HON. MR. JUSTICE MIDDLETON. FEBRUARY 11TH, 1914.

BLACKWELL v. SCHEMMAN.

5 O. W. N. 887.

Vendor and Purchaser—Specific Performance—Parties not ad idem —First Mortgage—Provision as to—Fault of Estate Agent—Costs.

MIDDLETON, J., dismissed a vendor's application for specific performance of an alleged agreement to purchase certain lands, holding that the parties were never *ad idem* as to the terms of the agreement relative to the first mortgage.

Action by vendor for specific performance tried at Toronto, 9th and 10th February, 1914.

M. L. Gordon, for plaintiff.

J. C. McRuer, for defendant.

HON. MR. JUSTICE MIDDLETON: — It is not necessary, in my view, to discuss the question of reforming this agreement and directing specific performance of the agreement as reformed.

Gray, the real estate agent, was too anxious to force the transaction through, and, in truth, the parties never were *ad idem*.

Mrs. Blackwell would not undertake the arrangements necessary to increase the first mortgage from $1,500 to $2,500. Mr. Gray assumed that this could be done without trouble, and the only matter of importance was the expense. Mrs. Schemman agreed to bear this expense, but did not agree to "raise the mortgage," and she did not authorise the charge made in the agreement by which the onus of doing this is placed upon her.

On another ground the action fails. The parties both assumed that the first mortgage could be "raised" from $1,500 to $2,500. The mortgagee refuses, and his mortgage has yet two years to run.

When the cash payment was increased from $1,100 to $1,400 the mortgage balance ought to have been reduced from $2,000 to $1,700—this change was neglected.

When the time for closing came a demand was made for a mortgage of $2,000 and $2,072 cash, it being erroneously assumed that the failure to "raise" the extra $1,000 on the