

RE FOSTER AND RUTHERFORD—LENNOX, J.—NOV. 2.

Vendor and Purchaser—Agreement for Sale of Land—Objection to Title—Building Restrictions—Application under Vendors and Purchasers Act—Conflicting Affidavits—Direction for Trial of Questions Arising upon Oral Evidence.—An application by the purchaser for an order, under the Vendors and Purchasers Act, declaring that the vendor was unable to make a good title to lands the subject of an agreement for sale and purchase, by reason of building restrictions which were an incumbrance. LENNOX, J., in a written judgment, said that the affidavits were conflicting, and one person who was a necessary witness refused to make an affidavit. The issues presented could not be decided by balancing affidavits. The parties must proceed to a trial by an action in the ordinary way, with pleadings defining the issues they wished to raise, or, if they agreed upon the questions to be tried, and desired it, an issue might be directed. In either case the costs of this motion should be costs in the cause to the successful party unless otherwise ordered by the Judge at the trial. R. G. Agnew, for the purchaser. S. H. Bradford, K.C., for the vendor.