

payment of rent, but expressly upon the terms of the lease and subject to payment of rent.

As to the taxes from the 1st January to the 15th October, 1915, the learned Judge finds that the defendant, while in possession of the goods of the insolvent upon the demised premises, acted as treating the liability for those taxes as a preferential claim, and by his promises and conduct so quieted and assured the plaintiff as to induce him to refrain from making use of the means at his disposal to secure payment of these taxes out of the goods of the insolvent estate.

Judgment for the plaintiff against the defendant: (1) for payment to the plaintiff of the taxes from the 15th October, 1915, to the 15th January, 1916, and interest from the 4th March, 1916; and (2) for payment out of the assets of the insolvent estate to the plaintiff of such taxes in respect of the demised premises as the insolvent company did not pay for the period from the 1st January to the 1st October, 1915, with interest from the 4th March, 1916; and, to the extent that the assets may be insufficient, for payment by the defendant.

Costs of the action should be paid by the defendant.

---

RE PHERRILL—BRITTON, J.—JULY 24.

*Will—Construction—Division of Farm among Sons—Appointment of Trustee to Make Division if Sons should not Agree—Land Vesting in Trustee—Powers of Trustee—Sale of Land—County Court Judge—Right of Appeal—Share of Deceased Son.*—Motion on behalf of Jane Isabella Walton and James Albert Pherrill, children of David Pherrill, deceased, for an order determining certain questions concerning the distribution of the estate of the deceased, arising out of the terms of his will. The motion was heard in the Weekly Court at Toronto. The will directed a fair and equitable division of the testator's farm and effects thereon among his four sons after his wife's decease; and, if they could not agree upon a division, he referred all matters in difference between them to the Senior Judge for the time being of the County Court of the County of York, and he gave the estate and effects to the said Judge upon trust to sanction the division agreed upon or to make a division and to execute all necessary deeds. The testator also provided for the event of any of his sons dying before his wife; and one son, Stephen, predeceased his mother, leaving no lawful issue. The learned Judge disposed of the questions in a written judgment, as follows: (1) There was not an intestacy as to the goods and chat-