

Commonwealth of Virginia,

County of Rockingham, to-wit:

In the Circuit Court of said County:

The jurors of the Commonwealth of Virginia, in and for the body of the County of Rockingham, and now attending the Circuit Court of said county ^{at its January Term 1917} UPON THEIR OATHS PRESENT, that Calvin Bare since November 1st, 1916, in said County, did manufacture and unlawfully dispense and give away intoxicating cider containing more than one per cent of alcohol by volume in violation of the prohibition act of Virginia,

against the peace and dignity of the Commonwealth of Virginia.

~~AND THE JURORS AFORESAID, UPON THEIR OATHS AFORESAID, DO FURTHER PRESENT, that~~

~~against the peace and dignity of the Commonwealth of Virginia.~~

This indictment is found on the testimony of _____

_____,
witnesses sworn in Court and sent before the Grand Jury to give evidence.

Jan. Term, 1917,

COMMONWEALTH
vs. Indictment

Calvin Bear

*Calvin Bear was
in prison*

~~For Felony~~
For Misdemeanor

A TRUE BILL

G. B. Eastham
Foreman

We the jury find the accused guilty on charges
in the indictment and his punishment be a
fine of forty dollars and ~~at~~ confinement for
three days in jail
Attest, W. M. Shultz Jr Foreman.

~~1~~
Defendants Bill of Exception No. ~~1~~ 2

In the Circuit Court of Rockingham County, ~~November~~ January
Term, 1917.

Commonwealth of Virginia

v. Indictment for Misdemeanor

Calvin Bare

Be it remembered that upon the trial of
this cause the Commonwealth to maintain the issue on its part intro-
duced the following witnessess, all of whom were first duly sworn,
who testified as follows:

D.E. CROUSHORN, sheriff of Rockingham county, being introduced
as aforesaid, and being examined by H. M. Strickler, Attorney for
the Commonwealth, and ~~by C.R. Winfield~~ cross examined by C.R. Winfield,
attorney for the defendant, testified, in general effect, as
follows:

By authority of a warrant issued under the provisions of §
22 of the Prohibition Act of 1916, I went, on Nov. 30, 1916, to
the residence of the defendant Calvin Bare, in Rockingham county.

The place where he lives is not immediately on the
public road, but is approached by a lane leading therefrom.

The order of location of the buildings, as appro-
ached from the public road is as follows: First the barn; second
a small chicken house; third the outhouse in which the cider was
found (this being a single story weatherboarded structure, about
10 x 12 feet) and between that and the actual dwelling
several other small structures, probably a pig pen and a smokehouse.

I found defendant at home. Asked him if he had any
cider and he said yes he had, in the ^{newly built} outhouse, and at my request
he took me there and unlocked the door, which was locked ^{with a fall}
night latch. There were no bins or anything like
that in there.

In the Circuit Court of Rockingham County, ~~November~~ January Term, 1917.

Commonwealth of Virginia

Judgment for Misdeamors

Calvin Bate

As it is remembered that upon the trial of this cause the Commonwealth to sustain the issue on its part introduced the following witnesses, all of whom were first duly sworn, and testified as follows:

D. B. BROUGHTON, Sheriff of Rockingham County, being introduced as witness, and being examined by W. M. Strickler, Attorney for the Commonwealth, and G. C. FOSTER cross examined by C. F. Phillips, Attorney for the defendant, testified, in general effect, as follows:

By authority of a warrant issued under the provisions of § 22 of the Prohibition Act of 1916, I went, on Nov. 30, 1916, to the residence of the defendant Calvin Bate, in Rockingham County.

The place where he lives is not immediately on the public road, but is approached by a lane leading therefrom.

The order of location of the buildings, as approached from the public road is as follows: first the barn; second

a small chicken house; third the outhouse in which the cider was found (this being a single story weatherboarded structure, about

10 x 12 feet) and between that and the actual dwelling several other small structures, probably a pig pen and a smokehouse.

I found defendant at home, Asked him if he had any cider and he said he had, in the outhouse, and at my request

he took me there and unlocked the door, which was locked with a lock might catch. There were no bins or anything like that in there.

roughly built
with a lock
might catch. There were no bins or anything like that in there.

Seventy five

~~padlock~~ This outhouse stands at the distance of about ~~across the~~
~~or eighty feet~~ from the dwelling .

I found there one barrel nearly full of cider . This barrel had a small hole in it near the top , through which cider could be drawn by inserting a tube or straw . Also found a half barrel furnished with a spiggott , and about half full of cider , or vinegar . I tasted the cider from both barrels . That from the larger barrel tasted to me like sharp cider , and that from the smaller barrel tasted

unlike anything I had ever tasted before
Defendant said that the ~~larger barrel~~ *larger barrel contained sweet cider and the smaller one cider that was made*

for vinegar and that his wife had put yeast , or " rivels " into it to make it ferment quicker and change it into vinegar . Also *he had not been selling it but* said that he had been allowing persons to come and drink of the cider

and would tell them that it was there , and would unlock the door when he wanted to give cider to any person . He said further that the persons to whom he had been giving cider drank mostly out of the larger barrel . The smaller barrel , he said had sprung a leak before the time he had laid a floor in the building , and that some of the contents had been lost in that way . The boys , he said , had been stealing his cider before he put a floor in the building and

a lock on the door and that some of it had gone in that way . He also said that he had made up a lot of applebutter from cider made during the season . He also said that the vinegar had been made three to four weeks , and that the cider had been made from *Genet apples*

contents of the smaller barrel, which he spoke of as ~~apples~~ about two weeks before the time that I was talking to him . *two empty barrels,* *one gallon*

I also found in the outhouse an old stove, *a pint cup,* three buckets of molasses , in cans with tightly fittings lids , which buckets or cans were full of molasses . Also found a lantern , *some* chains , some tools , an empty jug , a roll of roofing and possibly some other small articles not noted by me were there .

While I was at the place I saw two people approach . *two fellows in a* *back board.* They were still there when I left . *Another man Lewis Bengi Reed,* *was here while I was there and asked him whether he had drunk any of the cider and* From each of the two barrels containing the liquids I filled a quart *the 1000 me to 107, in the*

bottle and numbered these bottles as No. 1 & No. 2 - *No. 1. was from the* *Smaller barrel, which Bone said was for vinegar, and No. 2 from the large barrel.* In order that the samples so drawn might be safely carried I put small punctures through the corks and stuck the corks back into the necks of the bottles , lightly . I was traveling in my car . *business of Bone's*

from both barrels

the 1000 me to 107, in the business of Bone's

Aluminum from

This outhouse stands at the distance of about ~~100~~ ¹⁰⁰ feet from the dwelling.

I found there one barrel nearly full of cider. This barrel had a small hole in its upper part, through which other could be seen by inserting a cone or straw. Also found a half barrel full of vinegar, and about half full of cider, or vinegar.

I carried the cider from both barrels. That from the larger barrel tasted to me like sharp cider, and that from the smaller barrel tasted like vinegar.

Aluminum from barrel
Aluminum from barrel
Aluminum from barrel
I found that the barrel which I had just carried from the larger barrel was nearly full of cider, and that the barrel which I had just carried from the smaller barrel was nearly full of vinegar.

Also found that the barrel which I had just carried from the larger barrel was nearly full of cider, and that the barrel which I had just carried from the smaller barrel was nearly full of vinegar.

and would tell them that it was there, and would unlock the door when he wanted to give cider to any person. He said further that the persons to whom he had been giving cider drank mostly out of the larger barrel.

the smaller barrel, he said he had sprung a leak in the larger barrel, and that some of the cider had been lost in that way.

The boys, he said, had been giving his cider before he got a floor in the building and had been giving his cider before he got a floor in that way.

He also said that he had made up a lot of cider made from cider made from the larger barrel, and that the cider had been made from the larger barrel.

He also said that the vinegar had been made from the larger barrel, and that the cider had been made from the larger barrel.

about two weeks before the time that I was talking to him.

I also found in the outhouse an old stove, not put up, three or four barrels of molasses, in cans with slightly flattened lids, with corks or one wire full of molasses. Also found a lantern, some tin, some tools, an empty jug, a roll of roofing and possibly some other small articles not noted by me were there.

When I was at the place I saw two people approach. They were men, one of whom I killed a deer.

In order that the samples so drawn might be safely carried I put small punctures through the corks and stuck the corks back into the necks of the bottles, lightly.

I was traveling in my car.

Two fellows in a
two empty barrels,
three or four

Aluminum from barrel
Aluminum from barrel
Aluminum from barrel

The samples were wrapped in an old robe , placed in the car and so carried by me to my home in Harrisonburg . The distance by the road traveled is about 22 miles . The samples were placed by me in a cool room -the coolest room in my house ,which is a brick house , furnace heated . I ~~remember~~ remember ^{that} ~~the~~ ^{one} window of this room was open ^{and the heat was cut off from the room.} I can not say that this room was in fact as cool as the outhouse in which defendant had kept the cider . We have ,on occasion had canned fruits and things of that kind to freeze in this room .

