

Plaintiff has entirely failed to shew that either the purchase of the goodwill and the personal property or the renting of the premises was part of a scheme devised for the purpose of enabling him to sell liquor in contravention of the law, or to enable defendants to furnish him with liquor which he was to sell illegally. The whole of this part of the transaction was carried out without any violation of the law taking place; there was no obligation upon plaintiff to procure the liquor required for his business from defendants or on them to supply it; he was free to procure it wherever he could.

The case comes within the principle of *Waugh v. Morris*, L. R. 8 Q. B. 202, cited in *Pollock on Contracts*, 7th ed., p. 378.

It was, as I have said, no part of the contract between the parties that liquor should be sold by defendants to plaintiff for the purpose of his re-selling it in violation of the law, and, even if that had been their intention in entering into the contract, it is necessary, to defeat defendants' right to recover, to shew that there was a wicked intention to break the law; there having been no such wicked intention, but an honest belief that what was intended to be done was lawful, the defence to the counterclaim based upon the alleged illegality of the transaction failed.

I would, therefore, vary the judgment on the counterclaim by declaring that defendants are not entitled to recover for the price of any liquor furnished by them to plaintiff between 12th October, 1901, and 2nd February, 1904, and making the reference to the local Master at Ottawa to take an account of what is due and owing by plaintiff to defendants in respect of the other claims put forward by them in their counterclaim, and directing that judgment be entered for them against plaintiff for what shall be found due, with costs subsequent to the trial.

In taking the accounts the Master will, of course, disallow so much, if any, of the claim of defendants in respect of the liquor as is included in the promissory notes held by them.

Proceedings on the judgment in favour of plaintiff will be stayed until after the report is made, and what is found due to defendants will be set off against it.

There will be no costs of the action or counterclaim up to and including the trial, or of the appeal to either party, but defendants should have their costs of the reference.