

DIARY FOR JUNE.

3. Sun. 1st Sunday after Trinity.
4. Mon. Lord Eldon born, 1751.
5. Tues. Maritime Court sits.
9. Sat. H. C. J. sits, and L. S. Easter Term ends.
10. Sun. 2nd Sunday after Trinity.
11. Mon. York C. C. sits, for motions begin.
12. Tues. Gen. Sess. and C. C. sits, for trial except 1: York.
15. Fri. Magna Charta signed, 1215.
16. Sat. York C. C. sits, for motions end.
17. Sun. 3rd Sunday after Trinity.
18. Mon. Battle of Waterloo, 1815.
20. Wed. Accession of Queen Victoria, 1837.
22. Fri. Longest day. Slavery declared contrary to law of England, 1772.
24. Sun. 4th Sunday after Trinity. St. John Baptist.
25. Mon. Sir M. C. Cameron died, 1887.
28. Thur. Coronation of Queen Victoria, 1838.
29. Fri. St. Peter.

Early Notes of Canadian Cases.

SUPREME COURT OF CANADA.

MCKENNA v. MCNAMEE.

Contract—Consideration—Failure of—Impossibility of performance.

McN. & Co. had been contractors for the construction of certain public works in British Columbia, which the Government of the Province had taken out of their hands. Believing that they could effect a restoration, they entered into an agreement with McK. & M. by which the latter were to complete the work and receive 90 per cent. of the profits, McN. & Co. to be still the recognized contractors with the Government, there being a clause in the contract against subletting. McK. & M. were fully aware of the state of affairs, and had examined all the provisions of the contract.

M. went to British Columbia and endeavoured to obtain the restoration of the contract, but failed to do so, and it not being restored, McK. & M. brought an action against McN. & Co. for breach of contract to take them into their service, and claiming for damages and moneys expended in the work, \$125,000.

Held, affirming the judgment of the Court of Appeal for Ontario (14 Ont. App. Rep. 339), HENRY, J., dissenting, that as the agreement was made with a view to the restoration of the contract, and, as such restoration failed without fault on either side, the defendants were not liable.

McCarthy, Q.C., and Mahon, for the appellants.

O'Gara, Q.C., for the respondents.

CITY OF LONDON FIRE INSURANCE COMPANY v. SMITH.

Fire Insurance—Description of property—Mutuality of contract—Estoppel—Statutory condition—Variation.

The agent of an insurance company filled in an application, on behalf of S., for insurance on the building of the latter, which he described as being built of boards. The word, "boards," was very badly written, but the character of the building was sufficiently designated on a diagram on the back of the application, which the agent was instructed to fill in, marking a brick building in red and a frame building in black—in this case it being marked in black. There was no special rate of premium for a building built of boards, and the rate charged to S. was that specified in the tariff of the company for a brick building, he having authority to fix such rate.

The application was sent to the head office, and a policy issued thereon, describing the building as brick, the word written "boards" in the application being read by mistake as "brick." The mistake was not brought to the notice of the head office until the insured premises was destroyed by fire, and a claim was made for the amount of the loss under the policy, but after receiving notice of the error the company, under a clause in the policy, caused such claim to be submitted to arbitration, but refused to pay the amount awarded to S. on the ground that, owing to the mistake in the policy, there had been no mutuality of contract between them and S., and no valid contract ever existed between them.

Held, affirming the judgment of the Court of Appeal for Ontario (14 Ont. App. R. 328), that there was a valid contract existing between the company and the assured, but even if there were not, the company could not set up want of mutuality, after treating the contract as existing, by the submission to arbitration and in other ways.

By the 17th statutory condition of the Act relating to insurance companies, R. S. O. c. 62, a loss shall not be payable until thirty days after the completion of proofs, unless otherwise provided by statute or agreement of the parties.

Held, that this was a privilege accorded to the company which could not extend the time