

SCOTT, LOCAL MASTER AT OTTAWA. MARCH 15TH, 1905.

MASTER'S OFFICE.

BOUCHER v. CAPITAL BREWING CO.

Account—Sale of Hotel Business—Counterclaim for Balance Due on Sale—Deductions—Resale of Assets of Business—License — Renewal—Trust—Goodwill—Chattel Mortgage—Seizure—Sale—Onus.

Reference to the Master under the judgment of a Divisional Court (ante 270) to take an account of the amount due on defendants' counterclaim.

J. Lorn McDougall, Ottawa, for defendants.

A. E. Lussier, Ottawa, for plaintiff.

THE MASTER:—Plaintiff has been awarded judgment for \$1,986.80, the amount paid by him to defendants for liquor illegally sold by them to him, and it has been referred to me to take an account of the amount due to defendants on their counterclaim. The bulk of the account is not in dispute. Defendants' books shew a balance due by plaintiff of \$3,070. Of this amount \$236.25 is admittedly due for liquor and must be deducted. To the extent of \$2,226.85 defendants allege that the indebtedness is secured by 7 notes, particulars of which are set out in paragraph 9 of their counterclaim. The original notes were given for the price of the business, with the object of enabling defendants to raise money on them in the bank. The subsequent ones were, as I find, given in part renewal of the others, which defendants were gradually retiring. This circumstance does not, however, affect the matter. Defendants in their counterclaim set up the dealings between plaintiff and themselves, and it is, therefore, open to me to find the amount actually due them by him, regardless of whether or not they are entitled to claim on the notes.

Defendants seized under a chattel mortgage and went into possession of the property on 2nd February, 1904. The account includes charges for water rates and license fee up to 1st May, but, as defendants are not accounting for their dealings with the premises after 2nd February, they clearly cannot charge water rates or license fee after that date. The respective amounts to be deducted on those accounts are