

The sole evidence in this case is that in an hotel which was once, but is not now, licensed to sell intoxicating liquor there is a bar, and on the bar a beer pump which pumps Local Option beer, and "all appliances" and "signs," consisting of calendars and advertising matter, that had decorated the bar and premises when the hotel had a license. The hotel still retained its name. The sign "Licensed to Sell" etc. was removed.

It is essential, to constitute an offence, that what is done should "induce a belief that" (a) premises in fact unlicensed are licensed, or (b) that liquor—i.e., intoxicating liquor—is "sold or served therein."

It is not for me to speculate why the Legislature should make it penal to have a bar so equipped as to induce a "reasonable belief" on the part of the thirsty wayfarer that he could therein obtain a beverage which might intoxicate, when there is in fact nothing to be had but beer containing "less than two and a half per cent. of proof spirits;" it may well be that the lack of the desired percentage can only be discerned by a trained and sensitive palate, and the average man seeking intoxication requires protection from such innocuous beverages; or the desire may be to protect the licensed house whose customers are being deluded by this hollow mockery into the belief that they are in a genuine bar. Be that as it may, it seems clear that there must be more than that which is necessary and proper for the sale of Local Option beer, before an offence is committed; some exhibition of bottles and casks such as usually contain real "Liquor," or some such display of suggestive advertising matter as would lead a reasonable man to the belief that in this unlicensed place liquor was sold. Mere "calendars and one thing or another" is not enough. The bottles, not only were not displayed, but were in the cellar, relics of a departed glory; and the "pump" might indicate the innocent "Local Option beer."

The motion should be granted with costs.

The magistrate should be protected.

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BOYD, C.

NOVEMBER 28TH, 1912.

### CITY OF GUELPH v. JULES MOTOR CO.

*Principal and Surety—Guarantee Bond—Construction of Agreement—Termination of Grant—Effect of—Variance of Contract to Prejudice of Surety—Meaning of 'Adjudged.'*

Action by the City of Guelph against the United States Fidelity Co., as guarantors on a bond for \$4,000 for security