

allowed and the order of the Master restored, the respondent being the holder of unpaid shares and so liable as a contributory.

LENNOX and ROSE, JJ., were of the contrary opinion, for reasons stated by each in writing.

THE COURT being divided, the appeal was dismissed with costs.

SECOND DIVISIONAL COURT.

MARCH 20TH, 1917.

LOUDON v. SMALL.

*Contract—Sale of Hotel Business—Time for Completion—"If Possible"—Action for Balance of Purchase-money—Terms of Contract not Fully Carried out by Vendor—Failure to Procure Lease of Premises Freed from Option to Purchase Business—Possession Given and Rent Paid—Liquor License Transferred and Business Carried on—Failure of Purchaser to Shew Breach of Contract by Vendor—Specific Performance—Injury to Hotel Business by Enactment of Prohibitory Liquor Law—Effect upon Contract—Counterclaim—Damages—Tender of Lease.*

Appeal by the defendant and cross-appeal by the plaintiff from the judgment of LATCHFORD, J., 11 O.W.N. 268, in an action to recover the purchase-money of an hotel business sold by the plaintiff to the defendant in July, 1914, for \$40,000.

The appeal and cross-appeal were heard by MEREDITH, C.J. C.P., RIDDELL, LENNOX, and ROSE, JJ.

W. N. Tilley, K.C., for the defendant.

W. G. Thurston, K.C., for the plaintiff.

MEREDITH, C.J.C.P., reading the judgment of the Court, said that the contract of the parties was not that the sale should "be completed by the 1st August, 1914," but that it should be completed then "if possible"—meaning if possible from the point of view of business men in a business transaction of this kind. The plaintiff was being what is commonly called "held-up" unconscionably by a third person whose consent was needed to enable the plaintiff to complete the contract on his part; the de-