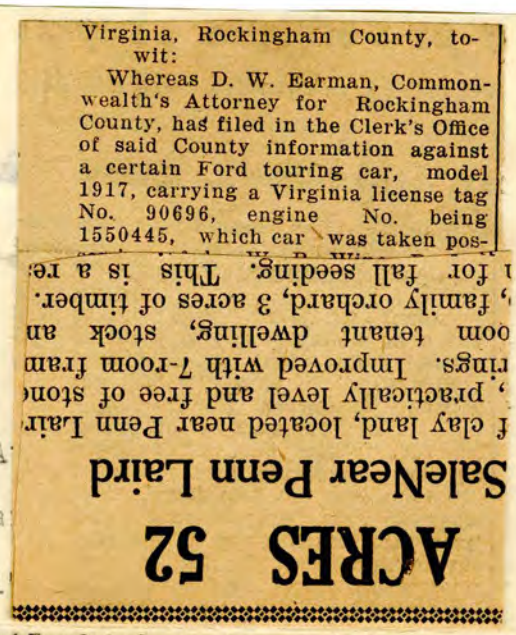

Virginia, Rockingham County, to-wit:

Whereas D.W.Earman, Commonwealth's A
County, has filed in the Clerk's Office of sa
against a certain Ford touring car, model 191
license tag No. 90696, engine No. being 1550445, which car was taken possession of by W.P.Wine, Deputy Sheriff, and J.R.Logan, a Policeman of the City of Harrisonburg, on the 28th day of February 1920, the said car at the time of seizure was occupied by IsaacPittington, F.G.Simmons and Tony Hitt who had in their possession in said car at said time about seven quarts of moonshine liquor and whereas the said information praye that the said automobile be forfeited to the Commonwealth and condemned and sold and the proceeds therefrom be disposed of according to law;

Isaac Pittington, F. G. Simmons, Tony Hitt and all other

Therefore all persons concerned in interest are notified to appear before the Circuit Court of Rockingham County, on the first day of the October term next, being October 18th 1920, to show cause, if any they can, why the prayer of the said information for the condemnation and sale of said car should not be granted;

Witness J.F.Blackburn, Clerk of the Circuit Court of Rockingham County at the Court House thereof on the 30th day of August 1920 and in the 145th year of the Commonwealth.

J.F.Blackburn Clerk.

Executed Sept 1 1920 by Posting a copy at the
Court House Door & by Publishing in the
Daily News Record a copy of notice 4 Times

W L Dillard SRC

Commonwealth
vs
Ford Touring Car
#1,550,445

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY, VIRGINIA.

COMMONWEALTH

VS Indictment for violation of Prohibition Law

TONY HITT June Term, 1920.

Be it remembered that upon the trial of this cause the Commonwealth, to maintain the issue upon its part introduced one, John R. Logan, who testified in chief:

That he was a policeman in the City of Harrisonburg; that on Saturday night, the 28th day of February, 1920, there was a smash-up of two automobiles on the North side of Court Square near the Presbyterian Church in the City of Harrisonburg; that on seeing the crowd he went to the place of collision and saw two men attempting to get out of a car, the one of whom left the car and was lost in the crowd before witness reached the car, and the other, Frank Simmons, who was intoxicated, was arrested; that the man who got out of the car first was apparently not intoxicated and got out of the car in a very short time; that there was a strong odor of intoxicating liquor, like apple brandy, which could be noticed some distance from the car; that there was a broken bottle in the car and that a suit case, was found in the back part of the automobile, which Frank Simmons was driving, and this suit case, on examination, was found to contain about seven quarts of liquor; that this was a five-passenger Ford car; that he took Frank Simmons and the suit case at once to the Harrisonburg jail where Simmons was locked up; that he did not know who the other man was who left the automobile at the same time with Frank Simmons, and that he does not know what became of him. On cross examination witness stated that he did not, at any time, see accused around the car, and that he had no reason to suspect him of engaging in such unlawful transportation of liquor, but that he was on the lookout for a man named Pittington, whose alleged activities along this line had been brought to his attention.

Witness said Simmons was very drunk.
One bottle was broken in the smash up.