On Decr. 1, 1916 , the two bottled samples ,kept by me as aforesaid, were,by me , heavily wrapped in paper ,placed in a specially prepared box , the spaces tightly filled in by stuffing with paper and the box nailed up and sealed . The box was also heavily wrapped in paper and furnished with a handle ,so that it might be carried like a suit case . The package so prepared I delivered on the morning of Decr. 2, 1916 , to Frank L. Dovel , Chief of Police , of Harrisonburg , to be by him taken and turned over to the State chemist, at Richmond , for analysis and report .

I know that cider is subject to changes in strength . When first made it is non intoxicating , and then will naturally change, ^{according to} ~~accordance with~~ the conditions under which it is kept or handled .

The samples were wrapped in an old robe, placed in the car and so carried by me to my home in Harrisonburg. The distance by the road traveled is about 22 miles. The samples were placed by me in a cool room - the coolest room in my house, which is a brick house, and the window of this room ~~is~~ ^{is} ~~not~~ ^{not} ~~open~~ ^{open} and the fact as the defendant had kept the cider. We have, on occasion had canned fruits and things of that kind to freeze in this room.

On Dec. 1, 1915, the two bottled samples, kept by me as described, were by me, heavily wrapped in paper, placed in a specially prepared box, the spaces tightly filled in by stuffing with paper and the box nailed up and sealed. The box was also heavily wrapped in paper and furnished with a handle, so that it might be carried like a suit case. The packages so prepared I delivered on the morning of Dec. 2, 1915, to ~~Frank~~ ^{Frank} ~~Gov~~ ^{Gov}, Chief of Police of Harrisonburg, to be by him taken and turned over to the State Marshal at Richmond, for analysis and report.

I know that cider is subject to changes in strength. When first made it is non-intoxicating, and then will naturally change ~~according to~~ ^{according to} the conditions under which it is kept or handled.

^L
FRANK DOVEL, Chief of Police of City of Harrisonburg, another witness in the same behalf being examined and cross examined by counsel, as aforesaid, testified in effect as follows:

On the morning of Decr. 2, 1916, at Harrisonburg, I received the package from Sheriff Croushorn, as testified to by him.

I took this package with me on the train, from Harrisonburg, to Richmond, Va., via Staunton, a distance of about 162 miles.

The cars appeared to be heated to about the ordinary degree.

The package was placed by me on the floor of the car, in my seat, and was so carried to Richmond, change of cars being made at Staunton.

On arrival at Richmond I took the package to the office of the State Chemist, delivered it to some person there in charge, saw the package opened, and took from the person to whom I delivered it a receipt *identifying the samples - The receipt referred to was located and here copied the receipt signed by C.M. Madburg, Chemist -* (When the package was opened the bottles were ~~found~~ light and no liquid had worked out. while on the way from Har-

rrisonburg to Richmond the temperature in the cars was such as is usual. I did not at any time get cold feet, and was comfortable in the rest of my body. I was raised in the country, have seen cider made, have drank it when sweet, and know that it changes in strength from perfectly sweet, when made, to sharper, or stronger as it gets older and as it may be more or less influenced by the temperature in which it is kept &.

D. FULK, another witness in the same behalf being examined and cross examined by counsel, as aforesaid, testified in effect, as follows:

I have at various times seen people going to and coming from the house of the defendant. I know that defendant had some cider on hand before November 1, 1916. Before that date he on one occasion gave me some cider to drink. Since that date I have not gotten any cider or other drink from the defendant.

At the time defendant was building the house in which the cider was kept he told me he was building it for a grain house.

Defendant had no other place suitable for the storage of his wheat rye or corn, and there was no cellar under his dwelling.

I live near the home of defendant and never saw any signs of intoxication in the persons I have noticed coming from his place. The cider he gave me before Nov. 1, 1916, was not intoxicating.

It was not working at that time - shows no signs of working.

FRANK DAVIS, Chief of Police of City of Harrisonburg, another witness in the same behalf being examined and cross examined by counsel, as aforesaid, testified in effect as follows:

On the morning of Dec. 2, 1918, at Harrisonburg, I received the package from Sheriff Crossborn, as testified to by him. I took this package with me on the train, from Harrisonburg, Va., via Staunton, a distance of about 100 miles.

The package was placed by me on the floor of the car, in my seat, and was so carried to Richmond, change of cars being made at Staunton. On arrival at Richmond I took the package to the office of the State Marshal, delivered it to some person there in charge, and the package opened, and took from the person to whom I delivered it the receipt, C. M. Mackay, Sheriff.

On the morning of Dec. 2, 1918, at Harrisonburg, I received the package from Sheriff Crossborn, as testified to by him. I took this package with me on the train, from Harrisonburg, Va., via Staunton, a distance of about 100 miles.

The package was placed by me on the floor of the car, in my seat, and was so carried to Richmond, change of cars being made at Staunton. On arrival at Richmond I took the package to the office of the State Marshal, delivered it to some person there in charge, and the package opened, and took from the person to whom I delivered it the receipt, C. M. Mackay, Sheriff.

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The package was placed by me on the floor of the car, in my seat, and was so carried to Richmond, change of cars being made at Staunton. On arrival at Richmond I took the package to the office of the State Marshal, delivered it to some person there in charge, and the package opened, and took from the person to whom I delivered it the receipt, C. M. Mackay, Sheriff.

At the time of the trial, the receipt was not produced. The receipt was signed by C. M. Mackay, Sheriff, and was in the handwriting of C. M. Mackay, Sheriff. The receipt was not produced at the trial.

TOM BARE , another witness in the same behalf , being duly examined and cross examined by counsel , as aforesaid , testified , in effect , as follows:

I am about 14 years old and live with my father , the defendant . I remember having seen Willy Reedy , Sam Miller and Berlin Turner about the place , a good while ago , several weeks before Croushorn was there . On the day Croushorn was there Reedy came up on horseback . I saw no signs of intoxication in any persons seen by me about the place at any time , and I dont know that any of the persons named by me got any cider . The three named by me I only saw once about the place so far as I recollect .

The smaller barrell that was kept in the outhouse was the vinegar barrell . During the season of 1916 defendant had had made from apples grown on his own place , five barrels of cider . Two barrels were used in making applebutter and a considerable part of one barrel was slipped out by some persons .

The "rivels " were put into the vinegar barrel by my mother . The molasses found in the outhouse was intended for family use , and other things to eat such as apples, beans &c had some times been kept there . The outhouse was needed on the place for the keeping of grain &c.

WILL REEDY , another witness in the same behalf being examined and cross examined by counsel , as aforesaid , testified in effect as follows : I got some sweet cider from defendant , at the outhouse, about two weeks before Croushorn was there . Defendant told me I could have some out of the large barrel and that the other was for vinegar . I drank about a pint from the smaller barrel and it tasted more like vinegar . It was in the day time .

I was not influenced by what I drank . The only way I felt it was that I could feel it going down my throat as I swallowed it . I think I could have drank five or six pints of the cider and not have felt intoxicated from it . It was given to me by defendant , I paid nothing for it .

TOM BANE, another witness in the same behalf, being duly examined and cross examined by counsel, as aforesaid, testified in effect, as follows:

I am about 35 years old and live with my father, the defendant. I remember having seen Willie Ready, Sam Miller and Berlin Turner about the place, a good while ago, several weeks before Groushorn was there. On the day Groushorn was there Ready came up on horseback. I saw no signs of intoxication in any persons seen by me about the place at any time, and I don't know that any of the persons named by me got any cider. The three named by me I only saw once about the place so far as I recollect.

The smaller barrels that are kept in the outhouse was the vinegar barrels. During the season of 1918 defendant had had made from apples grown on his own place, five barrels of cider. The barrels were used to making apple cider and a considerable part of one barrel was shipped out by some persons.

The "cider" were put into the vinegar barrel by my mother. The molasses found in the outhouse was intended for family use, and other things to eat such as apples, beans &c had some times been kept there. The outhouse was needed on the place for the keeping of grain &c.

WILLIE READY, another witness in the same behalf being examined and cross examined by counsel, as aforesaid, testified in effect as follows: I got some sweet cider from defendant, at the outhouse, about two weeks before Groushorn was there. Defendant told me I could have some out of the large barrel and that the other was for vinegar. I drank about a pint from the smaller barrel and it tasted more like vinegar. It was in the day time.

I was not influenced by what I drank. The only way I felt I think I could feel if going down my throat as I swallowed it. I think I could have drunk five or six pints of the cider and not have felt intoxicated from it. It was given to me by defendant, I said nothing for it.

BERLIN TURNER , another witness in the same behalf being duly examined and cross examined by counsel as aforesaid , testified, in effect, as follows :

The defendant gave me some cider . I dont remember how long it was before Croushorn was there . I think at that time a floor had partly been laid in the outhouse .

I only remember getting ~~some~~ cider from the defendant, on this one occasion . I got some from both of the barrels ; ^{Got it and drank it here in the building where it was} The sweet cider from the larger barrel tasted to me the best .

