CARTWRIGHT, K.C., MASTER:—In May, 1908, the defendant gave to the plaintiff a chattel mortgage to secure $4,800, being balance of purchase of the "Queen's Hotel," at Collingwood.

It is admitted that there is still something due on this mortgage if plaintiff is entitled to enforce it now; and plaintiff has moved under C. R. 603 for judgment.

The defendant has made an affidavit in which she says that the contract for the purchase of the Queen's Hotel "contained a provision that in case local option would pass that the mortgage would be void and that there would not be any liability thereunder."

It is submitted that in 1910 local option was carried at Collingwood. No doubt it came into force on 1st May in that year.

The defendant has been cross-examined but does not recede from her position. Her solicitor in the matter was the late James Baird, K.C. A copy of a letter from him to plaintiff is filed on this motion and verified by Mr. Loftus. It is dated 30th May, 1908, and speaks of an agreement between plaintiff and Mary Bandel as being sent to him with the other papers. What that agreement contained does not appear on this motion. It is not produced. It may have contained the provision on which defendant relies—a provision which under the circumstances then and still existing in respect of the liquor traffic cannot be considered unlikely to have been suggested at least by defendant. See as an instance *Hessey* v. *Quinn*, 18 O. L. R. 487.

Whether or not such an agreement was made either verbally or in writing must be left to be dealt with at the trial in the ordinary way. In taking this course I am as I consider only following the judgments of the House of Lords in the two similar cases of *Jacobs* v. *Booth's Distillery Co.*, 50 W. R. 49, 85 L. T. 262, and *Codd* v. *Delap*, 92 L. T. 510, cited in *Jacob* v. *Beaver*, 17 O. L. R. 501.

In both cases the House of Lords set aside the unanimous judgments of the Courts below, giving judgment with many strong expressions of astonishment and disapproval.

There is less reason to hesitate in this case because although the action was begun and writ served on 30th May, the present motion was only launched on 31st October last.

No explanation of this was suggested on the argument. The motion will be dismissed with costs in the cause.