W. P. Wine, another witness introduced on behalf of the Commonwealth, testified in effect as follows:

That he was the deputy sheriff and jailor for the ~~city~~ County of ~~Harrisonburg,~~ Rockingham, and that on the 28th day of February, 1920, between nine and ten o'clock at night, Policeman Logan brought to the jail and delivered to his custody one Frank Simmons, who was intoxicated; that at the same time Logan turned over to him a certain suit case which he stated contained liquor; that Simmons was locked up and the suit case was put away under lock; that he did not open the suit case at the time, but that several days later noticing a strong odor of liquor about the suit case, he opened it and found that the stopper had come out of one of the bottles which it contained, and the contents of the bottle had leaked out; that the suit case contained when opened seven pint and four quart bottles of liquor, the said bottles being packed securely with excelsior on one side and a pillow on the other and it appeared that one quart bottle had been removed from the suit case after it had been packed. There was an impression in the pillow where the quart bottle had been taken out. One pint bottle had been broken in the case - the fragments of the bottle were there. Witness then exhibited a suit case and a number of bottles of liquor to the jury testifying that it was the same suit case and contents which had been brought to him by Policeman Logan on the 28th of February. Witness further testified that several weeks later the accused was brought to jail and remained there several days before he was released on bond; that during the time he was in jail he had told witness that he had come up to town on February 28th with Simmons and Pittington, and that along the road this side of the bridge crossing the Shenandoah River near Elkton, he had been offered a drink by the other occupants of the car in which they were riding; that he took the drink from a bottle which the others had on the front seat of the car, ~~but which, up to that time, accused had no knowledge of.~~ that Simmons was very drunk & was afterwards released on bail.

Asked what kind of liquor it was, witness said it was apple brandy.

The bottles were introduced in Court & exhibited to the jury who smelt of them. The pieces of the broken pint bottle were also introduced before the jury.

Ed. Carrier, another witness introduced in the same behalf, testified that he was at his work at his place of business on the East side of Court Square in the City of Harrisonburg on the night of the 28th of February, and that Pittington and another man whom he did not know, ~~Frank Simmons~~ who were pretty drunk, came to him and asked him if he wished to buy some liquor; that he replied, "No" and if they had liquor they had better get out of town. Witness further testified that the car ~~in which Pittington and Simmons came to town~~ When he was talking to the men was about ten feet away and that the curtains were on the back part of the car. On cross examination witness stated that he did not see the defendant, Tony Hitt, at any time, I was not acquainted with him. ~~The two men then got into the car and went on the East side of Court Square into the street on the South side, and the where the collision occurred very shortly after they left him.~~ (W. did a little talking the collision occurred).

And this being all of the evidence introduced by the Commonwealth in chief to maintain her case, the defendant to maintain issue on his part introduced the following witnesses who testified as follows:

Tony Hitt testified that he lived at Elkton, Rockingham Co., Virginia; that he was a married man with three children, and that he had worked steadily and stayed closely at home, and that up until the night of the 28th of February he had not been to the City of Harrisonburg for five or six years; that he was not well acquainted with the various streets in the City of Harrisonburg; that he was at that time, and had been for some months past, employed by William Simmons, a brother of Frank Simmons, but that Frank Simmons was in no manner connected with the business, which business was a butcher shop in the Town of Elkton; that on Saturday afternoon, February 28th, after he had finished work, he took a package of meat to Leebrick's store, and while near the railroad track in the Town of Elkton he met Pittington who asked him if he wanted to come to Harrisonburg that night and that if he did he should come to Pittington's house after supper and they would go up together. Witness further testified that he had some business to transact with the Coiner Furniture people in Harrisonburg, and that he accepted the offer to bring him

