

rent \$50 a month, the first payment of which was to be made on the 1st of the following November.

Plaintiff was from time to time debited in his account with defendants with this monthly rent, and it would appear that he was treated as a sub-tenant of defendants, holding on the same terms and conditions as those on which they held, or it may be that defendants were to hold the lease for the benefit of plaintiff, but keeping it in their own name as security for the payment of the \$1,200.

Kuntz was not, as I have said, and it was not intended that he should be, the proprietor of the business, and plaintiff was not the manager or agent of Kuntz or of defendants for carrying on the business for them or either of them, but was the proprietor of the business; and the sales of the liquor were, as I have said, made by defendants to him.

The fees for the license were paid by plaintiff, or, if paid by defendants, were debited to his account with them, and Kuntz was, no doubt, as far as could be, if at all, a trustee of the license for plaintiff, subject to his (Kuntz's) right to deal with it for the benefit of defendants in accordance with the agreement which had been entered into.

My brother Teetzel was of opinion that, inasmuch as Kuntz held the license as trustee, agent, or representative of plaintiff, and plaintiff was selling liquor with the consent and authority of Kuntz, and was himself interested in the license as *cestui que trust*, the liquor sold by defendants to plaintiff had not been furnished in contravention of the provisions of the Liquor License Act, within the meaning of sec. 126, and he therefore held that the action and the defence to the counterclaim failed.

I agree with my brother Teetzel that there was no intention on the part of defendants or Kuntz, in what was done or agreed to be done, to evade the provisions of the Liquor License Act, and that all the parties to the transaction honestly believed that what was being done was lawful to be done under the authority of the license which had been granted to Kuntz, and I therefore regret that I am unable to see my way to reach the conclusion to which my learned brother came as to the proper disposition to be made of the action.

The right of plaintiff to recover depends on the answer which is to be given to the question, was the liquor for which plaintiff had paid defendants furnished in contravention of the Liquor License Act, or otherwise in violation of law