

defendant (out of \$1,000) such sum as should be found due by plaintiff to him, and that the balance of the \$1,000 should be paid out to plaintiff, and that further directions and costs should be reserved till after the Master's report or until after the parties had agreed on the account between them.

From what I have since learned, the parties have not agreed upon the account; if that be so, the matter should, therefore, proceed as above directed.

HON. MR. JUSTICE KELLY.

JULY 8TH, 1914.

SWARTZ v. BLACK.

6 O. W. N. 710.

Title—Cloud on—Exchange of Land by Intending Purchasers whose Offers had not been Accepted — Removal of Instrument from Registrar.

A. made an offer to buy two, and B. to buy one, of C.'s houses. Before either of the offers had been accepted A. made an exchange with B. of these properties and registered an instrument to that effect.

KELLY, J., *held*, that the instrument was a cloud on C.'s title and ordered that it be cancelled and the registration thereof vacated.

H. H. Shaver and Gordon Shaver, for plaintiffs.

M. Wilkins, for defendants.

HON. MR. JUSTICE KELLY:—Plaintiffs seek to have it declared that an instrument entered into between the two defendants, by which defendant, Mrs. Black, purported to exchange with her co-defendant two houses on Claremont Street, in Toronto, for one house adjoining or near these two in the same street is a cloud on plaintiffs' title, and that it be ordered to be delivered up and cancelled, and that the registration thereof be vacated.

Defendants have set up that plaintiff Swartz accepted a written offer, signed by defendant Black, for these two houses at \$3,000 each, and a further written offer, signed, by defendant Richards, for the other house, for \$3,000. These are the houses dealt with in the alleged agreement of exchange.

I have no difficulty in finding on the evidence that Swartz did not sign an acceptance of either of these offers or do