

DIARY FOR OCTOBER.

1. SUN. 17th Sunday after Trinity.
2. Mon. Clerks and Deputy-Clerks of Crown and Master and Reg. in Chan. to make quarterly returns.
8. SUN. 18th Sunday after Trinity.
11. Wed. Last day for Reg. & Mas. in Chan. to remit fees.
15. SUN. 19th Sunday after Trinity. Law of England introduced into Upper Canada 1792.
18. Wed. St. Luke the Evangelist.
22. SUN. 20th Sunday after Trinity.
28. Sat. St. Simon and St. Jude.
29. SUN. 21st Sunday after Trinity.
31. Tues. All Hallow Eve.

The Local Courts'

AND

MUNICIPAL GAZETTE.

OCTOBER, 1871.

SWEARING.

[COMMUNICATED.]

Let not the title of this paper lead any to suppose that it is a dissertation on a profane habit, unfortunately too prevalent in this irreverent age. We would not encroach upon the province of another learned profession, but merely propose the brief consideration of judicial swearing. While the light oath has no justification and is condemned by religion, the legal oath is required by justice and sanctioned by Scripture. "An oath for confirmation," saith the Apostle, "is to them an end of all strife." (Heb. vi. 16.)

The subject has been suggested by an incident which happened, a short time ago, in the Police Court at London, Ontario. A certain clergyman of the Romish Church had been there arraigned to answer a charge of evading the Registration Act. At the hearing of the matter, a brother ecclesiastic was called upon to give evidence. The usual Protestant Bible having been presented to him, that he might take the customary oath, he declined to swear upon the heretical volume. He requested to be allowed the Douay Bible, authorised by his Church; but the not unreasonable request was refused. The magistrate was obstinate: the minister was firm; and the case was adjourned.

Now this is certain beyond a doubt, that the worthy magistrate, though a safe Protestant, was not a sound lawyer. The witness, if his scruples so inclined him, had a perfect right to call for the Alcoran, or the Pentateuch. More than a century ago, an answer was given from the English Bench which satisfies the question often propounded in our courts to

witnesses of tender years (and which might form a leading point in the examination of candidates for the office of Police Magistrate)— "Do you understand the nature of an oath?" What that answer was, and by what reasoning it was arrived at, we shall humbly endeavour to set forth.

And first, as to forms of swearing. That the efficacy of an oath does not depend on the ceremony is an opinion supported by great and ancient authority. When the Roman emperors became converts to Christianity, they allowed their subjects, Pagan and Christian, to consult their own convictions or superstitions as to forms of taking an oath. Those early Christians, Selden tells us, made use of various forms, such as "Per vultum Sancti Luceæ," "Per pedem Christi," "Per sanctum hunc, vel illum." The practice of a *corporal* oath was borrowed from the Pagans, and established by the emperors of the East. From them dates our time-worn custom of calling Heaven to witness the truth of our declarations, "tactis sacrosanctis Dei Evangeliiis:" (Codex Theodosianus, lib. 8, tit. 2, c. 14.) This Christian ceremony was adopted by the English Legislature by a statute passed in the reign of Elizabeth.

In our own Courts deviations from this immemorial method are not often seen; but we do occasionally meet with a witness whose peculiar scruples forbid him to touch the book, and who takes the oath by extending his right hand towards heaven; truly a solemn form. This is the custom of the Scottish Kirk, which deems it idolatry to kiss the book. A curious case touching this practice is reported in the second volume of that ancient reporter, Siderfin, page 6 (*temp.* 1657). In the suit of *Dutton v. Colt*, Dr. Owen, Vice-Chancellor of the University of Oxford, was placed in the witness-box; but when they would have put him upon his oath, he stoutly refused to conform to the established mode, or to lay his hand upon the book. He desired that it might be spread open before him, and he would raise his right hand and swear very readily. The jury were perplexed; for at that early day there was no precedent for such an eccentricity. Glin, C. J., relieved their doubts, and permitted the oath, declaring that it was in his opinion as strong as that of any other witness; "though I myself," he added, "were I to be sworn, would touch the book."

In a case once, in which the illustrious