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 October term, 1918, UPON THEIR OATHS PRESENT, that Henry Cuthbert Bryan on the 6th day of August, 1918, in said County, did unlawfully manufacture, sell, offer, keep, store and expose for sale, give away, transport, dispense, solicit, advertise and receive orders for ardent spirits,

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 R. C. Morison, witnesses sworn in Court and sent before the Grand Jury to give evidence.

October term, 1918.

Mapp law.

COMMONWEALTH

vs. **Indictment**

HENRY CUTHBERT BRYAN.

~~**For Felony**~~

For Misdemeanor

A TRUE BILL

E. D. Harrisonburg

Foreman

Harry M. Strickler
Commonwealth's Attorney

In the Circuit Court of Rockingham County - October Term 1918.

Com of Va. v. Henry Cullen Bryan — An indictment for a misdemeanor

Be it Remembered that when this case was called for trial, the defendant, in addition to his plea of not guilty, tendered orally to the Court in an informal way a plea or defence of a former conviction for the same offence had before the Mayor of the City of Harrisonburg, in the County of Rockingham, upon a warrant issued by the said Mayor in which the defendant was charged with unlawfully transporting intoxicating liquors in the said City on the 5th day of August 1918, in violation of an ordinance of the said City, which act and offence of the defendant, as he averred, was the same identical act and offence as that for which he was presented by the grand jury of the County of Rockingham by the indictment under which he was tried in this case. All informality in connection with the form and pleading of said defence was waived by the Attorney for the Commonwealth, with the consent of the Court, and in support of said defence or plea the defendant cited or produced to the Court

(1) The warrant upon which the defendant was tried as averred by him, with the judgment of the Mayor and the other indorsements thereon;

(2) An order of the Circuit Court of Rockingham County, made on the motion of the defendant and under authority of an act of the General assembly approved Mar. 7. 1912 (Acts 1912 p. 170), dismissing the appeal which had been taken by defendant from the decision of said Mayor and carrying into effect the judgment of the Mayor; and (3) An ordinance of the said City of Harrisonburg for the suppression of the legislative tropic in said City, for the violation of which, as averred, the defendant was tried and convicted by the said Mayor.

The said warrant, with its indorsements, the said order of the Circuit Court, and the said City ordinance are in words and figures as here and now set forth:

The Warrant

(Here Copy the warrant with its indorsements)

Order of the Circuit Court

(Here Copy order dis. appeal)

City Ordinance

(Here Copy Ordinance)

And upon consideration of the defendant's plea of a former conviction as aforesaid, the Court overruled the same and rejected the said plea as presenting no defence to the indictment, and to this action of the Court the defendant excepted. And Thereupon the Court, with the consent of the accused, given in person, and that of the attorney for the Commonwealth, also, both entered of record, proceeded to hear and determine the case on the defendant's plea of not guilty without the intervention of a jury, and it was thereupon proven on behalf of the Commonwealth that on the 5th day of August 1918, the defendant was arrested on the street in the said City of Harrisonburg, in the County of Rockingham, in an intoxicated condition and with six quarts of whiskey in his possession which he was transporting over and along one of the streets of the said City. And this being all the evidence offered on behalf of the Commonwealth, and no evidence at all being offered on behalf of the defendant, the Court found the accused guilty as charged in the indictment and fixed his punishment at a fine of fifty dollars and confinement in jail for the term of one month, and entered judgment and sentence against him as shown by the order of the Court then entered. And

to the action of the Court in finding the defendant guilty and pronouncing judgment and punishment against him as shown by the order of the Court, after disallowing defendant's plea of a former conviction as aforesaid, the defendant excepted; and he prays that this his bill of exceptions may be signed, sealed and made part of the record of this case, and it is so done this the 10th day of December 1918. within 30 days after the adjournment of the term of Court at which said proceedings were had.

