

FEBRUARY 20TH, 1905.

DIVISIONAL COURT.

MIDDLETON v. COFFEY.

Liquor License Act—Delivery of Intoxicating Liquor to Person after Notice—Licensed Seller—Service of Notice on Barman—Notice Coming to Knowledge of Seller—Evidence.

Appeal by defendant from judgment of MEREDITH, J., ante 18, in favour of plaintiff for \$100 without costs in an action under sec. 125 of the Liquor License Act to recover from defendant, a licensed seller of intoxicating liquors, damages for selling to the husband of plaintiff, after notice under the statute. MEREDITH, J., held that service of the notice on defendant's bar-tender was equivalent to service upon defendant, and also found that defendant had knowledge of the service of the notice.

J. Haverson, K.C., for defendant, contended that the statute should be construed strictly, and that personal service on the defendant was necessary, or, if there could be service on an agent at all, that the bar-tender was not an agent upon whom service could be validly made.

J. M. Ferguson, for plaintiff, contended that the service was good, and that the finding of the trial Judge that the notice reached defendant, should not be interfered with.

The judgment of the Court (MEREDITH, C.J., FALCONBRIDGE, C.J., STREET, J.), was delivered by

MEREDITH, C.J.—The action was brought by a married woman, under the provisions of sec. 125 of the Liquor License Act, to recover damages on account of defendant having, after notice had been given forbidding him to sell liquor to her husband, done so.

On the argument of the appeal before the Divisional Court, only one ground was urged for reversing the judgment, and that was that under the statute the notice which is required to be given must be served personally, and that there was no evidence from which personal service could be properly found to have been effected.

We think it is unnecessary to determine the question as to whether service upon the bar-tender, which was the method adopted in this case, was sufficient or not, but, assuming that personal service was necessary, we are of opinion that there