

IDINGTON, J., gave reasons in writing for the same conclusion. He referred to *McLeod v. Citizens Ins. Co.*, 3 R. & G. (Nova Scotia) 156; *Atlantic Ins. Co. v. Wright*, 22 Ill. 474; *Germania Ins. Co. v. Hoick*, 125 Ill. 361; *Van Schoick v. Niagara Fire Ins. Co.*, 68 N. Y. 434.

FEBRUARY 11TH, 1905.

DIVISIONAL COURT.

BOUCHER v. CAPITAL BREWING CO.

Liquor License Act—Sale of Intoxicating Liquors to Person not Entitled to Sell—Recovery of Moneys Paid—Person Carrying on Business on Licensed Premises—License in Name of Another—Failure to Establish Agency—License Held in Trust for Occupant—Exception in Statute as to Honest Belief that Person Licensed to Sell—Application to Civil Action—Absence of Reason for Belief—Licensed Brewers Selling by Wholesale—Relief from Liability as Penalty—Purchase of Goodwill and Renting of Premises—Illegal Scheme.

Appeal by plaintiff from judgment of TEETZEL, J., dismissing the action with costs and referring the counterclaim for trial to the local Master at Ottawa.

Action to recover from defendants a large sum of money paid to them by plaintiff between 12th October, 1901, and 2nd February, 1904, for intoxicating liquors which he had bought from them, and which, as he alleged, had been furnished in contravention of the Liquor License Act, R. S. O. 1897 ch. 245, or otherwise in violation of law, within the meaning of sec. 126 of that Act.

Defendants counterclaimed for \$2,226.88 in respect of 7 promissory notes made by plaintiff, of which they were the holders; for \$624.30 for rent of the premises in which plaintiff carried on business; for two sums of \$34 and \$42 alleged to have been paid by them for plaintiff; and for \$142.35 for interest on all these sums.

In his defence to the counterclaim plaintiff set up that the whole of this indebtedness was incurred in furtherance of an illegal arrangement between him and defendants, which was entered into for the express purpose, object, and intention of enabling plaintiff to take and have possession of the premises in which he afterwards carried on business, and to