

allowed as a meritorious defence. *McIntyre v. Canada Company*, 18 Chy. 367, is another decision in our own courts in the same line.

In *Rucker v. Hanning*, 3 T.R. 124, the Court of King's Bench in England (so long ago as 1789) allowed the plea of the statute in a case where a defendant had obtained an order for time to plead, on the terms of pleading issuably, and pleaded the general issue and the Statute of Limitations. Lord Kenyon said the court was of opinion that the defendant was not precluded from pleading the statute after an order for time to plead; that the Court of Common Pleas had always so considered, and that in many cases it was a very fair plea.

As a matter of fact and in view of the requirements of the Division Court Act, the particulars of the plaintiff's claim here required to be amended, because s. 98 of the Act forbids any evidence being given of any cause of action except such as is contained in the particulars furnished to the clerk. It is always my custom in the matter of dates to allow such amendments. The year in this case was of importance, as it turned out, and I allowed the plaintiffs to proceed with their evidence, as if such amendment had been made, so I feel I was justified in allowing the defendant to amend.

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## Province of New Brunswick.

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### SUPREME COURT.

Barker, J.]

BANK OF MONTREAL v. DUNLOP.

[July 22.

*Interest—Mortgage—Construction.*

The promise for payment in a mortgage to secure an indebtedness provided for the payment of "said overdrawn account and all promissory notes on bills of exchange (and interest upon the same) then due and payable."

*Held*, that the overdrawn account was made chargeable with interest. *Chandler, K.C.*, for plaintiffs. *Allen, K.C.*, for defendant.

Barker, J.]

AYER v. ESTABROOKS.

[July 22.

*Will—Construction—Subject of gift "Farm on which I reside."*

Testator by his will devised to his daughter "the homestead farm on which I reside," and the residue of his real estate to his wife for life. After the date of the will he acquired other real estate, including land known as lot A and upon which he resided at the time of his death. By