I felt no intoxicating effects from what I drank .

I saw there ,at defendants , when I got the cider , Charles Ritchie and Willy Reedy . I can not positively swear this was in November .

LEWIS BEN REEDY , another witness in the same behalf ,being examined and cross examined by counsel , as aforesaid , testified, in effect , as follows:

The defendant gave me some of his cider, some three of four days before Croushorn was there . ^{them in the building where he kept it} I drank from both of the barrels . The smaller barrel tasted more like vinegar .

I did not feel the effects of what I drank .

EDWARD SHOEMAKER , another witness in the same behalf ,being examined and cross examined by counsel, as aforesaid , testified, in effect , as follows:

The defendant gave me some cider to drink , I think after Nov. 1, 1916 . Probably two or three weeks before Croushorn was there . I drank from both barrels ^{there in the building where it was} and both were sweet cider at that time ^{just a little bit sharp} . The outhouse where the cider is kept is a necessary building for defendant to have for convenient use of his place in the storage of his grain . He had no other place so far as I know where it would have been convenient or suitable to keep his cider .

WILLIAM TURNER, another witness in the same behalf being duly examined and cross examined by counsel as aforesaid, testified in effect, as follows:

The defendant gave me some cider, I don't remember how long it was before Groushorn was there, I think at that time either had partly been laid in the outhouse. I only remember getting ~~some~~ cider from the defendant on this one occasion. I got some from both of the barrels. The sweet cider from the larger barrel tasted to me the best. I felt no intoxicating effects from what I drank. I saw Clara, at defendant's, when I got the cider, Charles Nichols and Willy Heedy. I can not positively swear this was in November.

WILLIAM TURNER, another witness in the same behalf, being examined and cross examined by counsel, as aforesaid, testified in effect, as follows:

The defendant gave me some of his cider, some three or four days before Groushorn was there. I drank from both of the barrels. The smaller barrel tasted more like vinegar. I did not feel the effects of what I drank.

EDWARD SHOMAKER, another witness in the same behalf, being examined and cross examined by counsel, as aforesaid, testified in effect, as follows:

The defendant gave me some cider to drink, I think after Nov. 1, 1916. Probably two or three weeks before Groushorn was there. I drank from both barrels and both were sweet cider at that time. The outhouse where the cider is kept is a necessary building for defendant to have for convenient use of his place in the storage of his grain. He had no other place so far as I know where it would have been convenient of suitable to keep his cider.

CHAS.W.RITCHIE , another witness introduced in the same behalf , being examined and cross examined by counsel as aforesaid, testified , in effect, as follows:

I live about 150 yards from the defendant . From my house

I can see his and from my front door I can look right into the outhouse where the cider was kept . Defendant gave me , in this grain house , in ~~the~~ November, 1916 , some cider to drink . I think about three different times . *I drank from the big barrels.* I drank enough of it for it to feel heavy on my stomach . It had no kick . I felt no intoxicating effects from it . *Will and Jake Ruby went there the second time - saw them get cider from the little barrel.*

The outhouse is certainly a proper and necessary building for defendant to have for a grain house and is located just at the place , with reference to his other buildings , where , if the place was mine , I would want to have it for a grain house , and for an outhouse . The house of the defendant is small and he has no other place for convenient or proper storage of his grain and other things . *There wasn't any grain there though - Boris grain was -* I have never seen any intoxicated persons at or about the place of the defendant and have not seen or heard of any disturbance caused by his cider . *This witness said the second time he was there November: 10 days before Courtroom was there and the 3rd time was the next morning and the first time was several weeks before that, and that the 22 and 23rd time, you could tell it was beginning to ferment, after it didn't have any kick in it.*

And the Commonwealth further to maintain the issue on its part introduced and read in evidence to the jury the whole of the following written and printed document , to-wit:

(Here insert the whole of the paper on which the certificate of analysis of the cider is written)

This witness said the second time he was there November: 10 days before Courtroom was there and the 3rd time was the next morning and the first time was several weeks before that, and that the 22 and 23rd time, you could tell it was beginning to ferment, after it didn't have any kick in it.

... another witness introduced in the same behalf ...
being examined and cross examined by counsel as aforesaid, testified
in effect, as follows:

I live about 150 yards from the defendant's front door
I can see his and from my front door I can look right into the
outhouse where the cider was kept. Defendant gave me, in this
grain house, in November, 1916, some cider to drink. I think
I drank from the big barrel.

heavy on my stomach. It had no kick, I felt no intoxicating
effect. The outhouse is certainly a proper and necessary
building for defendant to have for a grain house and is located

just at the place, with reference to his other buildings, where
if the place was mine, I would want to have it for a grain house
and for an outhouse. The house of the defendant is small and he
has no other place for convenient or proper storage of his grain and
other things. I have never seen any intoxicated persons at or

about the place of the defendant and have not seen or heard of any
disturbance caused by his cider. This witness said the first time he saw
November, to keep before Grand Jurors that he saw the 30¢ of
and the first time was some weeks before that, and that he saw the 25¢ and 30¢ time.

And the Commonwealth further to maintain the issue on its part in-
produced and read in evidence to the jury the whole of the following
written and printed document, to-wit:

(Here insert the whole of the paper on which the certificate
of analysis of the cider is written)

Direct your attention to the fact that the witness said the first time he saw the 30¢ of November, to keep before Grand Jurors that he saw the 30¢ of and the first time was some weeks before that, and that he saw the 25¢ and 30¢ time.

It is stipulated and agreed between the prosecutor and counsel for the defendant that the evidence showed the the following further facts :

That each giving away of cider was shown by the testimony, was done by the defendant in the building referred to in the testimony as the outhouse

That there was no evidence in the cause as to any sale of any cider or ardent spirits of any character by the defendant.

The Court certifies further that all of the witnesses who testified to getting cider of the defendant, testified that they got it and drank it in the building in which it was kept, and that there was no testimony to the effect that the defendants had sold it, but all testified that it was given to them.

It is stipulated and agreed between the prosecutor and counsel for the defendant that the evidence showed the following facts:

That each living away of either, as shown by the testimony, was done by the defendant in the building referred to in the testimony as the defendant's residence.

That there was no evidence in the case as to any sale of any other or ardent spirits of any character by the defendant.

The Court further found that all of the business was conducted by the defendant, that the defendant testified that the first of the business was done in the building in which it was kept, and that the defendant testified to the effect that the defendant had been given to them.

And thereupon the commonwealth rested and the defendant likewise rested

Which said testimony and written evidence is all of the evidence introduced on the part of the commonwealth, and the defendant offered no witnesses or other testimony in his behalf.

And the taking of testimony on both sides having been concluded the Court instructed the jury as follows :

(Here insert the three instructions granted, numbering them respectively 1, 2, & 3)

And thereupon, after hearing argument by counsel, the jury retired to consult of its verdict, and having duly considered thereof the jury returned to the court the following verdict, which was duly signed by the foreman and read aloud ~~by the clerk~~ to them, by the Clerk, and acquiesced in by each of the jury, the said verdict being in the words and figures following, to-wit:

(Here insert the verdict)

Whereupon the defendant, by his counsel, moved the court to set aside the said verdict as contrary to the law and the evidence, and to grant a new trial. Whereupon the court having heard argument and having considered of its decision, declined to set aside the said verdict and overruled said motion to set the same aside, and entered its judgment in the following words and figures, to-wit:

(here insert the judgment)

To which action on the part of the court in overruling said motion to set aside said verdict and grant a new trial, and in entering judgment upon said verdict, the defendant by his counsel excepted, and tendered this his Bill of Exceptions, and prayed that the same be signed, sealed, enrolled and made part of the record, which is accordingly done, this 30 day of March, 1917.

J. H. Haas, Judge

And thereupon the Commonwealth rested and the defendant likewise rested
which rest testimony and written evidence is all of the evidence
introduced on the part of the Commonwealth, and the defendant offered
no witnesses or other testimony in his behalf.
And the taking of testimony on both sides having been concluded
the Court instructed the jury as follows:

Here insert the three instructions granted, numbering them
respectively 1, 2, & 3.

And thereupon, after hearing argument by counsel, the jury
retired to consult of its verdict, and having duly considered thereof the
jury returned to the court the following verdict, which was duly signed
by the foreman and read aloud according to them, by the Clerk, and
announced in by each of the jury, the said verdict being in the words
and figures following, to-wit:

Here insert the verdict.

Thereupon the defendant, by his counsel, moved the court to set
aside the said verdict as contrary to the law and the evidence, and to
grant a new trial. Thereupon the court having heard argument and
having considered of its decision, declined to set aside the said verdict
and overruled said motion to set aside the same, and entered its
judgment in the following words and figures, to-wit:
Here insert the judgment.

To which action on the part of the court in overruling said
motion to set aside said verdict and grant a new trial, and in entering
judgment upon said verdict, the defendant by his counsel excepted,
and tendered this Bill of Exceptions, and prayed that the same be
signed, sealed, enrolled and enter part of the record, which is according
to law, this 30 day of March, 1917.

