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DIARY FOR NOVEMBER.

15. Mon...Michaelmas sittings of Q. B. & C. P. Div. H. C. J. begin. J. B. Macaulay, 1st C. J. of C. P. 1849.
17. Wed...Appointment of election Judges on rota. Ld. Chan. Erskine died 1823, et. 73.
21. Sun...22nd Sunday after Trinity. J. Elmsley, and C. J. of Q. B., 1796.
27. Sat...Michaelmas sittings of Q. B. and C. P. Div H. C. J. ends.
28. Sun...Advent Sunday.
30. Tues...Moss, J. A., appointed C. J. of Appeal, 1877.

TORONTO, NOVEMBER 15, 1886.

MISTAKES IN BOUNDARIES.

WE are induced by a perusal of the recent case of *Roan v. Kronsbein*, 12 O. R. 197, to come to the conclusion that it would be a very reasonable thing if the courts were empowered, in cases of that kind, to award damages in lieu of giving a judgment for the recovery of the land. The action was brought for the recovery of a strip of land a few inches wide. It appeared that Mrs. Hart, the owner of lot 13, built a house, which, on a survey being subsequently made, was found to encroach seven and a half inches on the adjoining lot 12. The owner of lot 12 and Mrs. Hart then entered into an agreement in the year 1851, whereby it was agreed that Mrs. Hart should not be disturbed during her lifetime, but that on her death the owner of lot 12 should be entitled to claim the part of his lot encroached on. This agreement was never registered. Mrs. Hart died within ten years before the action was brought. The defendant had purchased the house and lot formerly occupied by Mrs. Hart, in ignorance of the agreement made by her, and of the fact of there being any encroachment. The case of the defendant was particularly hard, because, buying as he did, a house that

had been erected for upwards of thirty years, he not unnaturally assumed that it was impossible for any one to object that it encroached on the adjoining lot. Even if the agreement had been registered, which it was not, the defendant would not have been likely to have had notice of it, because he was buying lot 13 and would not, in the ordinary course of business, be likely to examine the title of lot 12 to which the agreement related. In such a case it appears to us that it would be eminently proper that the courts should have a discretion to award damages in lieu of a judgment for the recovery of the land, involving, as the latter would, the destruction of the defendant's building. This principle has been already recognized by the legislature in R. S. O. c. 40, s. 40, whereby the court is enabled, in lieu of awarding an injunction to restrain the breach of a covenant contract or agreement, or against the commission or continuance of any wrongful act, or for the specific performance of any covenant, contract or agreement, if it thinks fit to award damages to the party injured, in addition to, or in substitution for, such injunction or specific performance. Some provision of that kind, it appears to us, is wanted in reference to actions for the recovery of land.

MORTGAGEES AND THE STATUTE OF LIMITATIONS.

By the recent decision of the Court of Appeal in *Newbould v. Smith*, 55 L. T. N. S. 194, it has been in substance determined to be the law that a payment to a mortgagee, in order to be sufficient to prevent the Statute of Limitations from run-