

In the learned Judge's opinion, there was nothing in the agreement between Montagu and the defendant to constitute them partners. Most of the incidents of partnership were lacking. They were to become, if anything, merely co-owners. It was absurd to suggest that the agreement, whatever its exact terms may have been, which these two men, made in September, 1919, carried with it all the ingredients of a partnership, with the power to incur obligations binding upon each other, with no right in either to transfer his interest to a stranger, etc.: see Lindley on Partnership, 7th ed., pp. 26, 27. If partnership were involved in the arrangement at all, it was only a contemplated partnership, conditional upon each party performing his part of the bargain. The defendant failed to perform his part, and the agreement came to an end.

The defendant's counsel contended that there was no necessity for any motion to confirm the report. The conclusions of the Commissioner were, however, of such a nature that a motion for confirmation or for judgment upon the report by way of further direction was proper.

The appeal should be dismissed and the report confirmed; and, so far as necessary, there should be judgment for the plaintiffs against the defendant in the terms of the conclusions of the report. The plaintiffs should have the costs of the appeal and motion, but only one counsel fee.

ROSE, J.

MARCH 12TH, 1920.

*BOONE v. MARTIN.

Landlord and Tenant—Assignment by Tenant for Benefit of Creditors—Covenant by Tenant to Pay Rent and to Pay Municipal Taxes—Failure to Pay—Payment by Landlord—Claim to Preferential Lien for Amount Paid—Payment of Taxes not a Payment of Rent—Claim of Landlord to be Subrogated to Municipality's Right of Distress—Mercantile Law Amendment Act, sec. 3—Right to Priority in Respect of Rent in Arrear—Costs of Action.

Action by a landlord against the assignee for the benefit of the creditors of his tenant, for a declaration that the plaintiff was entitled to a preferential lien upon the assets of the tenant in the hands of the defendant for rent and for taxes paid by the plaintiff.

The action was tried without a jury at a Toronto sittings.

J. W. McCullough, for the plaintiff.

Gordon N. Shaver, for the defendant.