

DIARY FOR OCTOBER.

6. SUN... 16th Sunday after Trinity.
 7. Mon... County Court and Surrogate Court Term begins.
 12. Sat... County Court and Surrogate Court Term ends.
 13. SUN... 17th Sunday after Trinity.
 15. Tues... Law of England introduced into Upper Canada,
 1792.
 18. Friday St. Luke.
 20. SUN... 18th Sunday after Trinity.
 27. SUN... 19th Sunday after Trinity.
 28. Mon... St. Simon and St. Jude.
 30. Wed... Appeal from Chancery Chambers.
 31. Thurs. All Hallow Eve.

The Local Courts'

AND

MUNICIPAL GAZETTE.

OCTOBER, 1867.

THE MARRIAGE LAWS.—No. II.

The law of marriage introduced into Upper Canada from England, and as modified by local legislation, indicated that the privilege of solemnizing that rite was to be limited to the clergy of the Church of England. But as other religious communities were formed and waxed strong, this was felt to be a hardship, and various enabling statutes were at different times passed—the dates of which serve to indicate the development of ecclesiastical prosperity and activity in the country. Thus by 38 Geo. III. cap. 4 (1798) members of the Church of Scotland, Lutherans and Calvinists could claim the right of being married by ministers of their own denominations, and by 11 Geo. IV. cap. 36 (1830) the same right was extended to Presbyterians, Congregationalists, Baptists, Independents, Methodists, Menonists and Tunkers or Moravians. Then the comprehensive statute 10 & 11 Vict. cap. 18 was passed, whereby was conceded to all clergymen or ministers of "any denomination of Christians whatever," the power of validly celebrating marriage between those who were adherents of their respective churches. The next and final step in progress was made, when ten years afterwards, by 20 Vic. cap. 66, the ministers of "every religious denomination in Upper Canada," were declared to have the right to solemnize matrimony according to the several rites, ceremonies and usages which obtained among them. And thus the law stands as consolidated: Con. Stat. U. C. cap. 72, sec. 1.

It is noticeable, however, that none of these or the other Provincial statutes relating to

marriage in any manner touch in express terms upon the Roman Catholic population. If not otherwise provided for, they would of course be embraced under the wide language of 10 & 11 Vict. cap. 18; 20 Vict. cap. 16, and the Consolidated Act.

With regard to all Protestant clergy, the provisions of the statute law are clear that they shall not celebrate the ceremony of marriage, unless there has been either the usual proclamation of banns or the issue of a license authorizing such marriage. The first mention of marriage by license, in our statutes, is in 33 Geo. III. cap. 5, sec. 6, (an act applicable to those who were then in the position of Dissenters) which leaves it all uncertain as to the source of authority whence such dispensation issues. The next statute, however, 33 Geo. III. cap. 4, sec. 6 (likewise applicable to the then Dissenters) recognizes that the power to grant such license is vested in the Governor—a right which he exercises as representing the Sovereign and by virtue of the royal instructions: see *Reg. v. Roblin*, 21 U. C. Q. B. 357. The regulation in Lord Hardwicke's Act as to license is as follows:—"All marriages solemnized from and after the 25th March, 1754, * * * without publication of banns or license of marriage from a person or persons having authority to grant the same, first had and obtained, shall be null and void to all intents and purposes whatsoever." Under the English law at that time, licenses could be granted either by the Sovereign, or the Archbishop of Canterbury, or duly consecrated Bishops of the Church of England, by virtue of and within the territorial limits of their episcopal office, or by certain officers of the Spiritual Courts. But the Pope of Rome had no such power, nor had any ecclesiastical functionary belonging to, or claiming authority under the Church of Rome. See Chitty on the Prerog. pp. 51, 53; *Colt v. Bishop of Coventry*, Hob. 148; 25 Hen. VIII. cap. 21; 28 Hen. VIII. cap. 16; 1 Eliz. cap. 1, secs. 8, 10; and 4 Geo. IV. cap. 5. There can be no question that Lord Hardwicke's Act extended to Roman Catholics in England, at the time the English Marriage Law became the Upper Canadian Marriage Law, as appears by the I. S. 31 Geo. III. cap. 32, sec. 12.

By 26 Geo. III. cap. 84, and other statutes, the Archbishop of Canterbury was empowered to consecrate bishops for the colonies, and though we do not know that the question has