

Hillsborough, }
June 27, 1929. }

WALTER E. KITTREDGE & a v. MICHAEL BARTIS & a.

Walter E. Kittredge, William H. Barry and Frederic J. Gaffney (Mr. Gaffney orally), pro sese.

Alvin A. Lucier and Karl E. Dowd (Mr. Lucier orally), for the defendants.

Per Curiam. The evidence was conflicting as to the claimed estoppel to set up the additional defence. Whether the delay was such as to make it inequitable to permit the defendants to file a belated answer, was for the trial justice to determine. *Brown v. Fitzgerald*, 70 N. H. 211.

Exception overruled.

Rockingham, }
June 27, 1929. }

WILLIAM L. McCAULEY v. ANNIE G. BESSEY.

Per Curiam. This is a bill in equity, tried by the late Judge *Doe*, and resulting in the order "petition denied." At the plaintiff's request, the court began to make a draft of the facts he found, in order that the case be transferred to this court. This draft was not completed; and since the death of Judge *Doe*, the superior court (*Sawyer, C. J.*) has declared a mistrial.

The order of mistrial was not only authorized but apparently required by the situation in which the case was left. The defendant's exceptions raise various questions which would be material upon a petition for a new trial, under the statute (P. L., c. 342), but they have no application to the present proceeding.

Exceptions overruled.

Doyle & Doyle, for the plaintiff.

Frederic J. Grady, for the defendant.