

plaintiff, C. and D. were served, and appeared and defended the action, but B., who was not known at the time to be a member of the firm, was not served, and swore that he did not know, until after the termination of the proceedings, of the nature of the action, or of the steps taken by his co-partners to defend it. Judgment having been given for plaintiff, C. and D. appealed. The appeal was dismissed with costs. After the costs connected with the trial and appeal had been incurred plaintiff discovered that B. was a member of the firm, and took steps under O. 40, R. 10, to have execution against him on the judgment recovered against the firm, and also the costs incurred in connection with the appeal and not included in that judgment. The application was heard before Graham, E.J., who made the order applied for. From this the defendant B. appealed.

*Held*, dismissing the appeal, that B. was liable not only for the costs of the original action and judgment, but for the costs of the appeal taken by his co-partners C. and D., and that his only remedy was against his co-partners in winding-up the partnership.

C. H. Cahan for plaintiff. W. B. A. Ritchie, Q.C. for defendant.

Full Court.]

BARROWMAN v. FADER.

[March 8.

*Sale of land—Covenant to pay taxes—Demand before action—Provision of Halifax city charter as to time at which taxes become due—Act allowing a discount if paid promptly.*

Plaintiff and defendants entered into an agreement for the sale by plaintiff to defendants of a lot of land for a sum of money payable in instalments extending over a period of four years. The agreement contained a clause providing that until the completion of the purchase defendants should have the possession of the land and should be entitled to receive all the rents and profits, and should pay all rates and taxes of every kind levied or assessed on the land. Ten days after the making of the agreement an assessment was made for taxes which became due and payable on the 1st May following, and for which plaintiff became liable to be sued by the city of Halifax, and to have his property levied upon by warrant for the recovery of the taxes at any time after the 31st May, prior to which time the taxes constituted a lien on the property.

*Held*, 1. The situation so far as regarded plaintiff's rights and liabilities, was the same as if the covenant to be performed on the part of defendants had reference to a mortgage to mature on the 31st May, and that plaintiff was entitled to recover.

2. Payment of the rates and taxes by defendants formed part of the consideration for the contract whereby they were permitted to enter into possession and to receive the rents and profits.

3. As there was an absolute covenant on the part of the defendants to pay, plaintiff was not required to make a demand before bringing his action.

By the Acts of 1897, c. 44, s. 22, the city collector was authorized to allow a discount of two per cent. to all persons paying the taxes on or before the 31st day of July of the year in which such taxes fell due.