

from the outside, and naturally she wanted something done to repel the invader. The defendant's admission, whatever it amounted to, was not made until after the conviction. What he said was—and no objection was made to considering that as evidence—that his going to Brantford was to exhibit samples, take orders for similar goods, and forward these orders, so that, if the orders were accepted, goods would be supplied from the factory outside of Brantford, by the employer of the defendant.

This, as I understand the evidence and business, is what commercial travellers, by the hundreds, are doing all over Ontario. I do not think that kind of business makes the commercial traveller a "transient trader," within the meaning of the Act or within the by-law of the City of Brantford.

In addition to the one argument addressed to us, counsel for the appellant handed in a carefully prepared argument in writing. I have read it with care, and I have consulted the cases cited; but I am unable to agree with the contention of the appellant.

To constitute the offence charged, the goods offered or sold must be goods in Brantford. I agree with the learned Judge appealed from.

The appeal should be dismissed with costs.

RIDDELL, J.:—The appeal should be dismissed, upon the short ground that before the magistrate there was no evidence, i.e., no legal evidence, of any offence. It is said that the magistrate disbelieved the defendant: that may be so—no tribunal is compelled to believe anybody, witness or party: *Rex v. Van Norman* (1909), 19 O.L.R. 447, at p. 449. But no tribunal can find the existence of any alleged fact proved simply because a witness or party who is not believed swears that it does not exist.

But, as it is desired to have a decision on the facts alleged, I would say that Mr. Wilkes, in his able and exhaustive argument, has entirely failed to convince my mind that the case followed by my learned brother, *Rex v. St. Pierre* (1902), 4 O.L.R. 76, is wrongly decided.

Nor am I able to draw any substantial distinction between that case and the present. To my mind, there is no difference in principle in taking orders for an article to be supplied from a distant city, whether what is produced to those from whom it is hoped to secure orders is a picture of the article, or a sample