

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and ROSE, JJ.

H. M. Mowat, K.C., for the appellants.

Wallace Nesbitt, K.C., and Christopher C. Robinson, for the plaintiffs, respondents.

THE COURT dismissed the appeal with costs.

SECOND DIVISIONAL COURT.

JUNE 8TH, 1917.

POLAK v. SWARTZ.

*Covenant—Assignment of Covenant Contained in Deed—Covenantors not Executing Deed—Exchange of Properties Subject to Mortgages—Action by Assignee to Enforce Covenant.*

Appeal by the plaintiff from the judgment of CLUTE, J., ante 46.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and ROSE, JJ.

W. J. McLarty, for the appellant.

J. A. Macintosh, for the defendants, respondents.

The judgment of the Court was read by MEREDITH, C.J.C.P., who said that the action was brought to recover the amount alleged to be due and payable under a mortgage made by one Sonshine to the plaintiff. Sonshine sold his equity of redemption in accordance, it was said, with an agreement between him and the defendants that they should "assume and pay off" this mortgage; but it was also said that Sonshine at the same time, and as part of the same transaction, agreed with them to pay off mortgages upon certain lands, the equity of redemption in which they conveyed to him. The deed from Sonshine to the defendants contained a form of covenant—a clumsy form—on the part of the defendants to pay off the mortgage upon the land conveyed by Sonshine to them—the mortgage in question in this action. But the deed in which this form of covenant was contained was never executed by either of the defendants. It was signed, sealed, and delivered by Sonshine and his wife only.

Treating the form of covenant as if really a covenant, Sonshine subsequently assigned all benefit of it to the plaintiff; and this