to the City that evening; that later in the evening he went to the Home of Pittington, where he found Pittington and Simmons with the car; that he noticed on entering the car a suit case in the rear of the same, but he did not know what it contained; that he did not inquire about it and had no reason to think that it contained anything in the nature of intoxicating liquor, nor did he know that there was any liquor whatever either in the car or on the occupants. Witness further testified that they left Elkton and after going a little distance beyond the bridge outside of the Town of Elkton, Frank Simmons stopped the car and they offered him a drink out of a bottle which they had on the front seat; that Simmons and Pittington were on the front seat and witness on the rear seat. Witness testified that he took a drink at that time and returned the bottle to them on the front seat, but that he did not even then know that there was any other liquor in the car; that on reaching the Cross Keys road they turned up to the right toward Keezeltown, which is about a half or three quarters of a mile longer than by the customary route along the pike, but which road was better at this time of the year, and which road from Keezeltown comes back on the pike about a half or three quarters of a mile outside the limits of the City of Harrisonburg; that on reaching Keezeltown Pittington got out for two or three minutes and talked to a tall man, but that he did not hear what was said and that no liquor was exhibited here, nor was the suit case taken out or opened; that they then came to the City of Harrisonburg and stopped ~~along~~ on the side of one of the streets because the radiator was very hot; that they got out on the side walk for probably five minutes when Simmons suggested they go to a garage and get some oil; that Pittington went to some other place in town; that Simmons and defendant got into the car and went around the Court Square when they ran into another car; that Simmons then said, "What have I done"; that witness said, "You have run into a car". Seeing the crowd gathering and the policeman coming, witness got out of the car

without making himself known, and mingled with the crowd, although he stayed for some minutes nearby; that realizing that Simmons would probably be arrested because of the accident, he (witness) walked away; that he then walked down the street and met Pittington and told him about the accident; that Pittington then said, "What became of the suit case" and asked the defendant why he did not bring it as there was liquor in it, to which defendant replied that he had not known that; that this statement of Pittington's was the first knowledge witness had of the contents of the suit case, which had not been touched or referred to on the trip. Witness further testified that Pittington then hired a car and together they went back to Elkton; that on the Monday following Pittington came to the home of the defendant, and, saying he had been advised by Deputy Sheriff Lucas to leave, urged defendant to go with him; that together they went to Harrisburg, Pennsylvania; that after staying here several days defendant left Pittington and went to the home of his brother at Baltimore where he learned that warrants had been issued for Simmons, Pittington and himself; on receipt of a letter from his father to that effect, left Baltimore, returned to the Town of Elkton and gave himself up voluntarily to Mr. W. E. Lucas, the deputy sheriff, that he was gone about 3 weeks.

On cross examination witness said that he did not know at any time until the accident, that there was liquor in the suit case, and that he did not know at the time he entered the car that there was any intoxicating liquor either in the car or in the possession of any of the occupants; that he had been promised nothing whatever from the sale of the same, and that he had come to Harrisonburg for the purpose of going to the Coiner Furniture Company, and therefore accepted their offer to bring him here.

Witness Hill, the accused, further stated in answer to the direct question, that the car stopped only once in Harrisonburg before the collision, but he was unfamiliar with the streets and did not know what street it was on when it stopped, and that all three of them got out when it stopped & Pittington went off to get oil. Witness also said in answer to a question by the Court as to whether the drink he took at the Elkton bridge was the only drink he took, that he later took another drink before they reached Harrisonburg, and that Pittington and Simmons drank repeatedly and were drunk when they got to Town.

W. E. Lucas, another witness introduced in the same behalf, then testified that he was deputy sheriff of Rockingham County, Virginia, and that about two weeks after this collision, or smash-up, in Harrisonburg, warrants were issued for Pittington, Simmons

Simmons having also run away;
and Hitt; that he had twice searched the home of Tony Hitt but had on neither occasion found him there; that about a week after the warrants were issued, the accused, who had been out of the state, returned and voluntarily gave himself up, and that he then brought him to Harrisonburg and put him in confinement in the county jail. On cross examination witness testified that he had not advised Pittington to leave.

And this being all the evidence introduced, or offered to be introduced by the Commonwealth or by the defendant, ~~the Commonwealth having elected to proceed on the charge of transportation of intoxicating liquor as charged in the indictment,~~ the defendant, by counsel, thereupon prayed the Court to grant the following instructions to the jury:

(1)

"The Court instructs the jury that the accused is presumed to be innocent and the duty devolves upon the Commonwealth to prove his guilt beyond a reasonable doubt.

