

the statute of limitations would not begin to run until after the date of the recovery of the judgment.

*R. E. Harris*, K.C., for appellant. *J. A. Kenny*, for respondent.

Full Court.]

CITY OF HALIFAX *v.* BENT.

[Feb. 4.

*Practice and procedure—Default judgment—Motion to set aside—Order reducing amount—Power of judge to make—O. 13, r. 10—Costs.*

In an action brought by plaintiff against defendant to recover an amount claimed for taxes an agreement was entered into on behalf of defendant to pay the amount claimed for debt and costs within a day or two from May 16th or 17th, 1901. On the 18th an amount was paid on account of costs, and on the 21st, the balance not having been paid, judgment by default was entered for the full amount claimed for debt and costs, without giving credit for the amount paid on account. On an application to the judge of the County Court to set aside the judgment the learned judge refused the motion but made an order reducing the judgment to the proper amount.

*Held*,—1. Under O. 13, r. 10, he had power to do so.

2. Inasmuch as the application was a necessary one defendant should have had the costs of the motion below, but as there was a substantial condition in respect of which he had not succeeded there should be no costs of the appeal.

*Semble*, that if the judgment had been entered in breach of good faith the amendment should not have been granted, but that in this case it was defendant's duty to have seen that the terms of the arrangement as to payment were complied with.

*W. F. O'Connor*, for appellant. *W. F. MacCoy*, K.C., and *W. B. MacCoy*, for respondent.

Full Court.]

KEDY *v.* DAVISON.

[March 5.

*Arbitration—Appointment of third arbitrator by first two named—Question of consent to—Injunction to restrain party appointed from acting refused—Grounds of objection—Onus as to—Evidence Mode of appointment—Consent to act—Revocation.*

Certain rights and easements of plaintiffs were expropriated by the L. Gas Co. under an Act of the legislature enabling the company to make such expropriation, and providing for the determination of the amount of remuneration to be paid by arbitration. Plaintiffs appointed C. to be one of the arbitrators, and the Company appointed D. Plaintiffs claimed a declaration that D., who was alleged to have been agreed upon by C. and B. as the third arbitrator, was not duly appointed, and an injunction to prevent him from acting (1) because the appointment of D. was not agreed