J. A. Harris, Jr.

The Court instructs the jury that while the law of this State allows a person to make cider of any strength from fruit of his own raising, for domestic consumption at his own home; and, furthermore, allows one in his own home, to give ardent spirits, including cider of more than one per cent alcohol, to another person, or to other persons, yet the right to give to another person cider containing more than one per cent of alcohol by volume, or any other ardent spirits, can only be exercised in the home of the giver; and the Court further tells the jury that the definition of the word home, in the sense in which that word is used in the law in this connection, can not be extended to, and does not include, the outhouse mentioned in the evidence in which the accused kept his cider; and therefore that if the jury believe from the evidence beyond reasonable doubt that the cider dispensed or given away by the defendant, ^{after Nov. 1, 1916,} as shown in the evidence, contained at the time more than one per centum of alcohol by volume, then they should find the accused guilty as charged in the indictment and fix his punishment at a fine of not less than \$50.00 and not more than \$500.00, and confinement in jail for not less than one month and not more than six months.

The Court instructs the jury that while the law of this State allows a person to make cider of any strength from fruit of his own raising, for domestic consumption at his own home; and, furthermore, allows one in his own home, to give abundant spirits, including cider of more than one per cent alcohol, to another person, or to other persons, yet the right to give to another person cider containing more than one per cent of alcohol by volume, or any other spirit, can only be exercised in the home of the giver; and the Court further tells the jury that the definition of the word home, in the sense in which that word is used in the law in this connection, can not be extended to and does not include, the outhouse mentioned in the evidence in which the accused kept his cider; and therefore that if the jury believe from the evidence beyond reasonable doubt that the cider dispensed or given away by the defendant, as shown in the evidence, contained at the time more than one per centum of alcohol by volume, then they should find the accused guilty as charged in the indictment and fix his punishment at a fine of not less than \$50.00 and not more than \$500.00, and confinement in jail for not less than one month and not more than six months.

ALL RIGHTS RESERVED

Handwritten notes in the top left corner, including the word "Case" and several illegible lines of text.

The court instructs the jury that in order to justify them in finding the accused guilty as charged in the indictment, they should first be convinced of his guilt, from the evidence, beyond a reasonable doubt. In every criminal trial the accused is entitled to the benefit of every reasonable doubt that may arise from the evidence, or from the lack of evidence, and should the Commonwealth fail to prove, by the evidence, beyond a reasonable doubt, the facts necessary to warrant a conviction, then the jury must acquit.

Case v. Board

Instructions given

by the Court on the

trial - to be applied

with the facts

No. 2.

Instructions the jury that in order to justify
them in finding the accused guilty as charged in the indictment
they should first be convinced of his guilt, from the evidence,
beyond a reasonable doubt. In every criminal trial the accused
is entitled to the benefit of every reasonable doubt that
may arise from the evidence, or from the lack of evidence, and
should the Commonwealth fail to prove, by the evidence, beyond
a reasonable doubt, the facts necessary to warrant a conviction,
then the jury must acquit.

Commonwealth of Virginia,
County of Rockingham, to-wit:

In the Circuit Court of said County:

1
The jurors of the Commonwealth of Virginia, in and for the body of the County of Rockingham, at its January term, 1917, and now attending the Circuit Court of said county, UPON THEIR OATHS PRESENT, that Calvin Bear since November 1, 1916, in the said County, did unlawfully manufacture, sell, offer, keep, store, and expose for sale, give away and dispense ardent spirits in violation of the prohibition act of Virginia, against the peace and dignity of the Commonwealth of Virginia.

2
AND THE JURORS AFORESAID, UPON THEIR OATHS AFORESAID, DO FURTHER PRESENT, that Calvin Bear since November 1, 1916, in the said County did ~~unlawfully~~ manufacture, ~~unlawfully~~ dispense and give away intoxicating cider, containing more than one per centum of alcohol by volume in violation of the prohibition act of Virginia, against the peace and dignity of the Commonwealth of Virginia.

3
AND THE JURORS AFORESAID, UPON THEIR OATHS AFORESAID, DO FURTHER PRESENT that Calvin Bear since November 1, 1916, in the said County did unlawfully manufacture vinegar from cider and fruit and did unlawfully sell, dispense and give away same as a beverage, in violation of the prohibition act of Virginia, against the peace and dignity of the Commonwealth of Virginia.

This indictment is found on the testimony of _____
witnesses sworn in Court and sent before the Grand Jury to give evidence.

January Term, 1917.

Prohibition.

Commonwealth
vs. Indictment
Calvin Bear.

For a Misdemeanor.

A TRUE BILL

as to 2nd County

G. R. Eastham.

Foreman

Harry M. Strickler,
Commonwealth's Attorney.

In the Circuit Court of said County,
County of Rockingham, to-wit:
Commonwealth of Virginia.

The jurors of the Commonwealth of Virginia, in and for
the body of the County of Rockingham, at its January term, 1917,
and now attending the Circuit Court of said County, UPON THEIR
OATHS PRESENT, that Calvin Bear since November 1, 1916, in the
said County, did unlawfully manufacture, sell, offer, keep, store,
and now attending the Circuit Court of said County, UPON THEIR

the peace and dignity of the Commonwealth of Virginia,
beverage, in violation of the prohibition act of Virginia, against
said County did unlawfully manufacture since November 1, 1916, in the
AND THE JURORS AFORESAID, UPON THEIR OATHS AFORESAID,

to testify on the testimony of
evidence.

Commonwealth v. Calvin Bare. INSTRUCTION A.

The court instructs the jury that it is lawful for any person to manufacture and keep for domestic consumption, at his home, cider from fruit of his own raising, regardless of the alcoholic strength, or to manufacture from fruit, cider not containing more than one percent of alcohol, by volume, for use or sale, or for vinegar

INSTRUCTION B.

Commonwealth v. Bare.

The court instructs the jury that the word home as used in the law here to be applied, means the permanent residence, or abiding place of a person (other than a club, hotel, boarding house etc.) and includes with the actual dwelling house, or place, all outbuildings commonly used and intended for necessary or convenient use in connection with the use of the whole as a home.

Whether or not the cider given away by the accused was at the time of such giving of greater strength than is by law allowed, where the giving is not shown to be within the home of the giver, and whether or not the giving occurred within the home of the accused are questions of fact to be determined by the jury, upon the evidence.

Commonwealth v. Calvin Bare,

Instruction C.

The Court instructs the jury that a person having a home, as defined by the law, and by the instructions given, may lawfully give away CIDER, in such home : Provided that such giving is in no wise a shift or device to evade the provisions of the law. And the Court further instructs the jury that if they believe from the evidence that the giving of cider by the accused, as charged in the indictment, and shown in the evidence, occurred only within the home of the accused, in the sense in which home has been defined to them, and that such giving was in no wise a shift or device to evade the provisions of the law, they will find the accused not guilty.

Commonwealth v. Calvin Bore. INSTRUCTION A.

The court instructs the jury that it is lawful for any person to manufacture and keep for domestic consumption, at his home, cider from fruit of his own raising, regardless of the alcoholic strength, or to manufacture from fruit, cider not containing more than one percent of alcohol, by volume, for use or sale, or for vinegar.

INSTRUCTION B.

Commonwealth v. Bore.

The court instructs the jury that the word home as used in the law here to be applied, means the permanent residence, or abiding place of a person (other than a club, hotel, boarding house etc.) and includes with the actual dwelling house, or place, all outbuildings commonly used and intended for necessary or convenient use in connection with the use of the whole as a home.

Whether or not the cider given away by the accused was at the time of such giving of greater strength than is by law allowed, where the giving is not shown to be within the home of the giver, and whether or not the giving occurred within the home of the accused are questions of fact to be determined by the jury, upon the evidence.

Commonwealth v. Calvin Bore.

Instruction C.

The Court instructs the jury that a person having a home, as defined by the law, and by the instructions given, may lawfully give away CIDER, in such home: Provided that such giving is in no wise a shift or device to evade the provisions of the law. And the Court further instructs the jury that if they believe from the evidence that the giving of cider by the accused, as charged in the indictment, and shown in the evidence, occurred only within the home of the accused, in the sense in which home has been defined to them, and that such giving was in no wise a shift or device to evade the provisions of the law, they will find the accused not guilty.

A.

Commonwealth v. Calvin Bare .

INSTRUCTION E.

Revised

The court instructs the jury that before they would be justifiable in finding the accused guilty, it would be necessary for them to believe, from the evidence, beyond all reasonable doubt, that the accused, at some time after November 1st, 1916, at some place not within the home of the accused (as home has been defined) gave away cider which at the time of such giving, was of greater strength than one percent of alcohol, by volume.

And the jury are further instructed that while the official analyses of the samples of cider is competent evidence that the samples of cider analysed, were, each, at the time of the completion of the analyses, of the strength certified to in said report, it is not evidence of the strength of the cider from which such samples were drawn, either at the time when the cider was given away by the accused, or at the time when such samples were drawn from the barrels.

