

DIARY FOR NOVEMBER.

1. Tues.....All Saints' Day.
2. Wed.....O'Connor, J., Q.B., died, 1887.
3. Sat.....Sir John Colborne, Lieut.-Governor of U.C., 1838. Gunpowder Plot.
4. Sun.....21st Sunday after Trinity.
5. Tues.....Court of Appeal sits. John Milton died, 1674.
6. Wed.....Prince of Wales born, 1841.
7. Fri.....Battle of Chrysler's Farm, 1813.
8. Sat.....J. H. Hagarty, 4th C.J. of C.P., 1868. W. B. Richards, 10th C.J. of Q.B., 1868. Magna Charta signed, 1215.
9. Sun.....22nd Sunday after Trinity. A. Wilson, 5th C.J. of C.P., 1878. J. H. Hagarty, 12th C.J. of Q.B., 1878.
10. Mon.....Falconbridge, J., Q.B.D., 1887.
11. Tues.....M. C. Cameron, J., Q.B., 1878.
12. Sat.....J. D. Armour, 14th C.J. of Q.B., 1887. Thos. Galt, C.J., C.P.D.
13. Sun.....23rd Sunday after Trinity.
14. Mon.....Michaelmas Term begins. Q.B. and C.P. Divisions of H.C.J. sittings begin. J. Simms, 2nd C.J. of Q.B., 1798. Princess Royal born, 1840.
15. Thur.....Battle of Fort Duquesne, 1758.
16. Fri.....Marquis of Lorne, Gov.-Gen., 1878.
17. Sun.....1st Sunday in Advent. Frontenac died at Quebec, 1698.
18. Wed.....St. Andrew's Day. Thos. Moss, C.J. of Appeal, 1877. Street, J., Q.B.D., and MacMahon, J., C.P.D., 1887.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE
FOR ONTARIO.

COURT OF APPEAL.

[May 13, 1890.]

McMILLAN v. BARTON.

*Principal and agent—Trusts and trustees—
Fraud—Statute of Frauds.*

Property of the plaintiff's husband having been offered for sale under mortgage, she agreed orally with the mortgagee's solicitors to purchase it; but, not having the means to make the cash payment required, she saw one of the defendants, who agreed to lend her for a year the necessary money and to take a deed of the property as security, and he gave to the solicitors a written offer to purchase on the terms arranged by the plaintiff, which offer was by the solicitors orally accepted. The property was, however, in fact conveyed to the other defendant, who was the daughter of her co-defendant.

Held, per HAGARTY, C.J.O., and MACLENNAN, J.A., that on the evidence the conveyance to the daughter was the result of a fraudulent conspiracy between her father and herself to deprive the plaintiff of her bargain, that therefore the daughter stood in no better position

than the father, and that he was an agent for the plaintiff, whose agency must be proved by oral evidence notwithstanding the Statute of Frauds.

Held, per BURTON and OSLER, J.J.A., that on the evidence the purchase by the daughter was not a collusive one, but was one for her own benefit, and that it could not be impeached.

The court being equally divided, the judgment of ROBERTSON, J., at the trial was affirmed.

Upon appeal to the Supreme Court of Canada, 20 S.C.R. 404, the view of HAGARTY, C.J.O., and MACLENNAN, J.A., was adopted.

Me's, Q.C., and C. Millar for the appellants.
John Bain, Q.C., for the respondent.

[May 10, 1892.]

Dwyer v. Port Arthur.

Municipal corporations—By-law—Street railways—Costs.

In January, 1891, the defendants passed a by-law to raise \$75,000 for street railway purposes, with a recital that it was necessary to raise that sum for the purpose of building a street railway connecting the municipality of Neebing with the municipality of Port Arthur. The by-law had been submitted to the electors, and had been carried by their votes, but the approval of the Lieutenant-Governor in Council had not been obtained, and the provisions of section 505 of the Municipal Act had not been observed. This action was brought to restrain the municipality from constructing the street railway under this by-law; and on the 4th of May, 1891, while the action was pending, an Act, 54 Vict., c. 78 (O.), was passed declaring that the by-law in question was legal and valid to all intents. After the passing of the Act an injunction was granted by STREET, J., restraining the defendants from acting under the by-law on the ground that the Act in question did not go far enough. The action was afterwards brought down to trial, and MACMAHON, J., following the judgment of STREET, J., made the injunction perpetual.

Held, reversing these judgments, that the validating Act had the effect of changing the by-law from one for raising money merely to one for construction, and made it valid for all purposes.