

unless it could be sure that the plain intention of the parties to be gathered from all the circumstances, was that the sum named was to be a penalty.

LIQUOR LICENSE—SALE AT UNAUTHORIZED PLACE—UNAUTHORIZED ACT OF SERVANT—MASTER AND SERVANT—SCOPE OF EMPLOYMENT—(R.S.O. c. 245, ss. 49, 50, 72).

Boyle v. Smith (1906) 1 K.B. 432 was a case stated by magistrates. The defendant was licensed to sell liquor by retail. He sent his servant to deliver beer to customers. The servant had no authority to sell, his sole duty was to deliver beer to customers who had previously given orders therefor to the defendant; and the servant had been expressly ordered not to sell or deliver beer to other persons, and to bring back beer he was unable to deliver. The servant in disobedience of his orders sold and delivered beer from his van in a street to persons who had not previously ordered it. The magistrate refused to convict the master for selling liquor in an unauthorized place, and the Divisional Court (Lord Alverstone, C.J., and Lawrance and Ridley, JJ.) held that he was right, on the ground that the servant was himself responsible and not his master for his unauthorized act.

COSTS—WRIT OF POSSESSION—JUDGMENT FOR POSSESSION UNDER RULE 118—(ONT. RULE 604)—JUD. ACT. s. 5—(ONT. RULE 1130).

The Dartford Brewery Co. v. Moscley (1906) 1 K.B. 462 was an action for rent, and to recover possession of land. The plaintiff applied for and obtained judgment for possession of the land, under Rule 118 (Ont. Rule 604), the claim for rent standing over. The defendant having failed to deliver possession, a writ to compel delivery of possession was issued, and the plaintiff now applied for an order for the payment of the costs of the writ. Lawrance, J., made an order as asked and the Court of Appeal (Williams and Stirling, L.JJ.) affirmed the order, holding that the costs were in the discretion of the Court under s. 5 of the Jud. Act. (Ont. Rule 1130). Under the combined effect of Ont. Rules 870, 871, it is possible such an application would be unnecessary in Ontario.