The jury in reaching a conclusion as to the strength of the cider at the time it was given away by the accused should take into consideration the evidence as to the effect that may have been had on the aging or strengthening of the samples by the period of time that elapsed between the last date of giving by the accused and the drawing of the samples; the effect of the shaking and the changes of temperature to which the cider may have been subjected in the drawing and carrying of the samples to Richmond and all things that may have tended to increase the strength of the samples analysed up to the date of completion of the analyses.

Revised

Revised

and analyses

A

Keenan

INSTRUCTION 5.

The court instructs the jury that
 before they would be justified in finding the accused guilty, it would
 be necessary for them to believe, from the evidence, beyond all reason-
 able doubt, that the accused, at some time after November 1st, 1918, at
 some place not within the home of the accused (as home has been defined)
 gave any other which at the time of such giving, was of greater strength
 than one percent of alcohol, by volume.

And the jury are further instructed that while the official anal-
 ysis of the samples of either is competent evidence that the samples of
 other analyzed were, each, at the time of the completion of the anal-
 ysis, of the strength certified to in said report, it is not evidence
 of the strength of the other from which such samples were drawn, unless
 at the time when the other was given away by the accused, or at the time
 when such samples were drawn from the barrels.

The jury in reaching a conclusion as to the strength of the other
 at the time it was given away by the accused should take into consider-
 ation the evidence as to the effect that may have been had on the strength
 or strengthening of the samples by the period of time that elapsed be-
 tween the last date of giving by the accused and the drawing of the
 samples; the effect of the shaking and the changes of temperature to
 which the other may have been subjected in the drawing and carrying of
 the samples to Richmond, and all things that may have tended to increase
 the strength of the samples analyzed up to the date of completion of
 the analyses.

Given in answer

Commonwealth v. Calvin Bare . INSTRUCTION A.

The court instructs the jury that it is lawful for any person to manufacture and keep for domestic consumption , at his home , cider from fruit of his own raising , regardless of the alcoholic strength , or to manufacture from fruit, cider not containing more than one percent of alcohol , by volume , for use or sale , or for vinegar

~~Vinegar distilled from above as granted in 2d and~~

Commonwealth v. Calvin Bare . INSTRUCTION B.

withdawn

The court instructs the jury that it is lawful for any person to manufacture and keep cider from fruit , for the purposes of vinegar, not to be used as a beverage, and non intoxicating cider containing not more than one percent of alcohol , by volume , for use or sale .

out

Should cider so manufactured become, by natural process , of greater strength than one percent alcohol , it would be unlawful for such person to continue the sale thereof , or to continue the giving away thereof , except in his home , but it would not be unlawful for such person to continue to keep such cider in his home and there give it away, as the law permits the giving of ardent spirits in the home of the giver .

in manner

Handwritten notes at top left.

INSTRUCTION A. *Comwealth v. Galvin*

The court instructs the jury that it is lawful for any person to manufacture and keep for domestic consumption, at his home, cider from fruit of his own raising, regardless of the alcoholic strength, or to manufacture from fruit, cider not containing more than one percent of alcohol, by volume, for use or sale, or for vinegar.

Handwritten notes on left margin.

INSTRUCTION B. *Comwealth v. Galvin*

The court instructs the jury that it is lawful for any person to manufacture and keep cider from fruit, for the purpose of vinegar, not to be used as a beverage, and non-intoxicating cider containing not more than one percent of alcohol, by volume, for use or sale. Should cider so manufactured become, by natural process, of greater strength than one percent alcohol, it would be unlawful for such person to continue the sale thereof, or to continue the giving away thereof, except in his home, but it would not be unlawful for such person to continue to keep such cider in his home and there give it away, as the law permits the giving of ardent spirits in the home of the giver.

INSTRUCTION ~~e~~ B.

Revised

Commonwealth v. Bare.

The court instructs the jury that the word home as used in the law here to be applied, means the permanent residence, or abiding place of a person (other than a club, hotel, boarding house etc.) and includes with the actual dwelling house, or place, all outbuildings commonly used and intended for necessary or convenient use in connection with the use of the whole as a home.

Whether or not the cider given away by the accused was at the time of such giving of greater strength than is by law allowed, where the giving is not shown to be within the home of the giver, and whether or not the giving occurred within the home of the accused are questions of fact to be determined by the jury, upon the evidence.

~~Compare to instruction~~

INSTRUCTIONS 9

Revised

Commonwealth v. [illegible]

The court instructs the jury that the word home as used in the law here to be applied, means the permanent residence, or abiding place of a person (other than a club, hotel, boarding house etc.) and includes with the actual dwelling house, or place, all outbuildings commonly used and intended for necessary or convenient use in connection with the use of the whole as a home.

Whether or not the elder given away by the accused was at the time of such giving of greater strength than is by law allowed, where the giving is not shown to be within the home of the giver, and whether or not the giving occurred within the home of the accused are questions of fact to be determined by the jury, upon the evidence.

[Faint handwritten text]

C.

Commonwealth v. Calvin Bare ,

Revised

~~Instruction D.~~

The Court instructs the jury that a person having a home , as defined by the law , and by the instructions given , may lawfully give away CIDER , in/ such home : Provided that such giving is in no wise a shift or device to evade the provisions of the law . And the Court further instructs the jury that if they believe from the evidence that the giving of cider by the accused , as charged in the indictment , and shown in the evidence , occurred only within the ~~evidence~~ home of the accused , in the sense in which home has been defined to them , and that such giving was in no wise a shift or device to evade the provisions of the law , they will find the accused not guilty .

W. H. ...

C.

Commonwealth v. Calvin Bane,

Instruction B.

The Court instructs the jury that a person having a name, as defined by the law, and by the instructions given, may lawfully give away CIDER, in such name; provided that such giving is in no wise a shift or device to evade the provisions of the law. And the Court further instructs the jury that if they believe from the evidence that the giving of cider by the accused, as charged in the indictment, and shown in the evidence, occurred only within the ~~accused~~ home of the accused, in the sense in which same has been defined to them, and that such giving was in no wise a shift or device to evade the provisions of the law, they will find the accused not guilty.

Commonwealth v. Calvin Bare.

INSTRUCTION D.

The court instructs the jury that before they would be justifiable in finding the accused guilty, it would be necessary for them to believe, from the evidence, beyond all reasonable doubt, that the accused, at some time after November 1st, 1916, at some place not within the home of the accused (as home has been defined) gave away cider which at the time of such giving, was of greater strength than one percent of alcohol, by volume.

And the jury are further instructed that while the official analyses of the samples of cider is competent evidence that the samples of cider analysed, were, each, at the time of the completion of the analyses, of the strength certified to in said report, it is not evidence of the strength of the cider from which such samples were drawn, either at the time when the cider was given away by the accused, or at the time when such samples were drawn from the barrels.

The jury in reaching a conclusion, as to the strength of the cider at the time it was given away by the accused should take into consideration the evidence as to the effect that may have been had on the ageing or strengthening of the samples by the period of time that elapsed between the last date of giving by the accused and the drawing and analyses of the samples; the effect of the shaking and the changes of temperature to which the cider may have been subjected in the drawing and carrying of the samples to Richmond and all things that may have tended to increase the strength of the samples analysed up to the date of completion of the analyses,

INSTRUCTION D.

The court instructs the jury that before they would be justified in finding the accused guilty, it would be necessary for them to believe, from the evidence, beyond all reasonable doubt, that the accused, at some time after November 1st, 1916, at some place not within the home of the accused (as home has been defined) gave away either whole or in part, at the time of such giving, was of greater strength than one percent of alcohol, by volume.

And the jury are further instructed that while the official analyses of the samples of cider is competent evidence that the samples of cider analysed, were, each, at the time of the completion of the analyses, of the strength certified to in said report, it is not evidence of the strength of the cider from which such samples were drawn, either at the time when the cider was given away by the accused, or at the time when such samples were drawn from the barrels.

The jury in reaching a conclusion, as to the strength of the cider at the time it was given away by the accused should take into consideration the evidence as to the effect that may have been had on the ageing or strengthening of the samples by the period of time that elapsed between the last date of giving by the accused and the drawing and analyses of the samples; the effect of the shaking and the changes of temperature to which the cider may have been subjected in the drawing and carrying of the samples to Richmond and all things that may have tended to increase the strength of the samples analysed up to the date of completion of the analyses.

E.

Commonwealth v. Calvin Bare .

Instruction F.

Modify as here shown

The court instructs the jury that in order to justify them in finding the accused guilty as charged in the indictment, they should first be convinced of his guilt, from the evidence, beyond a reasonable doubt. In every criminal trial the accused is entitled to the benefit of every reasonable doubt that may arise from the evidence, or from the lack of evidence, and should the Commonwealth fail to prove, by the evidence, beyond a reasonable doubt, the facts necessary to warrant a conviction, or if any one of the facts necessary to show the guilt of the accused is consistent with a theory of his innocence, then the jury must acquit.