The Court further instructs the jury that the presence of the accused in the car with the liquor is not sufficient to convict him unless the jury is satisfied beyond a reasonable doubt that the accused also knew of the presence of the liquor in the car when he got into the car."

(2)

"The Court instructs the jury that if they believe from the evidence that the accused exercised no ownership or control over the car or its contents, that he was not the owner, hirer or driver of the car, but only a passenger at the invitation of others, he is not guilty of transporting liquor as charged in the indictment."

(1)

(2)

Whereupon the Court refused to give the said instructions, or either of them, as prayed for by defendant, to which action of the Court in refusing to give the said instructions, or either of them, the defendant, by counsel, excepted.

Whereupon the Court ~~ex mero motu~~ on the request of the attorney for the Commonwealth to instruct the jury orally upon the law governing the case gave to the jury the following instruction in writing:

"The Court instructs the jury that the transportation of even one quart of intoxicating liquor, or less, from Elkton to Harrisonburg, is an unlawful act under the Prohibition law, and that if the defendant accompanied Pittington and Simmons on the trip from Elkton to Harrisonburg, knowing there was liquor in the car, and drank with them from a bottle, then he is guilty under the law whether he knew the suit case contained liquor or not."

To the granting of which instruction the defendant, by counsel, objected, which objection the Court overruled, to which action of the Court in overruling said objection of the defendant, defendant, by counsel, excepted.

Whereupon the case was submitted to the jury, which, after considering of its verdict, returned into Court and rendered the following verdict:

"We, the jury, find the accused, Tony Hitt, guilty as charged in the indictment and fix his punishment at a fine of $50 and confinement in jail for 1 month.

John F. Miller, Foreman"

Whereupon the defendant by counsel, moved the Court to set aside the verdict as contrary to the law and evidence and misdirection of the jury and to grant the defendant a new trial, for reasons expressed in writing and hereto appended, but the Court overruled the said motion of the defendant, and to the action of the Court in so overruling the motion of said defendand to set aside said verdict to grant him a new trial, the defendand, by counsel, excepted. And the said defendant prays that this, his bill of exceptions ~~No. 1~~ may be signed, sealed and enrolled,

and made a part of the record in this case, which is thereupon accordingly done this 7th day of ~~June~~ July, 1920, during the term of Court at which said trial was had.

J. R. Haas, Judge.

Here copy opinion of the Court following.

J.R.H.

Com
v
Jury Hill

Opinion of the Court

The transportation of ardent spirits is forbidden except in those cases where it is expressly allowed under secs.39,39 1-2,and62 of the Prohibtion Act. Therefore the transportation of one quart, more or less, from Elkton to Harrisonburg, merely to be drunk by the party on the trip, is unlawful.It is unlawful under sec.3 of the act and also under sec.39.

The accused in this case denies any knowledge of the suit case of bottles that was in the car, and any participation in or knowledge of the purpose to sell the liquor in Harrisonburg, and he declares that at the time he got aboard the car to come to Harrisonburg, by invitation of Pittington, that he did not know that there was any liquor in the car at all.

He admits, however, that about the time he got into the car, or soon after, he saw the quart bottle on the seat in front, he being on the back seat, and that shortly after they passed the Elkton bridge he and Pittington and Simmons all took a drink, and that after traveling some distance, he took another drink, and that Pittington and Simmons drank frequently and were drunk when they reached Harrisonburg.

Under these circumstances, and on the testimony of the accused himself, he must be held guilty of unlawful transportation, both under sec.3 and under sec.39, and also guilty of unlawfully receiving ardent spirits under sec.40_Guilty of unlawful transportation - because of the transportation of the diminishing bottle over the 20 miles from Elkton to Harrisonburg. Granting,for the present purpose, that he got into the car without knowing of the presence of the liquor, when he discovered its presence he not only remained in the car without protest of any sort, which he probably might have done without incurring any guilt, but he voluntarily became a participant in the unlawful act by joining in the revel and the drinking, which included in its execution the transportation of the liquor from drink to drink, to say the least of it.

