

MASTER IN CHAMBERS.

DECEMBER 14TH, 1912.

SMYTH v. BANDEL.

4 O. W. N. 498.

Judgment—Speedy Judgment—Motion for—Con. Rule 603—Chattel Mortgage on Licensed Hotel—Alleged Agreement as to—Prima Facie Defence Shewn.

MASTER-IN-CHAMBERS refused to vary order made on former application (23 O. W. R. 649), where plaintiff renewed the motion for speedy judgment, claiming to have found new material on ground that the same was disputed by defendants.

Grand Trunk Rv. Co. v. Toronto, 9 O. W. R. 671, at p. 674, referred to.

Motion for speedy judgment under Con. Rule 603.

H. S. Murton, for plaintiff.

J. T. Loftus, for defendant.

After the judgment in this case of 3rd December, inst., reported in 23 O. W. R. 649; 4 O. W. N. 425, counsel for the plaintiff found the agreement not produced on the former argument, and obtained leave to have the matter further discussed.

The motion was accordingly reargued by the same counsel as appeared on the first argument. It may as well be premised that, the writ was issued on 29th May, last, and served next day. No statement of claim has ever been delivered, though defendant appeared on 5th June. But on 31st October, the present motion was launched, a date which brings the case very nearly within the time to which a plaintiff can be limited in making a motion under Con Rule, 603, as laid down in the judgment of Riddell, J., in *G. T. R. v. City of Toronto*, 9 O. W. R. 671, at p. 674. This is a circumstance which might be entitled to weight in disposing of the motion; but it is not necessary to consider it at present.

The agreement now produced is no doubt silent as to the term spoken of by defendant. She, however, has made a further affidavit on which she has not been cross-examined. In this she says that the agreement now produced is not the agreement referred to in her former affidavit.

As said on the former argument such an agreement seems not improbable under the existing state of public opinion as to the usefulness of the liquor traffic, and is certainly not unprecedented.