

serve it out of the jurisdiction and to make all appropriate amendments.

The term imposed in *In re Mathews* that security should be given for the costs of the defendants cannot properly be imposed here. The foundation for it in that case was the fact that the dissenting plaintiff had become liable for costs by assenting to be a plaintiff in the first instance.

The costs before the Master and of this appeal should be to the defendants in the cause.

MIDDLETON, J.

JUNE 11TH, 1913.

PHILLIPS v. MONTEITH.

Vendor and Purchaser—Sale of Land Free from Incumbrances—Unpaid Taxes—Dispute as to whether a Charge on Land—Purchaser not Bound to Pay Purchase-price while Dispute Unsettled—Action for Purchase-price—Summary Disposition—Indemnity or Payment into Court—Costs.

Motion by the plaintiff for judgment on affidavits, the parties consenting that their substantive rights and the question of costs should be thus dealt with.

Featherston Aylesworth, for the plaintiff.

T. H. Peine, for the defendants.

MIDDLETON, J.:—Monteith Brothers, the defendants, purchased certain lands from the plaintiff for \$4,000. A declaration was made by the plaintiff, at the time of the closing of the transaction, that there were no taxes or incumbrances upon the land. Upon the strength of this, a cheque was given for the full balance of the purchase-price.

The defendants stopped payment of the cheque, because they learned, as they say, that \$47 arrears of taxes existed against the property. The bank was, however, authorised to pay the cheque if the \$47 to meet these taxes was retained. Phillips refused to assent to this, saying that he had searched in the Sheriff's office and ascertained that there were no arrears of taxes against the land.

It appears that a son of Phillips had been in possession of the lands, and was primarily liable for the payment of these