action is not determined by Davis Acetylene Gas Co. v. Morrison (1915), 34 O.L.R. 155. Reference to Cox Coal Co. v. Rose Coal Co. (1916), ante 22.

Bearing in mind the policy of the Judicature Act that all claims between the parties arising out of the same transaction shall be heard and determined in the one proceeding, the learned Judge considered it better to hold that a counterclaim is an answer to the plaintiff's claim within Rule 56 (1), and that upon a motion for judgment under Rule 57 the Court may either award judgment or grant a stay of proceedings under Rule 117, as may be deemed proper; but, if no motion for judgment is made, and the plaintiff elects to have a summary trial, the affidavit which embodies the counterclaim is to be treated, in the language of Rule 56 (2), as, with the claim endorsed upon the writ, constituting the record for trial. The affidavit, having set up the counterclaim, ought not to be stricken out merely because it has been reiterated in the formal pleading.

Appeal dismissed with costs to the defendant in any event.

BOYD, C. OCTOBER 12TH, 1916.

*TRAILL v. NIAGARA ST. CATHARINES AND TORONTO R.W. CO.

Railway — Passenger — Personal Injury — Negligence — Time-limit for Action—Railway Act, R.S.C. 1906 ch. 37, secs. 2 (31), 284 (7), 306.

Action by one who was a passenger on a car of the defendants to recover damages for injuries sustained by reason of a collision between that car and another car of the defendants.

The action was tried with a jury at St. Catharines. The jury found for the plaintiff with $1,500 damages.

A. W. Marquis, for the plaintiff.
G. F. Peterson, for the defendants.

THE CHANCELLOR, in a written judgment, said that the defendants were a Dominion railway company, that negligence was practically admitted; and the question upon which judgment was reserved at the trial was, whether they were liable to be sued