

DIARY FOR APRIL.

1. Fri.....Prince Bismarck born, 1815.
2. Sun.....6th Sunday in Lent.
3. Mon.....County Court sittings for motions. Surrogate Court sits.
5. Tues.....County Court sittings for trial, except in York. Canada discovered, 1499.
7. Thur.....Great fire in Toronto, 1847.
8. Fri.....Hudson Bay Company founded, 1692.
10. Sun.....6th Sunday in Lent. Palm Sunday.
11. Mon.....County Court non-jury sittings in York.
14. Thur.....Princess Beatrice born, 1857.
15. Fri.....Good Friday. President Lincoln assassinated, 1865.
17. Sun.....Easter Sunday.
18. Mon.....Easter Monday. Last day for call and admission notices. First newspaper in America, 1704.
19. Tues.....Lord Beaconsfield died, 1891.
23. Sat.....St. George's Day.
24. Sun.....1st Sunday after Easter. Earl Cathcart, Governor-General, 1846.
25. Mon.....St. Mark.
27. Wed.....Toronto captured (Battle of York), 1813.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE
FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Div'l Court.]

[Feb. 27.

ELLIS v. CLEMENS.

Waters and watercourses—Riparian proprietors—User of stream—Reasonable user—Injury to plaintiff's land—Prescriptive right—Malice—Damages—Concurrent cause of injury.

The use by riparian proprietors of the waters of streams through whose lands they flow must be a reasonable use, and the proprietors so using the waters must restore them to their natural channel before they reach the lands of the proprietors below them.

The wrongs complained of by the plaintiff were that the defendant, in restoring the water used by him to its natural channel, did so at such times and in such a manner that the water froze as it was being restored, and formed a solid mass of ice, completely filling the natural channel, so that the water coming down flowed away from the channel and over the plaintiff's land, and injured the land and the crops thereon; and the evidence showed that the cause of the water freezing as it was being restored to its natural channel was the times at which and the

manner in which the defendant so restored it, and was the natural result thereof; and it appears that the defendant was remonstrated with by the plaintiff and the effect of his so restoring the water pointed out to him, and the injury it caused, but he persisted in so restoring it, and expressed his intention to continue to so restore it.

Held, that the defendant's user of the water was unreasonable, and, as there was no proof to sanction a prescriptive right to restore the water at such times and in such manner, to the injury of the plaintiff, that he was liable to the plaintiff for the injury so caused; his conduct being wrongful, his persistence in it was malicious; and the injury to the plaintiff was an invasion of his rights, and imported damage, whether there was any actual damage or not.

Held, also, that even if there was a cause, for which the defendant was not responsible, concurrent with the wrongful acts complained of, and contributing to the injury sustained by the plaintiff, the defendant would still be answerable in damages for the injury sustained by the plaintiff by the wrongful acts complained of; but the plaintiff would only be entitled to recover such damages or such portion thereof as were caused by the wrongful acts complained of.

Judgment of STREET, J., 21 O.R. 227, affirmed.

W. R. Meredith, Q.C., and E. P. Clement, for the plaintiff.

Moss, Q.C., for the defendant.

GREEN v. MINNES.

Libel—Poster advertising account for sale—Justification.

The defendants M. & B., merchants, placed in the hands of the defendant A., a collector of debts, an account against the plaintiff Sarah G., wife of the plaintiff John G., for collection, well knowing the method of collection adopted by A., who, after a threatening letter to Sarah G., which did not evoke payment, caused to be posted up conspicuously in several parts of the city where the plaintiffs lived a yellow poster advertising a number of accounts for sale, among them being one against "Mrs. J. Green (the plaintiff), Princess street, dry goods bill, \$59.35." The evidence showed that Sarah G. owed the defendants M. & B. \$24.33 only.