

The appeal was heard by MEREDITH, C.J.C.P., TEETZEL and MIDDLETON, JJ.

W. J. Boland, for the defendant.

R. C. H. Cassels, for the plaintiffs.

THE COURT dismissed the appeal with costs, holding that the Act 63 Vict. ch. 24 did not apply, as the dealings in question were not "carrying on business" within Ontario, within the meaning of the Act.

TEETZEL, J.

NOVEMBER 17TH, 1911.

\*De STRUVE v. McGUIRE.

*Intoxicating Liquors—Excessive Drinking in Licensed Hotel—Death from Exposure to Cold—Action by Administrator for Damages—Liability of Owner of Hotel and Bar-tender—Wrongdoers—Insurers—Liquor License Act, sec. 122—Proximate Cause of Death—"Caused by such Intoxication."*

Action by the administrator of the estate of John Pundzius, deceased, against one McGuire, the proprietor of a licensed hotel at Thessalon, and one Coggin, his bar-tender, under sec. 122 of the Liquor License Act, R.S.O. 1897 ch. 245, to recover damages for the death of Pundzius while (as the plaintiff alleged) in a state of intoxication from drink furnished to him by the defendant Coggin, in the defendant McGuire's hotel, Pundzius having perished from cold on the way home.

On the morning of the 24th December, 1910, the deceased and two companions, all foreigners, employed in a lumber camp about twelve miles from Thessalon, walked into that town and arrived at the defendant McGuire's hotel about ten o'clock. They took several drinks before dinner and more after. The two companions took dinner, but the deceased did not. When they started for home, they were all intoxicated from the liquor furnished them by the defendant Coggin and drunk by them in the hotel. They wanted more liquor over the bar, but Coggin thought they were already too drunk to be furnished with more liquor in that way. Just before leaving for home, at about two p.m., they purchased from one Roach, another bar-tender in

\*To be reported in the Ontario Law Reports.