

RABE V. STATE OF ARKANSAS.

LIQUOR: *Selling brandy-peaches without license.*

No license is required to sell fruits preserved in brandy; but if one put a few peaches or cherries in a bottle of liquor to evade the law, and sell them, he is guilty.

APPEAL from *Perry* Circuit Court.

Hon. J. M. SMITH, Circuit Judge.

*Attorney-General Moore*, for the State.

SMITH, J. Rabe was indicted for selling ardent liquors without license. Waiving a jury, he was tried by the court; was convicted, and sentenced to pay a fine of \$200. No declarations of law were made or refused; and the only question before us is, whether his conviction was sustained by the law and the evidence.

The facts were, that as a clerk in a village store, he sold brandy-peaches. The bottle contained six peaches, surrounded by one gill of a fluid, or syrup, which tasted like strong liquors. The witnesses thought that this liquid might intoxicate, if one should imbibe enough of it, but it was very weak.

Rabe falls not under the condemnation of the letter of the law, since that requires no license to sell fruits preserved in brandy. Nor does his case come within its spirit, as it would do if he had put a few cherries or peaches in a bottle of brandy to evade payment of the license.

Reversed, and remanded for a new trial.

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