

Canada Law Journal.

VOL. XXII.

APRIL 1, 1886.

No. 7.

DIARY FOR APRIL.

4. Sun.....*5th Sunday in Lent.*
5. Mon....C. C. term begins. C. C. Sittings, for trial of non-jury cases, begin, except in York.
9. FriLord Bacon died 1626, *æt.* 66.
10. SatCounty Court term ends.
11. Sun.....*5th Sunday in Lent.*

TORONTO, APRIL 1, 1886.

THE time has again come round for the election of the Benchers of the Law Society, and the usual preliminary skinning has been going on. The voting papers have to be sent to the Secretary of the Law Society between the 29th day of March last and the 7th day of April instant, both inclusive. All received by post prior to the first date and after the second will be useless. Several lists have been given to the public. A correspondent sends us another for publication, which will be found in another place. While we do not in any way further this list, the names seem representative in their character, and the list has the advantage of bringing to the notice of the profession several new names which are entitled to consideration. No list, of course, can include all names one might like to see upon it, and some must necessarily be omitted.

In several places the local Bars have, we understand met, and, with more or less unanimity, decided as to those they desire should be elected as their representatives. Their recommendations will doubtless receive due consideration.

We are surprised that the country practitioners have not combined more in their own interest to elect men who would urge legislation to protect their undoubted rights. The Society at present receives their fees, and makes no attempt to save them from spoliation, and calmly contemplates their death by starvation.

RECENT ENGLISH DECISIONS.

The *Law Reports* for March comprise 16 Q. B. D. pp. 305-514; 11 P. D. pp. 13-20; 31 Chy. D. pp. 251-350; and 11 App. Cas. pp. 1-92.

POSTPONEMENT OF MORTGAGE TO SUBSEQUENT MORTGAGE AT REQUEST OF MORTGAGOR—IMPLIED PROMISE TO INDEMNIFY.

Ex parte Ford, 16 Q. B. D. 305, although a bankruptcy case, is nevertheless of some general interest. In order to enable the owner of the equity of redemption to obtain a further advance from a first mortgagee, a second mortgagee agreed to postpone his mortgage to that of a third mortgage held by the first mortgagee, and also to the further advance. The mortgaged property was ultimately sold, and failed to realize sufficient to pay the second mortgagee the whole amount due to him. The mortgagor having become bankrupt the second mortgagee claimed to prove against his estate for the deficiency. It is not expressly stated in the report, but it seems probably to have been the fact, that the bankrupt was not personally liable for the payment of the second mortgage debt. If he had been, we do not see that there would have been any room for controversy as to the liability of his estate. It was held by the Court of Appeal that the estate was liable on an implied promise on the part of the bankrupt to indemnify the second mortgagee for any loss he might suffer from the postponement of his claim. Lord Esher, M.R., said:

It seems to me that whenever circumstances arise in the ordinary business of life in which, if two persons were ordinarily honest and careful, the one of them would make a promise to the other, it may properly be inferred that such a promise was given and accepted.

PAYMENT OF MONEY UNDER MISTAKE OF LAW.

Ex parte Simmonds, 16 Q. B. D. 308, is another decision in bankruptcy of some general interest. In this case it was held by the Court of