DIARY FOR OCTOBER.

1. Mon....C.C. sittings for motions, except in York. Wm. D. Powell, 5th C.J. of Q.B. 1816.
2. Tues ...Co. Court non-jury sittings, except in York.
6. Sat.....Co. Court sittings for motions, except York, end.
7. Sun.....*19th Sunday after Trinity.* Henry Alcock, 3rd C.J. of Q.B. 1802.
8. Mon....Co. Court sittings for motions, in York, begin. R. A. Harrison, 11th C.J. of Q.B. 1875.
13. Sat.....Co. Court sittings for motions, in York, end. Battle of Queenston, 1812. Lord Lyndhurst died, 1863, æt. 91.
14. Sun.....*20th Sunday after Trinity.*
15. Mon....English Law introduced into Up. Canada. 1792.
18. Thur....St. Luke.
21. Sun.....*21st Sunday after Trinity.* Battle of Trafalgar, 1805.
23. Tues....Supreme Court of Canada sittings. Lord Lansdowne, G.G. 1883.
28. Sun.....*22nd Sunday after Trinity.* Simon and St. Jude.

Reports.

SURROGATE CASES.

[Reported for the CANADA LAW JOURNAL.]

SURROGATE COURT OF THE COUNTY OF YORK.

CONLIN *v.* CONLIN.

Cancellation of will, former will does not thereby revive—Declaration of intention and implication have no effect—R. S. O. c. 109, s. 24.

A. made a will in 1866. In 1876 he made a second will after the passing of the Wills Act, R. S. O. c. 109, which applied to all wills executed after the 1st day of January, 1874. The will of 1876 revoked the will of 1866. About 1880 A. caused the will of 1876 to be destroyed *animo cancellandi*, and expressing his intention to thereby revive the will of 1866, which was still in his possession,

Held, that no will made before 1st January, 1874, and revoked after that date, could be revived by any declaration of deceased or by implication, but that such revival must be effected by the observance of the formalities prescribed by sec. 24, cap. 109, R. S. O.

Held, that the deceased died intestate.

McCarthy, Q.C., for plaintiffs, who seek to establish will dated May 10th, 1866.

Lash, Q.C., for next of kin and administratrix.

Malone, for infants.

[McDOUGALL, Co. J., Toronto, Oct. 5.

The facts fully appear in the judgment of

McDOUGALL, SURR. J.—This is a surrogate issue tried at the February non-jury sittings of the County Court. The plaintiffs are suing to establish a will of their father, the late Patrick Conlin, alleged to have been executed by him on the 10th May, 1866, as his last will and testament. The will in question is produced in court, but has the signatures of the testator and the witnesses as well as the attestation clause torn off. About the year 1876, Patrick Conlin had a second will drawn; but it appears from the evidence that this will was destroyed by the testator's instructions, with the intention of cancelling it. The evidence further shows that the will of 1866 was in the testator's possession at the date of the destruction of the second will, and that he declared that this first will was the will which he intended should remain as his last will and testament.

Evidence was also given to throw some light upon the mutilation of the will of 1866. It appears that Patrick Conlin had a son John, who was dissipated, and who had been cut off by the will of 1866. It is apparent that the contents of this will were known in the family. John was in gaol at the date of his father's death for non-payment of a fine under a conviction for drunkenness. The fine was paid and he procured his liberty to attend his father's funeral. Evidence of a number of witnesses was given to show statements made by John to the effect that he had gained access to his father's papers, and deliberately torn off the signatures and seals, with a view to destroy his father's will, and so come in for a share of his father's estate, under the intestacy, which he thought would follow the destruction of the will. This statement or confession was sworn to as having been made shortly before his own death to his mother and sister. The same statement was also sworn to as having been made about the date of the funeral of his father, to his brother Philip Conlin. Two witnesses outside of the family were also called, who swore that John had made similar statements to them. These statements alleged to have been made by John to the various witnesses were strenuously objected to as being inadmissible, but I received the same (as I was trying the issue without a jury) subject to the objection.

Upon the view which, under the authorities, I am constrained to take of the law, it becomes unnecessary to discuss the question of the admissibility of these declarations of John. The important question to be decided is, Supposing the will of 1866 to be established as being duly executed by the testator, and supposing also the presumption that he had mutilated