See, also, 90 Va. 113, page 636,

State v. Kerns, 47 W. Va. 266; 34 S.E. 734

Taylor v. Commonwealth 90 Va. 109-118

Define by the

See 8th ed

Commonwealth v. Calvin Rose

Instruction 7

Manly for the State

The court instructs the jury that in order to justify them in finding the accused guilty as charged in the indictment, they should be satisfied beyond a reasonable doubt, and a reasonable doubt is a doubt that may arise from the evidence, or from lack of evidence, and should the Commonwealth fail to prove, beyond a reasonable doubt, the facts necessary to constitute the crime charged, the facts necessary to show the guilt of the accused, or the facts necessary to show the innocence of the accused, the jury should find the accused not guilty.

Can!

Calvin Rose

Instruction for

Accused Rose -

Prize on Murder

Calvin Rose v. Commonwealth DO No 104-118

104-118

Commonwealth v. Calvin Bare.

Instruction E.

The court instructs the jury that in order to justify them in finding the accused guilty as charged in the indictment, they should first be convinced of his guilt, from the evidence, beyond a reasonable doubt. In every criminal trial the accused is entitled to the benefit of every reasonable doubt that may arise from the evidence, or from the lack of evidence, and should the Commonwealth fail to prove, by the evidence, beyond a reasonable doubt, the facts necessary to warrant a conviction, or if any one of the facts necessary to show the guilt of the accused is consistent with a theory of his innocence, then the jury must acquit.

Commonwealth v. Calvin Baker.

Instruction B.

The court instructs the jury that in order to justify them in finding the accused guilty as charged in the indictment, they should first be convinced of his guilt, from the evidence, beyond a reasonable doubt. In every criminal trial the accused is entitled to the benefit of every reasonable doubt that may arise from the evidence, or from the lack of evidence, and should the Commonwealth fail to prove, by the evidence, beyond a reasonable doubt, the facts necessary to warrant a conviction, or if any one of the facts necessary to show the guilt of the accused is consistent with a theory of his innocence, then the jury must acquit.

Commonwealth

vs.

Calvin Bear.

*Copy this one on a
separate sheet of paper*

J.

~~INSTRUCTION C.~~

The Court instructs the jury that in order to justify a verdict of guilty, the jury should, upon the evidence, be convinced, beyond a reasonable doubt, that some of the cider shown in evidence to have been given away by the accused, after November 1st, 1917, was, at the time of such giving, of greater alcoholic strength than one per cent, by volume: That the burden of the proof to show such fact, by the evidence, beyond a reasonable doubt, rests upon the Commonwealth; and if, upon full consideration of the evidence, there should remain upon the mind of the jury a reasonable doubt that the cider given away by the accused (as shown in evidence) was at some one or more of the times of such giving, of such greater strength than one per cent. of alcohol by volume, then the accused is entitled to the benefit of such doubt that may arise, upon the evidence, and if such doubt exists in the mind of the jury, then the verdict should be not guilty.

*Copy this over to
Department of Justice
A*

Commonwealth

vs.

Calvin Bear.

INSTRUCTIONS.

The Court instructs the jury that in order to justify a verdict of guilty, the jury should, upon the evidence, be convinced, beyond a reasonable doubt, that some of the other shown in evidence to have been given away by the accused, after November 1st, 1914, was, at the time of such giving, of greater alcoholic strength than one per cent, by volume; that the burden of the proof to show such fact, by the evidence, beyond a reasonable doubt, rests upon the Commonwealth; and if, upon this consideration of the evidence, there should remain upon the mind of the jury a reasonable doubt that the other given away by the accused (as shown in evidence) was at some one or more of the times of such giving, of such greater strength than one per cent. of alcohol by volume, then the accused is entitled to the benefit of such doubt that may arise, upon the evidence, and if such doubt exists in the mind of the jury, then the verdict should be not guilty.

*By
J. H. [unclear]
[unclear]*

Commonwealth

vs.

Calvin Bear.

INSTRUCTION F.

The Court instructs the jury that in order to justify a verdict of guilty, the jury should, upon the evidence, be convinced, beyond a reasonable doubt, that some of the cider shown in evidence to have been given away by the accused, after November 1st, 1917, was, at the time of such giving, of greater alcoholic strength than one per cent, by volume: That the burden of the proof to show such fact, by the evidence, beyond a reasonable doubt, rests upon the Commonwealth; and if, upon full consideration of the evidence, there should remain upon the mind of the jury a reasonable doubt that the cider given away by the accused (as shown in evidence) was at some one or more of the times of such giving, of such greater strength than one per cent. of alcohol by volume, then the accused is entitled to the benefit of such doubt that may arise, upon the evidence, and if such doubt exists in the mind of the jury, then the verdict should be not guilty.

Commonwealth

vs.

Calvin Bear.

INSTRUCTION 7.

The Court instructs the jury that in order to justify a verdict of guilty, the jury should, upon the evidence, be convinced, beyond a reasonable doubt, that some of the other shown in evidence to have been given away by the accused, after November 1st, 1914, was, at the time of such giving, of greater alcoholic strength than one per cent, by volume: That the burden of the proof to show such fact, by the evidence, beyond a reasonable doubt, rests upon the Commonwealth; and if, upon full consideration of the evidence, there should remain upon the mind of the jury a reasonable doubt that the other given away by the accused (as shown in evidence) was at some one or more of the times of such giving, of such greater strength than one per cent, of alcohol by volume, then the accused is entitled to the benefit of such doubt that may arise, upon the evidence, and if such doubt exists in the mind of the jury, then the verdict should be not guilty.


But the Court refused to give said instructions F. asked for by the defendant, and to this action of the Court, refusing to give said instructions F., the defendant excepted, and now tenders this his fourth Bill of Exceptions, which he prays may be signed, sealed and made part of the record of said cause, which is accordingly done this 9th day of March, 1917, within thirty days from the rising of the Court at which said trial was ^{had} ~~heard~~, which Court adjourned on the 17th day of February 1917.

J. N. Haas, Judge Seal

But the Court refused to give said instructions. F. asked for
by the defendant, and to this action of the Court, refusing to give
said instructions F., the defendant excepted, and now tenders this
his fourth Bill of Exceptions, which he prays may be signed, sealed
and made part of the record of said case, which is accordingly done
this 9th day of March, 1917, within thirty days from the rising of
the Court at which said trial was ~~held~~^{made}, which Court adjourned on
the 17th day of February 1917.

J. N. Hovey, Judge
Clerk

But the Court refused to give the said five instructions and asked for by the defendant, or any of them, and refused to instruct the jury orally as requested by the Attorney for the Commonwealth and gave to the jury the three instructions set out in defendant's Bill of Exceptions No. 1; and to the action of the Court in refusing to give the instructions asked for by defendant, and each of them, as aforesaid, the defendant by counsel excepted, and now tenders this his third Bill of Exceptions, which he prays may be signed sealed and made part of the record in said cause, which is accordingly done this 9th day of March, 1917, within thirty days from the rising of the Court at which said judgment was given, which Court adjourned on the 17th day of February, 1917.

J. N. Haas, Judge 

on the 17th day of February, 1917.
the Court at which said judgment was given, which Court adjourned
done this 9th day of March, 1917, within thirty days from the rising of
and made part of the record in said cause, which is accordingly
his third Bill of Exceptions, which he prays may be signed sealed
aforesaid, the defendant by counsel excepted, and now tenders this
to give the instructions asked for by defendant, and each of them as
Bill of Exceptions No. 1; and to the action of the Court in refusing
and gave to the jury the three instructions set out in defendant's
the jury orally as requested by the Attorney for the Commonwealth
asked for by the defendant, or any of them, and refused to instruct
But the Court refused to give the said five instructions

J. A. H. [Signature]

COMMONWEALTH of VIRGINIA v. CALVIN BARE ,

On Indictment for Misdemeanor .

DEFENDANTS BILL of EXCEPTIONS NO. 1

In the Circuit Court for Rockingham County , January Term , 1917 .

Be it remembered that when the indictment in this cause was found and returned into court , the defendant , by counsel , appeared and demurred to the said indictment , on the ground that the same is not sufficient in law .

And thereupon , after joinder in the said demurrer , and after the court had heard the argument of counsel ~~COOPER~~ , the court sustained the said indictment and overruled the said demurrer .

To which action of the court in so sustaining the said indictment and overruling the said demurrer the defendant by counsel excepted , and tendered this his Bill of Exceptions ~~NO. 1~~ , which he prays may be signed, sealed, enrolled and made part of the record , which is accordingly done , this 3^d day of March , 1917 , and within thirty days from the adjournment of the court at which final judgment was entered in the said cause , which adjournment was on the 17th day of February , 1917 .

J. W. HARRIS, Judge Seal

COMMONWEALTH OF VIRGINIA v. CALVIN BARR

On Indictment for Misdeamors

DEFENDANT'S BILL OF EXCEPTIONS NO. 1
In the Circuit Court for Rockingham County, January Term, 1917.

It is remembered that when the indictment in this case
was found and returned into court, the defendant, by counsel, ap-
peared and demurred to the said indictment, on the ground that the
same is not sufficient in law.

