

within the meaning of sec. 126? For, if it was, it is no matter how unmeritorious the claim may be, as the section declares that the payment or consideration "shall be held to have been received without any consideration and against justice and good conscience, and the amount or value thereof may be recovered from the receiver by the party who made the same."

Was then the liquor sold by defendants to plaintiff and delivered to him between 12th October, 1901, and 2nd February, 1904, furnished in contravention of the Liquor License Act or otherwise in violation of law? . . .

Section 49 (1) of the Act—"No person shall sell by wholesale or retail any spirituous, fermented, or other manufactured liquors without first having obtained a license under this Act. . . ."

This sub-section is subject to certain exceptions in favour of brewers, distillers, and other manufacturers of liquors, to which I shall afterwards refer, and to an exception in favour of chemists and druggists, which for the purpose of the present inquiry it is unnecessary to consider.

64. (1).—"No person shall . . . sell or deliver intoxicating liquors of any kind to any person not entitled to sell liquor, and who sells such liquor, or who buys for the purpose of re-selling, and any violation of the foregoing provision shall be an offence under this Act.

"(2) But no person shall be convicted under this section who establishes . . . that he had reason to believe and did believe that the person to whom the liquor was sold or delivered was duly licensed to sell such liquor, or did not sell liquor unlawfully, or did not buy to re-sell.

"(3) This section shall apply only to a sale or delivery of liquor in any city, town, or village by a person residing or carrying on business therein to a person who sells liquor unlawfully in the same city, town, or village."

The argument for plaintiff is that the liquor supplied by defendants to plaintiff was sold and delivered in contravention of this section, because, as it is contended, plaintiff was a "person not entitled to sell liquor," within the meaning of the section.

If it be conceded that plaintiff was a "person not entitled to sell liquor," this argument is unanswerable. . . .

Unless he had first obtained a license under the Act authorizing him to do so, he was not only not entitled to