

## DIARY FOR APRIL.

1. Sun....Easter Sunday.
2. Mon....Easter Monday, C.C. York sit. for motions begin
3. Tues....C.C. non-jury sittings, except York.
7. Sat....C.C. York sittings for motions end.
8. Sun....1st Sunday after Easter.
14. Sat....Princess Beatrice born, 1857.
15. Sun....2nd Sunday after Easter.
17. Tues....C.C. non-jury sittings in York.
22. Sun....3rd Sunday after Easter.
23. Mon....St. George's day.
25. Wed....St. Mark.
29. Sun....4th Sunday after Easter.

## Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE  
FOR ONTARIO.HIGH COURT OF JUSTICE FOR  
ONTARIO.

## Queen's Bench Division.

Street, J.] [Feb. 27  
In re ROBERTSON AND TOWNSHIP OF NORTH  
EASTHOPE.

*Municipal corporation—Drainage by-law—  
Municipal Act, 1883, ss. 570, et seq.—  
Majority of land owners — "Mechanical  
operations" — Notice — Allowance of lump  
sum for roads—Duties of engineer.*

Upon a motion to quash a by-law providing for the assessment of certain owners of land for the cost of drainage work for the benefit of their land, under ss. 570 et seq. of the Municipal Act, 1883;—

*Held*, 1. That the petition of land-owners for such by-law should include a majority of all the persons whom the engineer finds to be benefited by the proposed work.

*Re Romney and Mersea*, 11 A. R. 712, and *Re Dover and Chatham*, 12 S. C. R. 321, followed.

2. That the engineer is at liberty to leave out of his scheme portions of the land mentioned in the petition, and the calculation as to the necessary majority should be made without considering the owners of such land.

3. That a petitioning land-owner has the right to withdraw his lands from the scheme before action has been taken under the engineer's report, and that if he does so he should

not be reckoned as a petitioner in making the calculation, *Re Misener and Wainfleet*, 46 U. C. R. 457, followed.

4. But even where, applying these principles, it is determined that the proper proportion of persons interested have not petitioned, a by-law valid on its face, passed by the council without objection, and under a *bona fide* belief, concurred in at the time by all parties concerned, that they had been properly set in motion, should not be quashed.

5. The words "mechanical operations," in ss. 8, of s. 570, of the Municipal Act must not be read in their widest sense; the provisions of the sub-section, requiring a two-thirds majority, are not intended to apply to every case in which it may become necessary to build or heighten a bank at the side of a drain, or to strengthen it in places by the addition of timber or logs.

6. The applicants to quash the by-law, having followed in their application the notice given by the council under s. 572 to intending applicants, should not be prejudiced because that notice was incorrect; the council must be held to their own notice.

7. The allowance in the engineer's report of a lump sum as "chargeable to municipality for roads" was sufficiently definite, there being only one municipality concerned. *Re Essex and Rochester*, 42 U. C. R. 523, distinguished.

8. The engineer, having himself made an inspection of each lot, and estimated how much each would be benefited by the drain, might properly delegate to an assistant the duty of making a calculation upon the basis established by him.

*Lash*, Q.C., and *J. E. Harding*, for the applicants.

*Idington*, Q.C., for the township.

Armour, J.]

[Aug. 11, 1887.

## BOYD v. SULLIVAN.

*Contract—Goods not all deliverable at once—  
Payment—When due—Refusal to pay for  
part delivered—Refusal to deliver remainder.*

Plaintiff and defendant entered into the following contract:—

"To G. M. B. (plaintiff): Please deliver me, at Port Arthur, five head good steers on first 'City' up (first trip up to Port Arthur of boat