

for a violation of the provisions of the Liquor License Act is immaterial, the penalty being several.

*J. McK. Cameron, for appeal. O'Connor, K.C., contra.*

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Full Court.] SHAND v. POWER. [Feb. 4.

*Vendor and purchaser—Option—Entry after expiry of time—Ejection—Recovery in.*

Defendant, the holder of a legal title to property of which plaintiff was in possession under an agreement to purchase, entered and took possession after the expiration of the period allowed by the agreement for payment of the purchase money for default of payment. Plaintiff brought an action claiming damages for trespass and for acts amounting to an assault alleged to have been committed in connection with the entry and taking possession, but on the trial failed to give evidence of the alleged assault. Defendant counterclaimed in ejection under the terms of the agreement.

*Held*, that defendant being the holder of the legal title and entitled to immediate possession should have had judgment on his counterclaim and that the judgment of the trial judge dismissing the counterclaim must be reversed with costs.

*J. J. Ritchie, K.C., for appeal. Rowlings, contra.*

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Full Court.] McDONALD v. BAXTER. [Feb. 4.

*Infant—Contract by—Substantial advantage—Warranty—Burden of proof as to.*

Plaintiff, an infant, purchased a horse from defendant in the month of April, 1908, paid the purchase price and took delivery and used him for general farm and other work down to June, 1909, when he sought for the first time to rescind the contract of sale and to recover the purchase price on the grounds: (1) That the contract was not one for necessities, and (2) that there was a breach of warranty as to the age, soundness and general capacity of the animal.

*Held*, dismissing plaintiff's application to set aside findings and for a new trial, that plaintiff having derived substantial advantage under the contract could not repudiate or rescind it.

The trial judge instructed the jury that the burden was on