

DIARY FOR FEBRUARY.

1. Sun.....*Sexagesima*. Sir Edw. Coke born, 1532.
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. Thur.....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.

Reports.

ONTARIO.

WINDING-UP ACT.

[Reported for THE CANADA LAW JOURNAL.]

RE CENTRAL BANK.

BURK'S CASE.

Bank Act, ss. 20 and 29—Shareholder and Contributory—Promissory note for stock subscription—What is a valid transfer of bank shares—Costs.

A promissory note given for the payment of a per-centage on shares subscribed for is not money, but only an engagement to pay money at a future time.

Therefore the giving of a promissory note, which was not paid at the time of the winding-up of a bank, is not a compliance with a statutory condition requiring the payment of a percentage on the shares subscribed for, and payable at the time of subscription, or within thirty days thereafter. And the person giving such promissory note, if he ever validly acquired any shares in the capital stock of the bank, forfeited the same by non-payment within the statutory time, and was not, there-fore, liable, in the winding-up proceedings, as a contrib-utory in respect of such shares.

A company is the creature of the law, and can act in no other manner than as the law creating it prescribes, and is not permitted to violate or evade the rules which legislature has prescribed in the public interest and for the protection of the creditors of such company.

A party, though successful, making a defence not war-ranted by law, may not be allowed the costs of such defence.

[MASTER-IN-ORDINARY, Sep. 1, 1890.]

The facts of the case are fully stated in the judgment.

W. R. Meredith, Q.C., and Hilton, for the liquidators.

S. H. Blake, Q.C., and Smellie, for Burk.

MR. HODGINS, Q.C., MASTER-IN-ORDINARY:

This is an application by the liquidators of the Central Bank to place the respondent, D. F. Burk, on the list of contributories in respect of fifty shares of the capital stock of the bank, and for an order to stay the issue of cheques for dividends due to him in respect of his ad-mitted claims as a creditor.

It appears that the respondent, on the 13th December, 1884, signed the stock book, agreeing to take fifty shares at \$100 per share, and that he then gave to the cashier of the bank a promissory note for \$500 payable on demand, being for the ten per cent. which s. 20 of the Bank Act requires to be paid at the time of subscription or within thirty days thereafter. This promissory note has not been produced, and is said not to have been among the assets of the bank when taken charge of by the liqui-dators. Its non-production by the bank may be held to be evidence of payment or discharge, for the maker paying a note has a right to the possession of the instrument for his own secur-ity, and as his voucher and discharge *pro tanto* in his account with the holder: *Hunsard v. Robinson*, 7 B. & C. 94.

The case seems to be governed by the con-struction to given to the proviso to s. 20 of the Bank Act, which reads as follows: "No share shall be held to be lawfully subscribed for un-less a sum equal to at least ten per centum on the amount subscribed for is actually paid at the time of or within thirty days after the time of subscribing."

The canon of statutory construction, where negative words are used in a statute, is that negative words make the statute imperative, while words in the affirmative may make it directory: *Rex v. Leicester*, 7 B. & C., 12. And as a corollary to this comes the rule that an absolute (or imperative) enactment must be obeyed or fulfilled exactly; but it is sufficient if a directory enactment be obeyed or fulfilled substantially: Per Lord Coleridge, C.J., in *Woodward v. Sarsons*, L.R. 10 C.P. 746. And if I were without any guiding rules of interpre-tation of the policy of the statute, which is con-ceded to be for the protection of the public in-terest, I would be compelled to give effect to the policy of the legislature, even if I had doubt as to the meaning of the words used: *Broom's Legal Maxims*, (ibid.) 539.