

## DIARY FOR DECEMBER.

1. Mon..... Princess of Wales born, 1844.
2. Tues..... General Sessions and County Court Sittings for Trial in York.
4. Thur..... Chancery; Division High Court of Justice sits.
6. Sat..... Michaelmas Term and High Court of Justice sitting ends.
7. Sun..... 2nd Sunday in Advent. Sir W. Campbell, 6th C.J. of Q.B., 1825.
9. Tues..... General Sessions and County Court Sittings for Trial, except in York.
14. Sun..... 3rd Sunday in Advent. Prince Albert died, 1861.
17. Wed..... First Lower Canadian Parliament met, 1792.
18. Thur..... Slavery abolished in the United States, 1862.
21. Sun..... 4th Sunday in Advent. St. Thomas. Shortest day.
24. Wed..... Christmas Vacation begins.
25. Thur..... Christmas Day. Sir M. Hale died, 1676, æt. 67.
26. Fri..... St. Stephen.
27. Sat..... J. G. Spragge, 3rd Chan., 1869.
28. Sun..... 1st Sunday after Christmas. Innocents' Day.
30. Tues..... Holt, C.J., born, 1642.

## Reports.

## ONTARIO.

## DITCHES AND WATERCOURSES ACT.

RE CURTIN, APPELLANT, AND TAYLOR,  
RESPONDENT.

*Scale of costs—Maps and surveys.*

The costs of a map and survey cannot be taxed against an unsuccessful respondent.

[WHITBY, NOV. 15.]

The appellant herein, having succeeded in setting aside the award of the engineer, with costs against the respondent, filed the usual affidavit of disbursements, claiming therein the sum of \$17.00 as being paid to a surveyor, in addition to his fees as a professional witness; which sum of \$17.00 the clerk disallowed, and this was an appeal from his ruling.

*N. F. Paterson*, Q.C., for appellant.

*T. W. Chapple*, for respondent.

DARTNELL, J.J. The clerk is right. Sec. 27 of the Ditches and Watercourses Act, R.S.O., chap. 220, provides that "the fees to witnesses . . . shall be the same as those allowed to witnesses . . . in the Division Court." It is true that in the Superior and County Courts, by Rule 1213, the taxing officer can allow for maps or plans when the necessity of them is shown to him, and that they were used at the trial; but this rule cannot be taken as adding another item to the Division Court tariff. In this,

as well as similar cases before me under the Act, the map was unnecessarily elaborate and expensive.

Appeal disallowed.

HEALY, APPELLANT, AND McDONALD,  
RESPONDENT.

*Maintaining Ditches—Benefit to the lands—Inferior and superior owners.*

Unless there is a preponderating benefit to the land through which it is necessary to construct or maintain a ditch for the benefit of the superior owner, the inferior owner should not be required so to construct or maintain it, where it is shown that any possible benefit to his land is counterbalanced by the inconvenience or nature of its location; and an award was amended to accord with this view.

[WHITBY, NOV. 24.]

Through Healy's land, from east to west, was situated a well-defined natural drain or watercourse. McDonald's land lay to the south; and in order to drain a portion thereof, it became necessary to open a ditch northerly through Healy's land, until the natural watercourse was reached. This, by an award of the township engineer, made in March, 1884, was permitted to be done by McDonald at his own expense. A new award, by a different engineer, and which is the subject of this appeal, directed that the ditch should in future be deepened and maintained by Healy.

*N. F. Paterson*, Q.C., for the appellant.

*J. McCosh*, for the respondent.

DARTNELL, J.J. The award in question is, in fact, a reversal of the former award, in a matter of considerable importance to the appellant. There does not appear to be any new circumstances which would justify the change, and certainly none enuring to his benefit. On the contrary, from the raising of the waters of Lake Simcoe, more than the usual quantity of water backs up on Healy's land, and the additional volume of water from McDonald's land would tend further to increase the flooding. There was some evidence that the drain in question might benefit a small portion of Healy's land; but, on the other hand, it was shown that by reason of its "zig-zag" course, it would inconveniently divide the field through which it passes. It is to be recollected that the Act is in derogation of common law rights, and it must therefore not be construed to the detriment of one, who,