And thereupon, after joinder in the said demurrer, and after
the court had heard the argument of counsel thereon, the court
sustained the said indictment and overruled the said demurrer.

To which action of the court in so sustaining the said in-
dictment and overruling the said demurrer the defendant by counsel
objected, and tendered this Bill of Exceptions ~~thereon~~, which
objection was signed, sealed, enrolled and made part of the re-
cord, and the same accordingly done, this 30 day of March, 1917,
and within thirty days from the adjournment of the court at which
said judgment was entered in the said cause, which adjournment

was on the 17 day of February, 1917.

W. H. ...

Commonwealth of Virginia

vs.

Calvin Bare

Defendant's Bill of Exceptions No. 3.

Be it remembered that upon the trial of this cause, after the evidence had been closed and both the Commonwealth and the Defendant had rested the attorney for the Commonwealth requested the Court to instruct the jury orally upon the law of the case, and the defendant by his counsel moved the Court to give the jury the following five instructions, to-wit:

Commonwealth of Virginia

vs.

Calvin Bare

Defendant's Bill of Exceptions No. 3.

Be it remembered that upon the trial of this cause, after the evidence had been closed and both the Commonwealth and the Defendant had rested the attorney for the Commonwealth requested the Court to instruct the jury orally upon the law of the case, and the defendant by his counsel moved the Court to give the jury the following five instructions, to-wit:

Commonwealth of Virginia

vs.

Calvin Bare.

Defendant's Bill of Exceptions No. 4.

Be it remembered that upon the trial of this cause after the Court had rejected the five instructions asked by defendant as set out in defendant's Bill of Exceptions No. 3, and had settled the instructions to be given in the case, and which were subsequently given to the jury, as set out in defendant's Bill of Exceptions No. 2, but before the same were in fact given to the jury, the defendant by counsel moved the Court to give the jury the following instructions, marked F: to-wit:

Commonwealth of Virginia

vs.

Calvin Bare.

Defendant's Bill of Exceptions No. 4.

Be it remembered that upon the trial of this cause after the Court had rejected the five instructions asked by defendant as set out in defendant's Bill of Exceptions No. 3, and had settled the instructions to be given in the case, and which were subsequently given to the jury, as set out in defendant's Bill of Exceptions No. 3, but before the same were in fact given to the jury, the defendant by counsel moved the Court to give the jury the following instructions, marked F: to-wit:

tion, marked F: to-wit:

Commonwealth of Virginia

v.

Calvin Bare.

Defendants Bill of Exception No. 5.

Be it remembered that upon the trial of this cause, after the evidence had closed and after both the Commonwealth and the defendant had rested, the defendant by Counsel moved the Court to instruct the jury as set out in defendant's bills of exceptions No. 3 and No. 4, which bills are here referred to and made part of this bill of exceptions, and the attorney for the Commonwealth moved the Court to instruct the jury orally upon the law of the case, but the Court overruled the motion of the defendant to give the instructions prayed for by him as aforesaid, and declined to give the same and likewise declined to instruct the jury orally, and in lieu of the instructions asked by the defendant and of the request of the attorney for the Commonwealth gave to the jury the instructions set out in defendant's bill of exceptions No. 2, which bill is made a part of this bill by reference; and to the action of the Court in giving No. 2 of said instructions given by the Court the defendant, by counsel, excepted and now tenders this his fifth Bill of Exceptions and prays that the same be signed, sealed, enrolled and made part of the record, which is accordingly done, this 9th day of March, 1917.

J. N. Haas, Judicial

Commonwealth of Virginia

v.

Calvin Bore.

Defendant's Bill of Exception No. 5.

Be it remembered that upon the trial of this cause, after the evidence had closed and after both the Commonwealth and the defendant had rested, the defendant by counsel moved the Court to instruct the jury as set out in defendant's bills of exceptions No. 3 and No. 4, which bills are here referred to and made part of this bill of exceptions, and the attorney for the Commonwealth moved the Court to instruct the jury orally upon the law of the case, but the Court overruled the motion of the defendant to give the instructions prayed for by him as aforesaid, and declined to give the same and likewise declined to instruct the jury orally, and in lieu of the instructions asked by the defendant and of the request of the attorney for the Commonwealth gave to the jury the instructions set out in defendant's bill of exceptions No. 5, which bill is made a part of this bill by reference; and to the action of the Court in giving No. 5 of said instructions given by the Court the defendant, by counsel, excepted and now tenders this his fifth Bill of Exceptions and prays that the same be signed, sealed, enrolled and made part of the record, which is accordingly done, this 9th day of March, 1917.

J. A. Harshbarger

Commonwealth of Virginia v. Calvin Bare .

Defendants Bill of Exceptions No. 6

Be it remembered that during the trial of this cause the Commonwealth introduced and read in evidence ,to the jury the whole of the following paper writing ,to-wit :

(Here insert the whole of the written and printed document on which the analyses of the cider appears , including therein the letter at the upper part of the paper signed G.W.Coiner , Commissioner)

Thereupon ,after the whole of the said paper writing had been put in evidence,as aforesaid , and before the Commonwealth had rested in the introduction of its evidence , the defendant ,by counsel , moved the Court to instruct the jury that such part of said paper writing as appeared above the signature of G.W.Coiner , Commissioner , was not proper evidence in the cause and that the same should be disregarded by the jury .

Thereupon the Court declined so to instruct the jury .

And thereupon the defendant, by counsel , excepted to such ruling of the Court and tendered this his Bill of Exceptions and prayed that the same be signed, sealed, enrolled and made part of the record , which is accordingly done , this 30 day of March, 1917 .

J.H. Haas Judge

Commonwealth of Virginia v. Calvin Bate

Defendant's Bill of Exceptions No. 1

It is requested that during the trial of this case the following be read to the jury as evidence, to the whole of the following paper writing, to-wit:

(The whole of the written and printed document as well as the analyses of the elder appears, including therein the letter of the elder part of the paper signed G.W. Colner, Commissioner.)

Thereupon, after the whole of the said paper writing had been put in evidence, as aforesaid, and before the Commonwealth had moved in the introduction of its evidence, the defendant, by counsel, moved the Court to instruct the jury that such part of said paper writing as appeared above the signature of G.W. Colner, Commissioner, was not proper evidence in the case and that the same should be disregarded by the jury.

Thereupon the Court declined so to instruct the jury, and the defendant, by counsel, excepted to such ruling.

The Court and defendant filed this Bill of Exceptions and prayed that the same be signed, sealed, enrolled and made part of the record, which

is accordingly done, this 30 day of March, 1917.

J. M. Hester

Commonwealth of Virginia

v.

Calvin Bare

Defendants Bill of Exceptions No. #7

Be it remembered that upon the trial of this cause, before the impanneling of the jury had been completed, the defendant, by counsel, called the attention of the Court to the fact that there had been no arraignment of the defendant, to which the Court replied that arraignment was not necessary.

Thereupon / the defendant not having been arraigned and no plea having been entered by him and no issue joined / the trial of the cause was proceeded with, and the jury having been impaneled and having heard the evidence and the argument of counsel, and received the instructions of the Court, rendered its verdict of ~~guilty~~ guilty, against the said defendant, as by the record shown.

Thereupon the defendant, by counsel, moved the Court in arrest of judgment, and for a new trial, on the grounds that there had been no arraignment of the defendant, no plea entered by him, and no issue joined in the cause, and on the further grounds asserted in support of the defendants demurrer to the indictment.

But the Court ~~declined~~ declined to arrest judgment in the cause and thereupon proceeded to enter its judgment on the said verdict, as by the record shown.

To which action of the Court the defendant, by ~~counsel~~ counsel, excepted and tendered this his Bill of Exceptions and prayed that the same be signed, sealed, enrolled and made part of the record, which is accordingly done, this 3^d day of March, 1917.

J. N. Haas, Judge

7

Bill of Exceptions No. 2

... of the jury had been completed, the defendant, by counsel, called the attention of the Court to the fact that there had been no arraignment of the defendant, to which the Court replied that

arraignment was not necessary. Thereupon the defendant not having been arraigned and no plea having been entered by him and no issue joined, the trial

of the cause was proceeded with, and the jury having been impaneled and having heard the evidence and the argument of counsel, and received

the instructions of the Court, rendered its verdict of guilty, against the said defendant, as by the record shown.

Thereupon the defendant, by counsel, moved the Court to set aside the verdict, and the Court granted the motion.

and no issue joined in the case, and on the further grounds asserted in support of the defendant's demurrer to the indictment.

But the Court declined to arrest judgment in the case and thereupon proceeded to enter the judgment on the said verdict, as

by the record shown. To which action of the Court the defendant, by counsel,

excepted, and tendered this Bill of Exceptions and prayed that the same be signed, sealed, enrolled and made part of the

record, which is accordingly done, this 27th day of March, 1917.

J. M. Hearn, Judge

Commonwealth of Virginia v. Calvin Bare .

