

DIARY FOR OCTOBER.

1. Thur.....Wm. D. Powell, 5th C.J. of Q.B., 1816. *Merritt*, J. Ch. Div., 1890.
4. Sun.....18th Sunday after Trinity.
5. Mon.....Civil Assizes at Toronto. County Ct. Sittings for Motions, except in York. Surrogate Court sits.
6. Tues.....County Ct. Non-Jury Sittings, except in York.
7. Wed.....Henry Alcock, 3rd C.J. of Q.B., 1802.
8. Thur.....Sir W. B. Richards, C.J. Supreme Court, 1875. R. A. Harrison, 11th C.J. of Q.B., 1876.
9. Fri.....De la Barre, Governor, 1682.
11. Sun.....20th Sunday after Trinity. Guy Carleton, Governor, 1774.
12. Mon.....County Court Sittings for Motions in York. Surrogate Ct. Sittings. America discovered, 1492. Battle of Queenston Heights, 1812.
15. Thur.....English Law introduced into Upper Canada, 1791.
18. Sun.....21st Sunday after Trinity. St. Luke.
19. Mon.....County Court Non-Jury Sittings in York. Last day for Call and Admission notices.
21. Wed.....Battle of Trafalgar, 1805.
23. Fri.....Lord Lansdowne, Governor-General, 1883.
24. Sat.....Sir J. H. Craig, Governor-General, 1807.
25. Sun.....22nd Sunday after Trinity.
27. Tues.....Supreme Court sits. C. S. Paterson, J. of Supreme Court, 1883. James MacLennan, J., Court of Appeal, 1894.
29. Thur.....Battle of Fort Erie, 1813.
31. Sat.....All Hallows Eve.

Early Notes of Canadian Cases.

SUPREME COURT OF JUDICATURE
FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

STREET, J.] [May 28.

IN RE DWYER AND TOWN OF PORT
ARTHUR.*Assessment and taxes—R.S.O., c. 193, s. 52—
"May," meaning of.*

By s. 52 of the Assessment Act, R.S.O., c. 193, where the assessment in cities, towns, etc., is made, by virtue of a by-law passed under that section, in the latter part of the year, such assessment may be adopted by the council of the following year.

Held, that "may," as used here, is permissive only, and that the council of the following year are given the option of having a new assessment.

Overwhelmingly strong reasons of convenience in favor of having one assessment instead

of two might justify the court in giving to "may" the force of "must."

Aylesworth, Q.C., and H. Symons, for the applicant.

Delamere, Q.C., for the corporation.

STREET, J.]

[July 28.

ELLIS & CLEMENS.

Waters and Watercourses—Riparian proprietors—Use of stream—Reasonable user—Prescriptive right—Maintenance of dam for twenty years—Changed conditions—Right of action.

Riparian proprietors are entitled to make a reasonable use of the water of a stream, to detain it and retard it within certain limits; but any user which inflicts positive, repeated, and sensible injury upon a proprietor, above or below, is not to be considered reasonable.

And where the defendant and his predecessor, by discontinuing the use of the water during the hard frosts, might have prevented the damage complained of by the plaintiff, but did not so discontinue, though requested to do so by the plaintiff,

Held, that they were making an unreasonable use of the water and were liable for the damage done.

The fact that the defendant and his predecessors had maintained their dam, mill, and race-way in the same position for upwards of forty years, and had, during all that time, used the water as the necessity of their business required, did not give the defendant a right to use the water to the prejudice of the plaintiff; the defendant could not insist that he had gained a prescriptive right to injure the plaintiff without proving that he and his predecessors had for twenty years been making an unreasonable use of the water, to the injury of the plaintiff; the use which had formerly been reasonable, becoming unreasonable, because of changed conditions, there arose for the first time a grievance which gave the plaintiff a right to complain, and he was not barred of that right by reason of his making no complaint until he began to be injured.

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

Moss, Q.C., and Alexander Millar, Q.C., for the defendant.