

DIARY FOR JULY.

1. Mon.....Dominion Day. Long vacation begins.
3. Wed.....Quebec founded 1608.
4. Tue.....Declaration of American Independence 1776.
6. Sat.....County Court Sittings for Motions, except in York, end.
7. Sun.....Third Sunday after Trinity.
10. Wed.....Christopher Columbus born 1447.
13. Sat.....Sir John Robinson, 7th C.J. of Q.B., 1829.
14. Sun.....Fourth Sunday after Trinity.
15. Mon.....St. Swithin.
19. Fri.....Quebec capitulated to the British, 1620.
21. Sun.....Fifth Sunday after Trinity.
22. Mon.....W. H. Draper, 9th C.J. of Q.B., 1863. W. R. Richards, 3rd C.J. of C.P., 1863. Act uniting Upper and Lower Canada assented to, 1840.
24. Wed.....Battle of Lundy's Lane, 1814.
25. Thu.....Canada discovered by Cartier 1534.
29. Sun.....Sixth Sunday after Trinity. Wm. Osgoode, 1st C.J. of Q.B., 1782.
30. Tue.....Relief of Derry.

Early Notes of Canadian Cases.

HIGH COURT OF JUSTICE FOR
ONTARIO.

Queen's Bench Division.

FERGUSON, J.] [Dec. 7, '88, and Jan. 30, '89.

O'NEILL v. OWEN.

Will—Execution—Attestation—Revocation—Devise to infants—Conveyances by heirs-at-law—Registration—Priorities—R.S.O., 1877, c. 3, s. 75—"Inevitable difficulty"—Crops—Possession—Costs.

The plaintiffs were the devisees of the land in question in this action under the will of H. O'N.; the defendant A. O'N., the father of the plaintiffs, was one of the heirs-at-law, and had obtained conveyances of the land from the other heirs-at-law of H. O'N.; and the defendant O. was the assignee of all the estate of A. O'N.; and had besides a mortgage from A. O'N. over the land in question.

On the 17th April, 1877, H. O'N. signed a will in the presence of one witness; another witness was then called in, before whom the testator acknowledged his signature, and then both witnesses signed in the presence of the testator and of each other. On the 23rd April, 1877, the testator, desiring to have two changes made, caused two sheets of the will to be rewritten and read to him; the two sheets were then put into the place of the old ones, the document pinned together, and on the last

sheet, which was not one of those rewritten, the date 17th was changed to 23rd. The same witnesses were then called in and the testator then acknowledged his signature to the will, and each of the two witnesses his. The two sheets taken out of the will were afterwards destroyed by one H. by the direction of the testator, but not in his presence. The testator died a few days after this without having made any other will. The will of the 23rd April was offered for probate, but was refused by a Surrogate Court.

Held, that the will of the 17th April was duly executed; but that the will of the 23rd April was not duly executed and probate of it was properly refused; and the will of the 17th April was not revoked by the destruction of the two sheets, out of the presence of the testator, nor by the defective execution of the will of the 23rd April, the intention of the testator not being to cancel the whole of the earlier will, but only to make two changes in it, and he being under the belief the later will was a valid one; and it was adjudged that the earlier will should be admitted to probate.

By this will the plaintiffs were to come into possession when they should become of the age of 21 years, not being less than 12 years from the date of the testator's death, and they were infants of tender years at the time when, after the death of H. O'N., the defendant A. O'N., their father and guardian, agreed with the other heirs-at-law for the purchase of their shares, on the assumption that H. O'N. had died intestate, and obtained conveyances from them. A. O'N. and the other heirs-at-law were at this time aware of the facts in regard to both the wills, and were also aware that, after probate of the will of 23rd April had been refused, it was the opinion of the solicitor for the estate that the will of the 17th April was properly executed, and that probate might be obtained.

Held, that the plaintiffs' rights were not defeated or prejudiced by the agreement and conveyances referred to; nor were the plaintiffs' rights defeated by the registration of the conveyances to A. O'N. and his assignment and mortgage to O.; for A. O'N. had actual notice and knowledge of the plaintiffs' rights; and the plaintiffs were prevented from registering the will by "inevitable difficulty" or "impediment" within the meaning of R.S.O., 1877, c. 3, s. 75.