

ed., p. 159; McCarthy v. Cooper (1884-5), 8 O.R. 316, 12 A.R. 284; but that principle could not be applied in the present case so as to justify a judgment against R. B. Rice & Sons and Tolton on the contract or a judgment against Tolton on any ground.

The plaintiff, however, was entitled to damages and a return of the commission.

If the defendants R. B. Rice & Sons are willing, either alone or in conjunction with the defendant Tolton—he being also willing—to agree to pay the obligations of the defendant Philip under the contract, they may be permitted to do so, in which case judgment will go accordingly, and for a return of the commission, with costs against the defendants. If they are unwilling, judgment is to be entered against the defendants R. B. Rice & Sons for the amount of the commission and damages at the rate of \$20 per foot for the loss sustained by the plaintiff in consequence of their breach of duty to him as agents, and setting aside the contract and declaring that the land is the property of the plaintiff, with costs against R. B. Rice & Sons; no costs to or against the other defendants.

BOYD, C., IN CHAMBERS.

FEBRUARY 15TH, 1916.

\*REX v. LEITCH.

*Liquor License Act—Offence against sec. 141—Person Found Intoxicated in Local Option Municipality—"Public Place"—Amending Act, 5 Geo. V. ch. 39, sec. 33—Blacksmith's Shop—Conviction—Finding of Magistrate.*

Motion to quash the conviction of the defendant by a magistrate for an offence against sec. 141 of the Liquor License Act, R.S.O. 1914 ch. 215: "Where in a municipality in which a local option by-law is in force or in which no tavern or shop license is issued, a person is found upon a street or in any public place in an intoxicated condition . . . he shall be guilty of an offence against this Act." By clause (a), added by 5 Geo. V. ch. 39, sec. 33, "public place" includes "any place, building or public conveyance to which the public habitually resort or to which the public generally are admitted either free or upon payment," etc.

James Haverson, K.C., for the defendant.

J. R. Cartwright, K.C., for the Crown.