

DIARY FOR JUNE.

2. Sun. *First Sunday after Ascension.*
4. Tue. *Maritime Court sits. Lord Eldon born 1751.*
8. Sat. *Easter Term and High Court Justice sittings end. Last day for call notices for Trinity Term.*
9. Sun. *Whitsunday.*
10. Mon. *County Court Sittings for motions in York end.*
11. Tue. *General Sessions and County Court Sittings for Trial except in York. St. Barnabas. Lord Stanley, Governor-General, 1855.*
15. Sat. *County Court Sittings for motions in York end. Magna Charta signed 1216. Emperor Frederick of Germany died 1888.*
16. Sun. *Trinity Sunday.*
18. Tue. *Battle of Waterloo, 1815.*
19. Wed. *Battle of Blenheim, 1704.*
20. Thur. *Accession of Queen Victoria, 1837.*
21. Fri. *Longest day.*
22. Sat. *Slavery declared contrary to the law of England, 1772.*
23. Sun. *First Sunday after Trinity.*
24. Mon. *Midsummer Day.*
25. Tue. *Sir M. C. Cameron died 1887.*
28. Fri. *Coronation of Queen Victoria, 1838.*
29. Sat. *St. Peter.*
30. Sun. *Second Sunday after Trinity.*

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

DUBUC v. KIDSTON, et al.

Hypothecary action—Judgment in—Art. 2075 C. C.—Service of judgment—Art. 476 C. C. P., and Con. Stat. L. C. Ch. 49, sect. 15—Waiver.

By a judgment *en declaration d'hypothèque*, certain property in the possession and ownership of respondents was declared hypothecated in favor of the appellant in the sum of \$5,200 and interest and costs, and they were condemned to surrender the same in order that it might be judicially sold to satisfy the judgment, unless they chose rather and preferred to pay to appellant the amount of the judgment. By the judgment it was also decreed that the option should be made within forty days of the service to be made upon them of the judgment and in default of their so doing within the said delay that the respondents be condemned to pay to the appellant the amount of the judgment.

This judgment (the respondents residing in Scotland and having no domicile in Canada) was served at the prothonotary's office and on the respondents' attorneys. After the delay of forty days, no choice or option having been made, the appellant caused a writ of *fi. fa. de terris* to issue against the respondents for the full amount of the judgment. The sheriff first seized the property hypothecated, sold it, and handed over the proceeds to a prior mortgagee. Another writ of *fi. fa. de terris* was then issued,

and another reality belonging to the respondents was seized. To this second seizure the respondents filed an opposition *afin d'annuler*, claiming that the judgment had not been served on them, and that they were not personally liable for the debt due to appellant.

Held, 1st, reversing the judgment of the Court below, that it is not necessary to serve a judgment *en declaration d'hypothèque* on a defendant who is absent from the province and has no domicile therein. Art. 476, C. C. P., and Con. Stat. L. C., c. 49, sect. 15.

2nd, That the respondents by not opposing the first seizure of their property, had waived any irregularity (if any) as to the service of the judgment.

3rd, That in an action *en declaration d'hypothèque*, the defendant, in default of his surrendering within the period fixed by the Court, may be personally condemned to pay the full amount of the plaintiff's claim. Art. 2075 C. C.

Appeal allowed with costs.

Blanchet, Q. C., for appellant.

Irvine, Q. C., for respondents.

THE UNION BANK OF LOWER CANADA. v. THE HOCHELAGA BANK.

Hypothec to the prejudice of creditors—When invalid—Art. 2023 C. C.

Where an hypothec has been acquired upon property within thirty days immediately preceding the declaration and admission of the mortgagee's agent, that the mortgagors were notoriously insolvent and *en déconfiture*, such hypothec in a report of distribution of the moneys realized on the property of the insolvents cannot be invoked to the prejudice of a party who was a creditor at the time when the hypothec was given. Art. 2023 C. C.

Appeal dismissed with costs.

Irvine, Q. C., for appellants.

Beique for respondent.

G. DEMERS v. N. DUHAIME.

Action en restitution de deniers—Sale of personal rights without warranty—Sale en bloc Arts. 1510 and 1517 and 1518 C. C.

N. D., respondent, owner of a cheese factory made an agreement with farmers by which the latter agreed to give the milk of their cows to no other cheese factory than to that of N. D. N. D. subsequently sold to G. D. (the appel-