This sort of participation in an act constituting a felony

opinion of the Court

The transportation of students to and from school, other than those who live within one mile of the school, is provided by the school district. Appellees do not challenge the constitutionality of the statute as it applies to parochial schools, but contend that the statute violates the Equal Protection Clause of the Fourteenth Amendment insofar as it requires local school districts to provide transportation to students who attend parochial schools, while not requiring the districts to provide transportation to students who attend private schools operated for profit. Appellees argue that the Equal Protection Clause requires that all students be treated equally by the State, regardless of religion, and that the State cannot discriminate between children on account of religion by providing services to children attending parochial schools which it does not provide to children attending private schools operated for profit. Appellees do not claim that they are entitled to have their children transported at public expense, but only that, if the State provides transportation to some children, it must provide it to all children on an equal basis. Appellees do not claim that the Appellant School District is discriminating against children attending parochial schools in the routes it has established, the number of children transported, or the distances and times involved in the transportation. Rather, appellees seek to require the State to provide transportation for children attending parochial schools identical to that which it provides for children attending public schools, arguing that only in this manner can the State refrain from inhibiting the free exercise of religion and avoid fostering support for religious schools in violation of the First Amendment.

The Appellees do not challenge the power of the State to require attendance at school, to specify the curriculum, to require that children be taught by qualified teachers, to provide for compulsory inspection of the schools, or to require that children be vaccinated. Nor do they challenge the State's power to spend public funds for the welfare of children, including the welfare of children who attend parochial schools. Finally, they do not challenge the State's power to require local school districts to provide transportation to children attending public schools. Their sole contention is that the State cannot draw the line at providing transportation to children attending public schools, but must provide it for those attending parochial schools as well.

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would make the participant a principal in the first degree. But whether a principal in the first or second degree or an accessory, the result is the same in the case of a misdemeanor at common law and under the provisions of sec. 3-a of the Prohibition Act.

Under sec.3, the transportation of liquor, except as provided by the act, is unlawful. It has been suggested that transportation, as used in sec. 3, is qualified by the words "for sale", used later in the same sentence of the law. But I have never so understood it. Those words qualify the word "store", which immediately precedes them. The word "sell" immediately follows the word "transport" in sec.3, and if we construe the words "for sale" as qualifying the word "transport"., we must also hold that they qualify the word "sell", and the statute would read:

> It shall be unlawful for any person in this state to manufacture, transport or sell for sale ardent spirits etc.-

which would make the reading absurd.

Besides, the purpose to forbid transportation except as otherwise provided in the act(without respect to any purpose to sell) is again declared and made plain in sec. 39.

The accused is also guilty under sec.40 for it is as much forbidden to receive a gill or a drink as it is to receive a gallon, and no one can receive ardent spirits except as provided by the statute.

(and, by the way, the word drastic only means effective, - not anything evil or bad.)
If it is claimed that this is a drastic interpretation of the statute, the answer is that the statute is a drastic law, and must needs be such to accomplish its object; and that the interpretation given by the court is in accordance both with the language of the law and with its spirit and purpose; and that while it is not to be expected that men will be prosecuted for a trivial or a mere technical violation of the law, and as a matter of experience they are not, when a man found with two others in the possession of liquor which is evidently designed to be the subject of a commercial enterprise, as shown in this case by the testimony of the witness Carrier and the character and number of the bottle containers, with the other circumstances taken, seeks to evade responsibility on the claim that he (the only one of the three to be caught and brought to trial, and he

himself having at first ~~felt~~ pled as a fugitive from the law to another state) was not a party to the commercial object of the trip, and did not know of the presence of the bottles in the suit case- a claim which in most cases it would be impossible to refute as to almost any one of a group taken in a blockading automobile- it is a proper case for applying and enforcing the drastic features of the ~~l~~law, and for holding the accused amenable to the penalties of the statute for the minor or technical guilt that is proven. ~~and admitted~~ After all this law is not more drastic than many others. A mere unwarranted touching of another is a battery - a technical battery. The law is not often abused, however, for this cause, either by public prosecution or private action, but the technical offense is sometimes laid hold of to inflict punishment or damages where justly due, ~~without~~ when without the technical battery there would be no law for the case. A case occurred in this Circuit a few years ago where a negro was indicted for attempted rape upon a white woman. The evidence wholly failed to show an attempt to use force, but did show a gentle laying on of ~~the~~ hands in an attempt to win consent. The jury properly found the negro guilty of assault and battery and gave him a term of two or three years in jail.

