sessions and County Court Sittings for trial in York.
3. Thurs.....York changed to Toronto, 1884.
4. Sun.....4th Sunday in Lent.
5. Mon.....Civil Assizes at Toronto.
6. Tues.....Court of Appeal sits. Prince of Wales married, 1883.
7. Fri.....Lord Mansfield born, 1704.
8. Sun.....5th Sunday in Lent.
9. Mon.....Chancery Sittings H.O.J. at Toronto.
10. Tues.....St. Patrick's Day.
11. Wed.....Arch. McLean, 6th C.J. of Q.B., 1862. Sir John B. Robinson, C.J., Ct. of Appeal 1882.
12. Thurs.....P. M. S. Vankoughnet, 2nd Chancellor of U. C., 1862.
13. Sun.....6th Sunday in Lent. Palm Sunday.
14. Mon.....Sir Geo. Arthur, Lieut.-Governor of Upper Canada, 1888.
15. Thurs.....Bank of England incorporated, 1694.
16. Fri.....Good Friday.
17. Sat.....Canada ceded to France, 1832.
18. Sun.....Easter Sunday.
19. Mon.....Easter Monday. B.N.A. Act assented to, 1867. Lord Metcalfe, Gov.-General, 1843.
20. Tues.....Slave trade abolished by Britain, 1807.

Reports.

ONTARIO.

SECOND DIVISION COURT, COUNTY OF ONTARIO.

[Reported for THE CANADA LAW JOURNAL.]

SMITH ET AL. v. A. LAWRENCE AND J. LAWRENCE (Claimant).

R.S.O., c. 124, sec. 2—*Fraudulent preference—Lease by a debtor to a creditor—Counsel fee in Division Courts—D. C. Act, secs. 197, 155, and 208.*

Neither the leasing in good faith for a fair rent by a debtor to his creditor, nor the subsequent application of the indebtedness of the lessor in part payment of the rent, are transactions which can be impeached under R.S.O., c. 124, sec. 2.

An interpleader, when the sum or value of the goods in dispute is over \$100, is a "contested case" within the meaning of sec. 208 of the D. C. Act, and the successful party may have a counsel fee taxed to him, even if sec. 155, s-s. 2, did not expressly extend sec. 208 to contestations of this nature.

[Whitby, 5th January, 15th, 1891.]

This was an issue under the 197th section of the D. C. Act, to try whether the monies paid into court by the various garnishees are applicable towards the payment of the various judgment creditors of Albert Lawrence, as against James Lawrence, who claims them under the circumstances set forth in the judgment.

Dow and McGilvray for the primary creditors.

D. Ormiston and J. E. Farewell, Q.C., for the claimant.

DARTNELL, J.J. The primary debtor, Albert Lawrence, and the claimant, James Lawrence, are brothers. The former is a farmer, a married man with a family, and the latter, a mechanic and a bachelor, living for some years past with the primary debtor, who appears to be of an improvident nature; whereas James is a thrifty, saving man, to whom his brother constantly applied for, and received, pecuniary assistance, repaying part, but always having a balance against him, which balance at the time hereafter mentioned amounted to about \$178. Albert (an instance of his improvidence), during the Toronto Exhibition of 1889, and after the threshing season was half over, was induced to become the purchaser of a steam thresher. He had no knowledge or skill in running such a machine, and had to hire his brother James at \$1.00 per day to run it for him. In August 1890, he proposed the same arrangement which James refused to accede to; whereupon, rather than let the machine lie idle, Albert proposed to lease it to James at a rental of \$350, payable on the 1st of January, 1891, the latter undertaking to furnish all labor and do all repairs. The only witnesses examined were the two brothers. They both say that, when the lease was drawn, nothing was said about applying Albert's indebtedness to James upon the rent; but I have no doubt it was in their minds that, when it came to be settled for, such indebtedness would be so applied.

The monies garnished formed the earnings of the machine, except \$40.00 thereof, which, at Albert's request, James previously turned in in payment of debts due by Albert to parties for whom James threshed, and the balance was paid by James to Albert, after satisfaction of his own claim, and this \$40.00 and the balance was also, as Albert swears, applied in payment *pro tanto* of his debts.

The two transactions, viz., the lease itself, and the payment or arrangement in advance of the rent, are both impeached as fraudulent preferences under R.S.O., c. 124, s. 2.

I do not so consider. It seems to me that both transactions were *bona fide* and natural, and that no creditors have suffered. The rent is a fair and reasonable one. James has only earned about fifty cents per day for his own labor over and above the rent and cost of running the machine. It is true that Albert's indebtedness to him is cancelled, but that is