

DIARY FOR NOVEMBER.

1. Friday *All Saints.*
2. Sat. .. Articles, &c., to be left with Secretary Law Society.
3. SUN. .. 20th Sunday after Trinity.
10. SUN. .. 21st Sunday after Trinity.
13. Wed. .. Last day for service for County Court.
17. SUN. .. 22nd Sunday after Trinity.
18. Mon. .. Michaelmas Term commences.
23. Sat. .. Declare for County Court.
24. SUN. .. 23rd Sunday after Trinity.
27. Wed. .. Notices for Chancery re-hearing Term to be served. Appeals from Chancery Chambers.
30. Sat. .. *St. Andrew.*

The Local Courts'

AND

MUNICIPAL GAZETTE.

NOVEMBER, 1867.

THE MARRIAGE LAWS.—No. III.

The articles of capitulation, drawn up at the time of the cession of Canada, lie at the very root of the question we are now approaching. Upon them was based, and in view of them is to be construed, all the subsequent legislation of the Home and the Colonial Governments in regard to the religious privileges of the Roman Catholic clergy and population. It is laid down by Lord Mansfield in the famous case of *Campbell v. Hall*, Cowp. 204, "That the articles of capitulation upon which the country is surrendered, and the articles of peace by which it is ceded, are sacred and inviolable according to their true intent and meaning," p. 208.

Now among the articles of capitulation, relevant to the question in hand, demanded by De Ramsay, in command of the Town of Quebec, and acceded to by Admiral Saunders and General Townshend, on Sept. 18, 1759, is the following:—"That the exercise of the Catholic and Apostolic and Roman religion, shall be maintained, and that safeguards shall be granted to the houses of the clergy and to the monasteries, particularly to his Lordship the Bishop of Quebec, who, animated with zeal for religion and charity for the people of his diocese, desires to reside in it constantly, to exercise freely and with that decency which his character and the sacred offices of the Roman religion require his episcopal authority in the town of Quebec, whenever he shall think proper, until the possession of Canada shall be decided by a treaty between their most Christian and Britannic Majesties."

Whereto the response was:—"The free exercise of the Roman religion is granted, likewise safeguards to all religious persons, as well as to the Bishop, who shall be at liberty to come and exercise, freely and with decency the functions of his office, whenever he shall think proper, until the possession of Canada shall have been decided between their Britannic and most Christian Majesties." Art. VI.

It will be observed that this article is to be regarded as merely provisional, and we find very important modifications in the terms granted, when the final articles of capitulation were concluded at Montreal, on September 8th, 1760, between Major-General Amherst and the Marquis de Vaudreuil, Governor of Canada. During the interval, Laval, Bishop of Quebec, had died—a fact which explains the provisions of some of these final articles, which we now proceed to cite, so far as necessary for our purpose:—

"The free exercise of the Catholic apostolic and Roman religion, shall subsist entire, in such manner that all the states and the people of the towns and countries, places and distant ports, shall continue to assemble in the churches and to frequent the sacraments, as heretofore, without being molested in any manner, directly or indirectly; these people shall be obliged by the English Government, to pay their priests the tithes and all the taxes they were used to pay under the Government of His most Christian Majesty.—*Granted as to the free exercise of their religion. The obligation of paying tithes to the priests will depend on the King's pleasure.*" Art. XXVII.

"The Chapter, Priests, Curates and Missionaries, shall continue with an entire liberty, their exercise and function of cures, in the parishes of the towns and countries.—*Granted.*" Art. XXVIII.

"The Grand Vicars, named by the Chapter to administer to the diocese during the vacancy of the Episcopal See, shall have liberty to dwell in the towns or country parishes, as they shall think proper. They shall at all times be free to visit the different parishes of the diocese, with the ordinary ceremonies, and exercise all the jurisdiction they exercised under the French Dominion. They shall enjoy the same rights in case of the death of the future Bishop, of which mention will be made in the following article.—*Granted, except what regards the following article.*" Art. XXIX.