

believed, as I think they did, that plaintiff was duly licensed to sell the liquor which they furnished to him, they had not, in my opinion, reason to so believe.

Defendants contended, lastly, that, being, as they were, brewers duly licensed by the government of Canada for the manufacture of liquor, and having, as they had, a brewer's provincial license, they had the right to sell liquor to others than licensees in wholesale quantities, and therefore to sell to plaintiff, even though he were not a person licensed to sell; and for this contention sec. 51 of the Liquor License Act and sec. 4 of 62 Vict. (2) ch. 31 (O.) were relied on.

I am unable to agree with this contention, for, in my opinion, the authority conferred by the sections relied on does not override the provisions of sec. 64.

There is no good reason why a brewer any more than any one else entitled to sell liquor by wholesale should be exempt from the prohibition against selling or delivering to a person not entitled to sell liquor who sells the liquor he buys or who buys for the purpose of re-selling it.

I should be of the same opinion even if 62 Vict. (2) ch. 31 did not, as it does, provide (sec. 30) that it shall be read with and as part of the Liquor License Act.

I at one time thought that it might be possible to exercise the powers conferred by R. S. O. 1897 ch. 108, and to relieve defendants from the liability . . . but I am unable on consideration to see my way to that conclusion; the liability is not, I think, a pecuniary penalty imposed upon defendants, within the meaning of ch. 108.

As I understand it, all that is effected by sec. 126 is to remove the impediment which at common law stood in the way of a person seeking to get back what he had given as the consideration on his part of an illegal contract where the illegal purpose has been carried out.

The result is that, in my opinion, plaintiff was entitled to recover the amount which he had paid to defendants for liquor furnished to him by them between the dates mentioned in the statement of claim, and that as to this branch of the case the appeal should be allowed and judgment entered for plaintiff.

The counterclaim, so far as it is for the price of liquor furnished to plaintiff, fails and should be dismissed, but I see no reason why defendants may not recover the remainder of their claim, or so much of it as they may be in a position to establish in the Master's office.