Defendants Bill of Exceptions No. ~~12~~ 8

Be it remembered that upon the trial of this cause the jury after having retired to their room to consider of their verdict presently returned ~~to the bar of the~~ ^{into} court and submitted their verdict in the following words and figures , to-wit:

" We the jury , according to the evidence and instructions , find the defendant guilty as charged , and find accordingly the minimum penalty under the law " (signed) A.M.Spitzer , Foreman . "

inquired of the jury whether they meant by their verdict to fix the punishment
Thereupon the Court instructed the Clerk to write out the verdict of the jury in proper form and in pursuance with such instruction the said Clerk wrote out the verdict in the following words and figures , to-wit : " We the jury find the accused guilty as charged in the indictment , and fix his punishment at a fine of fifty dollars and confinement for thirty days in jail " , which verdict was , without ~~retiring~~ ^{again retiring} from the ~~bar of the court~~ ^{jury box} , there signed by the said A.M.Spitzer , Foreman , and upon being read by the Clerk to the jury and the jury being polled was acquiesced in by all of the jury .

Thereupon , at a later day of the term, after the last mentioned verdict so written out by the said Clerk had been substituted for the verdict first found, as aforesaid , and had been entered upon the record , the defendant, by counsel , moved the Court to enter an order , nunc pro tunc , setting forth the facts as to the rendition and correction , as aforesaid , of the said verdict , and to arrest judgment on the verdict so entered , and grant the defendant a new trial .

Thereupon the Court overruled said motion and to such action of the Court the defendant , by counsel , excepted , and tendered this his Bill of Exceptions, which he prays may be signed, sealed, enrolled and made part of the record , which is accordingly done , this 3^d of March, 1917 .

J. N. Haas, Judge

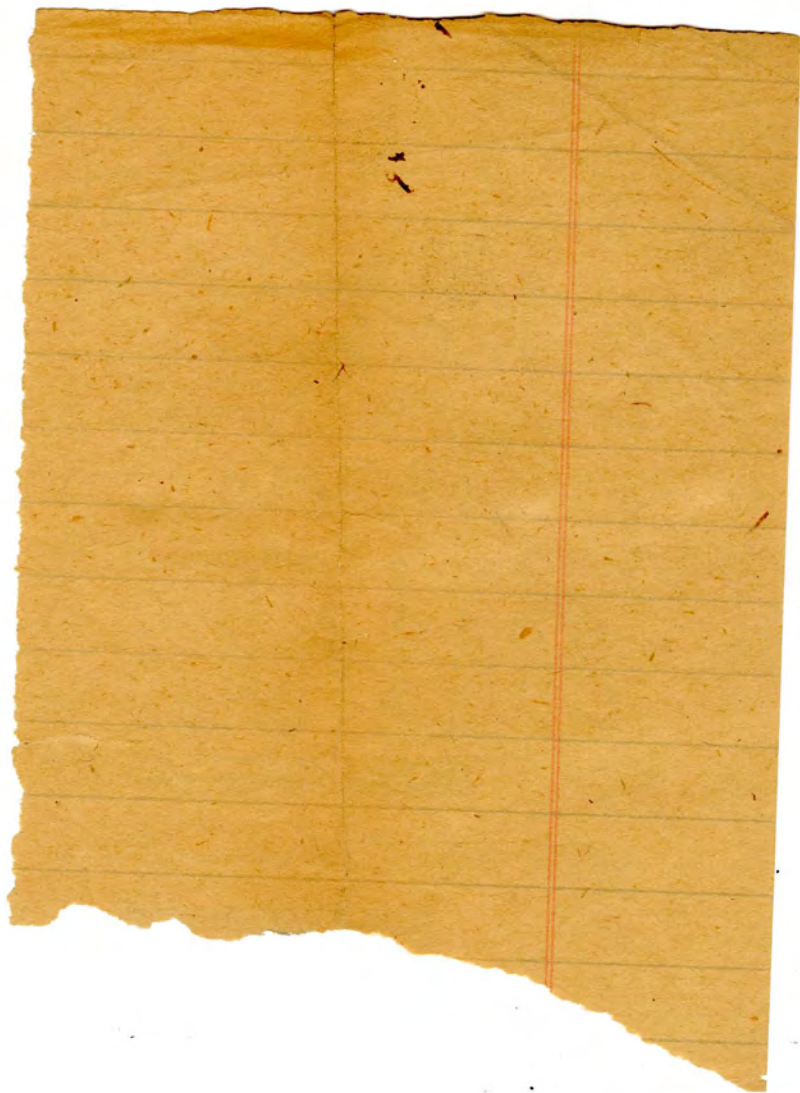
the accused at a fine of \$50. and confinement in jail for one month and upon this answering that they did as intended the Court

Com-

9 — Jan'y 31st —

Colvin Base

- 1 W. O. Myers
- 2 Jos. M. Moore
- 3 J. N. Fitch
- 4 W. T. Adams
- 5 J. B. Howard
- 6 A. N. Spritzer &
- 7 ~~W. G. Rice~~
- 8 O. O. Emmons
- 9 ~~W. G. Rice~~



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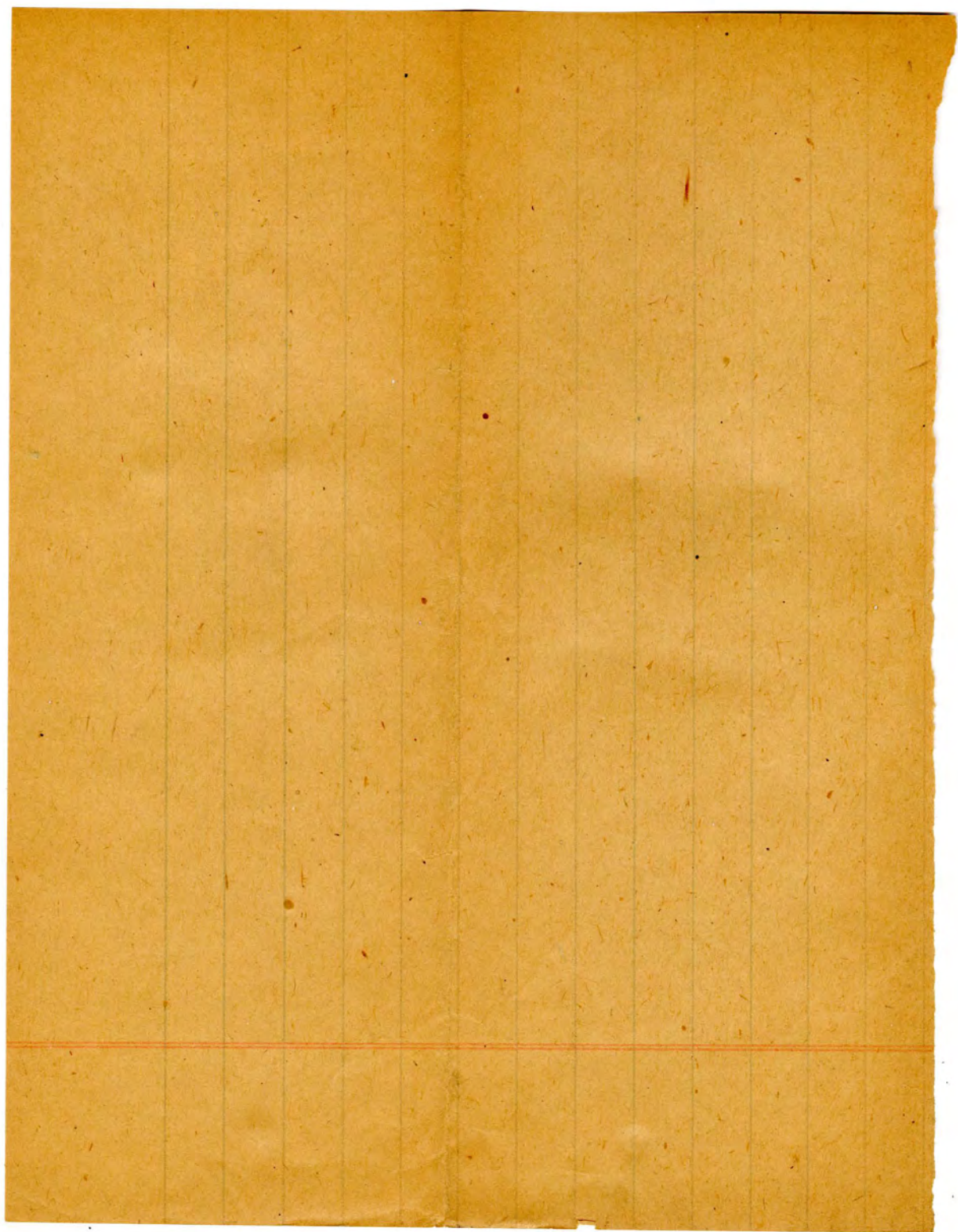
copy (1)
Indictment ~~to~~ 1

(2)
order 236

(3)
order - 241 - Jan 30, 1917

(4)
2 order in 243

5
order - 244



Commonwealth

VS

Calvin Bore

