

HIGH COURT OF JUSTICE.

RIDDELL, J.

OCTOBER 20TH, 1911.

BOEHMER v. ZUBER.

Trespass—Occupant of Office in Hotel—Sale of Hotel under Power of Sale in Mortgage—Notice of Sale—Removal of Books and Papers of Occupant—Deposit in Unsafe Place.

An action against the defendant Zuber and his co-defendants, his servants, for \$10,000, for that they "came and broken open and entered into the . . . office premises of the said plaintiff, and took and carried away therefrom certain goods, chattels, and personal property of the plaintiff, as well as certain chattels, books, and papers, not the property of the plaintiff, but in his care and custody, causing loss and injury to the plaintiff."

The action was tried without a jury.

W. M. Reade, K.C., for the plaintiff.

F. E. Hodgins, K.C., and J. A. Scellen, for the defendants.

RIDDELL, J. :—Zuber, owning a hotel property in Berlin, sold in April, 1909, to Floyd Boehmer, son of the plaintiff; he mortgaged to Pipe and also to Dunke and sold to the Kaiserhof Hotel Company. Pipe assigned his mortgage to Irwin, who assigned it to the defendant Zuber; Dunke also assigned to Zuber his mortgage.

The plaintiff had been occupying a room in the hotel as an office, and continued so to do; but, on the whole, I think he did so as representing his son. On the 10th February, 1910, the plaintiff, acting for his son, settled with the Kaiserhof Hotel Company in respect of an account of \$1,368 claimed against the company. In the settlement, rent, \$300, was allowed the company; this, on the evidence, it is plain, was for the office for one year from the 2nd April, 1909, to the 2nd April, 1910. I think, also, that it was the rent of Floyd Boehmer, and not of the plaintiff; but this is perhaps immaterial.

Interest falling in arrear, notice of exercise of power of sale was served upon the company; the plaintiff was interested in the company, and knew that notice of exercise of power of sale had been served—he knew the contents of the notice, but took no steps to prevent the sale. He was not personally served with