

## DIARY FOR MARCH.

1. Tues. ... Court of Appeal sits. General Sessions and County Court sittings for trial in York.
2. Wed. ... Ash Wednesday.
5. Sat. ... York changed to Toronto, 1831.
6. Sun. ... 1st Sunday in Lent.
10. Thurs. ... Prince of Wales married, 1863.
13. Sun. ... 2nd Sunday in Lent. Lord Mansfield born, 1704.
17. Thurs. ... St. Patrick's Day.
18. Fri. ... Arch. McLean, 8th C.J. of Q.B. Sir John B. Robinson, C.J., Court of Appeal, 1862.
19. Sat. ... P. M. S. Vankoughnet 2nd Chancellor of U.C., 1862.
20. Sun. ... 3rd Sunday in Lent.
23. Wed. ... Sir George Arthur, Lieut.-Gov. of U.C., 1833.
26. Sat. ... Bank of England incorporated, 1694.
27. Sun. ... 4th Sunday in Lent.
28. Mon. ... Canada ceded to France, 1632.
30. Wed. ... B.N.A. Act assented to, 1867. Lord Metcalfe, Gov.-Gen., 1843.
31. Thurs. ... Slave trade abolished by Britain, 1807.

## Reports.

## ONTARIO.

(Reported for THE CANADA LAW JOURNAL.)

## WEST v. SINCLAIR.

*Mechanics' lien—Jurisdiction of Master, under 53 Vict., c. 37, to declare deeds fraudulent—Actual or constructive notice to affect mechanics' lien.*

On a claim filed by a lienholder under the Mechanics' Lien Procedure Act, 53 Vict., c. 37, alleging that the owner had, after the contract with the plaintiff, conveyed the property to his wife, with notice of the plaintiff's lien; and that the wife had thereafter mortgaged the property to one M., with like notice of the plaintiff's lien, it was

*Held*, (1) That the jurisdiction conferred upon the Master by the said Act is statutory, and that although the Act is silent as to the jurisdiction to invalidate deeds for fraud, and the presumption of the law is against extending a statutory grant of judicial power, yet as the parties had proceeded as if the Master had jurisdiction in mechanics' lien cases to declare deeds fraudulent and void under the Statute of Elizabeth, and R.S.O. (1887), chaps. 96 and 124, it was proper in the interests of justice, and in obedience to the maxim *ampliare iustitiam*, to dispose of the questions raised as to the invalidity of the deed and mortgage.

(2) That the protection given to instruments registered prior to the registration of a mechanics' lien applies only to instruments registered by innocent purchasers or mortgagees who had not actual notice of the mechanics' lien.

(3) That the notice which is necessary to postpone a registered instrument, so as to give priority to a mechanics' lien, must be actual notice; and that a notice which merely puts a party upon inquiry as to facts of which it is material he should have actual knowledge is insufficient to postpone a registered instrument.

(4) That seeing work being done on a building, or materials being delivered on the premises to be used in such building, is not actual or sufficient notice that a mechanic doing such work, or furnishing such material, is unpaid, or that he is entitled to a mechanics' lien in respect thereof.

[Toronto, January 14, 1892.]

The plaintiff filed his statement of claim in respect of a mechanics' lien before the Master in Ordinary, under the Act 53 Vict., c. 37, setting out a contract with the defendant George Sinclair, who was then the owner of the property. The claim alleged that the defendant George Sinclair had, after the contract and prior to the registration of the plaintiff's lien, conveyed the property to his wife, the defendant Margaret Sinclair, with notice of the plaintiff's claim; and that the last named defendant had mortgaged the said property to the defendant McCausland, giving like notice of plaintiff's claim.

*D. Macdonald* for plaintiff.

*Vickers* for McDonald & Co.

*Haverson* for McCausland.

*Abbott* for the Sinclairs.

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

The question of the right of a Master or Referee, acting under the statutory jurisdiction in respect of mechanics' liens conferred upon them by the Act 53 Vict., c. 37, to try cases involving the validity or invalidity of conveyances and mortgages of land alleged to be fraudulent and void against creditors and lienholders under the Statute of Elizabeth, and R.S.O. (1887), chaps. 96 and 124, though incidentally referred to in this case, has not been argued.

The statute is silent as to this jurisdiction, although another statute appears to have been necessary to give a jurisdiction to the Master in Chambers (R.S.O. (1877), c. 49, s. 10, now Con. Rule 1007) in cases where a judgment creditor is impeded in his remedy by a fraudulent conveyance; and it may be further noted that a special statutory provision was considered necessary to vest in the referee in drainage cases the powers of the High Court (54 Vict., c. 57), but no similar powers have been conferred upon the Master under the Mechanics' Lien Act, 53 Vict., c. 37. In ordinary cases, a simple contract creditor must seek his remedy against the fraudulent conveyance by action, *Longeway v. Mitchell*, 17 Gr. 190.

The Act of 1890 gives an original and special jurisdiction to certain judicial officers, and therefore comes within the rules governing statutory powers conferred upon a judge or officer as a *persona designata*. It has been held that no jurisdiction other than that given by an Act, or necessarily incident to the statutory jurisdiction, can be exercised; that statutes creating special