

Defendant, as well as disputing these claims, by way of counterclaim claims \$25,000 for moneys due him for commission on sales of plaintiffs' lands, expenses, disbursements, compensation for endorsing notes and other negotiable paper for plaintiffs and procuring the same to be discounted, fees as director, salary as managing-director, and for special services.

At the trial plaintiffs abandoned the following items:

(a) \$3,631.88 set forth in paragraph 20 of the statement of claim.

(b) \$85.90, an item forming part of a claim of \$2,187.77 in paragraph 33.

(c) \$9.31 in paragraph 6, and

(d) \$25 in paragraph 27.

The chief part of the evidence submitted consists of the evidence taken and the exhibits put in at the trial of the action of the present plaintiffs against Leadley and others, including defendant, (the judgment of the Court of Appeal in which action is reported in 10 O. W. R. 501), and the exhibits and evidence submitted before the Master-in-Ordinary on the reference made to him in that action, and which latter evidence was reviewed in an appeal from the Master's report heard by Hon. Mr. Justice Teetzel (14 O. W. R. 1096) and in the further appeal from him to the Court of Appeal (16 O. W. R. 890). The parties to the present action were parties to all the proceedings in the former action, and the defendant, whose evidence in this action was taken *de bene esse*, was examined at great length both at the trial of the former action and on the reference. The books of the plaintiffs—the minute-books, by-laws and books of account—which there formed part of the evidence, are also in evidence here.

The only other evidence submitted is that of Mr. Cunningham, called for the plaintiffs, and Mr. Leadley called for the defence, so that there is but little evidence now before me beyond what was before the Court in one or other of the appeals mentioned above.

Defendant resists the claim for payment of the \$4,600 referred to in paragraph 14 and the preceding paragraphs of the statement of claim, on the ground that an arrangement existed between him and Edward Leadley,—one of the mortgagees in a mortgage from plaintiffs—by which the latter was to assume this indebtedness personally and credit the amount on the mortgage and so reduce the plaintiffs' mort-