

The order appealed from, so far as it went, directed judgment to be entered in the terms of the judgment sued upon; and there was no reason for disturbing that order.

The term prohibiting the issue of execution until the plaintiffs should give security was for the protection of the defendants.

*Motion dismissed with costs.*

SUTHERLAND, J.

JULY 19TH, 1916.

ROOS v. SWARTS.

*Practice—Death of Party while Reference Pending—Report Made after Death, but Dated back to Day when Case Closed—Necessity for Direction of Court—Rules 304, 512—Appeal from Report—Refusal to Hear until Representative of Deceased Appointed and Order of Revivor Made.*

In the above-named action, William Roos sued upon three mortgages assigned to him, the defendants being Edward R. Swarts and Charlotte E. Swarts. Another action was begun in which Edward R. Swarts was plaintiff and William Roos defendant. On the 14th July, 1914, an order was made directing that all necessary inquiries should be made and accounts taken in respect of the matters in question in the two actions, and for that purpose directing a reference to the Local Master at Goderich.

Edward R. Swarts died on the 24th April, 1915, and on the 5th August following an order was made in the above-named action directing that it should be continued at the suit of William Roos as plaintiff against Charlotte E. Swarts, administratrix of the estate of Edward R. Swarts, deceased, and the said Charlotte E. Swarts, as defendants.

The reference was proceeded with, and by January, 1916, all the evidence had been taken. On the 16th January, a written argument was put in by counsel for Roos; and, on the 1st February, a written answer by counsel for Charlotte E. Swarts.

On the 4th February, 1916, Charlotte E. Swarts died. No intimation of this having been given to counsel for Roos, he, in ignorance of her death, on the 5th February, put in a written reply.

The Master prepared his report, and gave an appointment to settle it, which was served on the solicitor who had acted for Charlotte E. Swarts.