

DIARY FOR MAY.

1. Sun *2nd Sunday after Easter*. St. Philip and St. James.
2. Mon J. A. Boyd, 4th Chancellor, 1881.
4. Wed Mr. Justice Henry died, 1866.
6. Fri Lord Brougham died, 1866, at 90.
8. Sun *3rd Sunday after Easter* York vacated by U.S. troops, 1813.
10. Tues Supreme Court of Canada will sit. Court of Appeal sits. General Sessions and County Court sittings for trial in York.
14. Sat First Illustrated Newspaper, 1842.
15. Sun *4th Sunday after Easter*.
16. Mon Easter Term begins. Q.B. & C.P. Divs. of H.C.J. sittings begin.
21. Sat Confederation proclaimed, 1867.
22. Sun *Rogation Sunday*. Earl Dufferin Gov.-Gen., 1872.
24. Tues Queen Victoria born, 1819.
25. Wed Princess Helena born, 1846.
26. Thurs Ascension Day.
27. Fri Habeas Corpus Act passed, 1879. Battle of Fort George, 1813.
29. Sun *1st Sunday after Ascension*. Battle of Sackett's Harbour, 1813.

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

Ontario.]

[April 4.

BARTON v. McMILLAN.

Contract—Deed of land—Evidence—Agency—Statute of Frauds—Parol testimony.

M. owned certain property which was mortgaged, and had been advertised for sale under a power of sale in the mortgage. Before the date fixed for the sale, M. had made an assignment for the benefit of his creditors, and his wife tried to purchase the property. It was not sold on the day named, and the next day M.'s wife went to the solicitors of the mortgagee and arranged for the purchase by making a cash payment and giving a mortgage for the balance. She had some other property on which she wished to raise the money for the cash payment, and B. offered to lend the amount at 7 per cent. interest for a year, he taking the wife's property and holding it in trust for that time. B. and M. went to the office of the mortgagee's solicitors, where a contract was drawn up in the terms agreed, and signed by B., who told the solicitor that he did not know whether the deed would be taken in his own name or his daughter's, but that he would advise him by telephone. On the following day a telephone message came to the solicitors to have the deed made in the name of B.'s daughter, which was done; the deed was executed, the money paid, and a mortgage was given to the original mortgagee as

agreed. Subsequently the daughter claimed that she purchased the property absolutely for her own benefit, and an action was brought by M.'s wife against B. and his daughter to have the daughter declared a trustee of the property subject to repayment of the loan from B., and for specific performance of the agreement with B. the action charging collusion and conspiracy on the part of B. and his daughter to deprive plaintiff of her property. The defendants pleaded the Statute of Frauds, in addition to denying the alleged agreement.

Held, affirming the decision of the Court of Appeal, and that of the trial judge, STRONG, J., dissenting, that the evidence established the agreement by B. to lend the money and take the property in trust as security; that the daughter was aware of this agreement; and that the deeds executed having been made in pursuance thereof, the daughter must be held a trustee of the property, as B. would have been if the deed had been taken in his name.

Held, further, STRONG, J., dissenting, that the Statute of Frauds did not prevent the said agreement being enforced, notwithstanding it was not in writing.

Appeal dismissed with costs.

Moss, C. C., for the appellants.

Bain, Q. C., for the respondent.

MCDONALD v. MCDONALD.

Title to land—Action against estate for debt of executor—Purchase by executor at sale under execution—Constructive trust—Statute of Limitations.

D.M. was one of the executors of his father's estate, and an action was brought against the estate on a note made by him which his father, in his lifetime, had indorsed for his accommodation. Judgment was recovered in said action, and an execution issued under which land devised to A.M., a brother of D.M., was sold and purchased by D.M., who gave a mortgage to the judgment creditors. D.M. afterwards sold the land to another brother, W.M., who paid off the mortgage; and, it having been offered for sale under execution issued on a judgment against W.M., it was again purchased by D.M. The original devisee of the land, A.M., took forcible possession, and D.M. brought an action to recover possession.