And so, under the old internal revenue statutes of the federal government, and under the state liquor laws, in the prosecution of a notorious offender, it was necessary often to inflict substantial punishment when, on the ~~trial of~~ trial of the particular case, it was only shown that a single half pint or pint had been sold, and that little, according to the testimony for the defense, for the accommodation of a sick neighbor who wanted it for strictly medicinal use.-

Laws of this sort must ~~need~~ be drastic ~~that is effective~~ if they are to accomplish anything.

J. M. H.

Commissioner Hitt

Arrest Warrant

COMMONWEALTH OF VIRGINIA, }
ROCKINGHAM COUNTY, } TO WIT:

To The Sheriff or _____, a Constable of said County:

Whereas, W. P. Wine of the said County, has this day made complaint and information on oath before me, F. J. Argenbright a Justice of the said County, that Tony Hill Isaac Pittington and Frank Simmons of the said County, on the 28th day of February 1920, in the said County, did unlawfully transport ardent Spirits from a point near Elkton Virginia to Harrisonburg Virginia in a Ford Touring Car Motor No. 1555443, License No. 90196 of 1919 License for the purpose of selling said ardent Spirits against the Dignity and Peace of the Commonwealth of Virginia

These are therefore, in the name of the Commonwealth of Virginia, to command you forthwith to apprehend and bring before me, or some other Justice of the said County, the ~~body~~ bodies of the said Tony Hill Isaac Pittington and Frank Simmons to answer the said complaint and to be further dealt with according to law. And you are required to summon John Logan to appear and give evidence in behalf of the Commonwealth, on the examination touching the said offence. also to seize said car and ardent Spirits

Given under my hand and seal this 2nd day of March, in the year 1920

F. J. Argenbright J. P. (Seal)

No. 38

NEWS-RECORD CO., HARRISONBURG, VA.

Commonwealth

vs. } **Arrest Warrant**

Tony Hitt

Executed the within warrant by arresting and delivering the body of

Toney Hitt

~~before~~ Over to the Jailer

a ~~Justice~~ of Rockingham County, and by summoning the within named witnesses in person,

this 22 *day of* March 1920

W.E. Lucas Deputy for

Constable of Rockingham County.

W.D. Dillard S.R.C.

Sheriffs Cost $2.30

Justice fee: 1.00

$3.30

Commonwealth of Virginia
County of Rockingham
Toney Hitt appearing before me and was bailed to appear before me at the Sheriffs Office in said County on Saturday the 3rd day of April 1920 in the sum of Five Hundred dollars with J. R. Cover as his Surety. J. R. Cover was recognized in the sum of $500.00
Given under my hand this the 22d day of March 1920
F. J. [illegible] J.P.

April 3 - 1920

OFFICE OF THE CLERK

Supreme Court of Appeals of Virginia,

HAMPTON H. WAYT, CLERK.

Staunton, Va.

This is to certify that on the petition of Toney Hitt, one of the Judges of the Supreme Court of Appeals of Virginia has allowed a writ of error and supersedeas to a judgment of the Circuit Court of Rockingham County, pronounced on the 24th day of June, 1920, in a prosecution by The Commonwealth against said Toney Hitt, for a misdemeanor, but said supersedeas is not to discharge the petitioner from jail, if in jail, nor to release the Surety, if out on bale. Bale may be allowed, if applied for. Bond of $100.00 with good security, conditioned as the law directs.

Teste:

H.H. Wayt Clerk

To the Clerk of the Circuit Court of Rockingham County.

OFFICE OF THE CLERK

Supreme Court of Appeals of Virginia.

HAMPTON H. WAYT, CLERK

Staunton, Va.

To the Clerk of the Circuit Court of Rockingham County.

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Teste:

[illegible] Clerk

TONY HITT

ADS

COMMONWEALTH

Bushnell

QUALITY

WORKMANSHIP

20-4446