General for Ontario, under sec. 120 of the Liquor License Act, R. S. O. 1897 ch. 245, from an order of the Judge of the County Court of Oxford quashing a conviction by the Police Magistrate for the city of Woodstock of the defendant, a licensed hotel-keeper, for that he "did unlawfully give, sell, or supply liquor to one Charles B. Cowley, who was apparently or to the knowledge of the said Patrick Farrell under the age of 21 years.

The appeal was heard by FALCONBRIDGE, C.J.K.B., BRITTON and RIDDELL, JJ.

J. R. Cartwright, K.C., for the appellant.

James Haverson, K.C., for the defendant.

RIDDELL, J.:—The Act of 1902, 2 Edw. VII. ch. 33, never came into force, and, therefore, the absolute prohibition made by sec. 161 of that Act never became effective. The statutory provision is now (1907) 7 Edw. VII. ch. 46, sec. 8, introducing a new provision for sec. 78 of R. S. O. 1897 ch. 245. The section prohibits selling to two classes of minors: (1) those apparently under 21; and (2) those to the knowledge of the vendor under 21.

Upon the appeal before the County Court Judge it was agreed that "the evidence taken before the Police Magistrate should be used instead of calling the witnesses;" and the written depositions were put in.

The Act R. S. O. 1897 ch. 245, by sec. 118, provides that the practice and procedure upon the appeal and all the proceedings thereon shall be governed by the statute R. S. O. 1897 ch. 92: this statute, ch. 92, by sec. 13, provides that the Judge "shall hear and determine the charge or complaint . . . upon the merits . . . and if the person charged or complained against is found guilty, the conviction shall be affirmed . . ." It is plain, and it has been the uniform view of practitioners, that the so-called appeal to the County Court Judge is not really an appeal but a trial; that the County Court Judge must himself find the appellant guilty before the conviction can be affirmed. The wording of the section is, I think, conclusive.

The burden of proof is the same before the County Court Judge as before the Magistrate—the burden of proof is not upon the appellant, as it would be in the case of an appeal properly so-called, to prove that the court below is wrong; the findings of the court below are wholly irrelevant; and it is for the County Court Judge to determine the complaint himself upon the evidence brought before him. Rex v. McNutt, 4 Can. Crim. Cas. 392, may be referred to upon this point.