affected by the commencement of the action and the registration of its pendency.

Appeal allowed with costs in the cause in any event.

Hoyles, for the appeal.

Rae, contra.

Osler, J.A.] [April 21.

O'DONNELL v. O'DONNELL.

Short notice of trial—Rule 455 O. J. A.—Holidays excluded in computing time.

Clement moved to set aside notice of trial. The defendant was on terms to take short notice of trial, and the notice was accordingly served on Wednesday for the following Monday.

Aylesworth, contra.

The Master in Chambers was of opinion that the notice was irregular, as under Rule 455 O. J. A. which was held to apply to the case of a short notice of trial, Sundays and other holidays should be excluded; owing, however, to an affidavit being filed, suggesting that the defendant had agreed to take any notice and to go down to trial in any case, the application was enlarged to come before the learned judge who should take the St. Catharine's assizes, the application accordingly came before OSLER, J. A., who held the notice irregular, and set it aside without costs.

Galt, J.] [April 21.

MILLETTE v. LITLE.

Privilege of witnesses—Answers tending to criminate—Husband and wife.

This was an action of libel in which defendants who were husband and wife were charged.

In an action of libel against a husband as the writer of libellous articles, and as editor of a newspaper in which they were printed, and his wife as owner and publisher of the newspaper, on examination, after issue joined in the action, the husband refused to answer questions as to the ownership of the newspaper on the ground that his answers might tend to expose his wife to a criminal prosecution for publication of the libels, and the wife refused to answer questions as to the authorship of the newspaper articles in question, and as to the editing of the newspaper, on the like grounds as to her husband.

Held, that defendants were justified in their refusals.

FLOTSAM AND JETSAM.

A KENTUCKY gentleman, on his death-bed, made a will, in which he bequeathed to his wife, who was *enceinte*, in case she should be delivered of a daughter, one-half of his estate, the other half to such daughter; but in case the expected heir was a son, one-third was to go to the wife and two-thirds to such son. Shortly after the testator's death the wife gave birth to twins—a boy and a girl. The question now puzzling the lawyers is: How shall the estate be divided? The wife claims one-half the estate because she had a daughter; the daughter's guardian claims one-half the estate under the will, and the guardian of the son vows he will not accept less than two-thirds of the estate. The matter is now pending in the Hickman Circuit Court. While the Judge is trying to solve this question, the lay members of the profession are trying their "'prentice han'." One attorney in New York city thinks it a case of "lapse;" that the "testator" died intestate, and that the law must make his will. Another, writing from Frankfort, Ky., says: "My solution of the question is, to construe the will as devising to the mother five-twelfths of the estate, to the daughter three-twelfths, and to the son four-twelfths; that is, one moiety to the mother and daughter in the proportion of one-half to each; and the other moiety to the mother and son in the proportion of one-third to the mother and two-thirds to the son." And a Hoboken attorney comes to the same conclusion. He says that he "simply bequeathed his estate twice. If he left a daughter, he gave half to the widow and half to the daughter. If he left a son, he gave one-third to the widow and two-thirds to the son. So each legacy abated fifty per cent. The widow took five-twelfths, the daughter one-fourth, and the son one-third." From Cincinnati and Toledo comes another solution, viz: "Is not the following a more equitable division all round: One-fourth to the wife, one fourth to the daughter, one-half to the son? This carries out the testator's intention to make the wife and daughter share equally, and son receive twice as much as the wife. He did not devise the estate twice, but only once upon contingencies—the ultimate events fulfilled neither contingency alone, but partook of each."