J. N. Haas, Judge (Seal)

Commonwealth

Vs). } On an Indictment for violation of the Prohibition Law

Cuthbert Bryan.

In Morgen Stein's case, 26 S. E. p., 402, and in Thon's Case, 31 Gratt. 887, the statute involved expressly provided that it should not be in force in a city having an ordinance prescribing a penalty equal to that fixed by the statute. In both cases, because of discrepancies between the ordinance and the statute with respect to the penalties, the court held that conviction under the city ordinance did not bar a prosecution under an indictment for the same act.

The prohibition law <u>does not</u> say the law shall not be in force in cities having such an ordinance; and as matter of fact a city could not have such an ordinance because to do so would involve, among other incongruities, the impossible result of the city declaring a felony by ordinance and making it triable by the mayor.

The ~~legislature~~ provisions of the prohibition act with reference to the right of cities to enact ordinances on the subject may well have been induced by considerations other than to make the ordinance and the penalties denounced by it the only law operative in the city. For instance, it does not often happen that the same act is prosecuted in several jurisdictions even when that might lawfully be done, and the legislature having this fact in mind may have designed to insure such a reasonable punishment under the city ordinance that it would not be deemed worth while by the State authorities (or those of the Federal Government) to pursue the matter further.

At any rate the purport and language of this statute will not warrant the court in giving the construction to it that would make the statute inoperative within a city or town having such an ordinance as the statute prescribes, and remove an accused person wholly beyond the jurisdiction and control of the State and the Courts, and leaving the prosecution and punishment of offenders wholly in the hands of the city and town authorities. If the statute had been meant to have that effect, that intention, of ~~xx~~ great importance as it is, would have been expressed in words and not left to inference.

It is evident that if the statute is set aside or superseded in cities and towns having ordinances, then a second offence in such a city or town can not be punished as a felony, because it can not be made a felony by town or city ordinance, and, since the statute is not operative in the town, it can not be a felony by virtue of the statute - I do not see how it can be said that the statute comes be operative as to the felony part and inoperative as to the first offence, but if that view could be argued with good reason it would still be true that there could be no felony because the statute declares a second ~~violation of the~~ or other offence after a conviction under the statute shall be a felony, while in the case supposed the first offence and conviction for comes be a violation of a town ordinance, not but a violation of the statute.

Dec. Cont. 1918

J. H. H.

Communication
from
Capt. Bryan
Lec. Court 1895
Memo. Wm Crook

Will states that to engineers the tracing and estimates for the proposed bridge would make it cost at least two and a half times as much as those against a city's natural advantages and estimate presented, has always been an object with the Corps, and to the State and Nation, and consequently to the Corps, and to the Nation, it is as important that the bridge should be built at the proper time and place as any other public work.

Lt. Col. Wm. Crook

VIRGINIA, ROCKINGHAM COUNTY, to-wit:

BE IT REMEMBERED that this day Henry Cuthbert Bryan and Annie M. Bryan came before me, H. W. Bertram, Bail Commissioner for said County, at Harrisonburg, Virginia, and severally and respectively acknowledged themselves to be indebted to the Commonwealth of Virginia, in the sum of Five Hundred Dollars, that is to say, the said _____ in the sum of _____ dollars, and the said _____ in the sum of _____ dollars, to be levied of their respective goods and chattels, lands and tenements for the use of the Commonwealth rendered, at the same time waiving their Homestead Exemption as to this obligation, and all claim or right to discharge any liability arising to the Commonwealth under this recognizance with coupons detached from the bonds of this State:

YET UPON THIS CONDITION, That if the said Henry Cuthbert Bryan shall personally appear before the Circuit Court of Rockingham County on the 18 day of December, 1918, then and there to answer the Commonwealth for and concerning a certain misdemeanor of which he stands convicted and to which a writ of error and supersedeas has been granted by the Supreme Court of Appeals of Virginia and shall not depart therefrom without leave of said court, then this recognizance shall be void, otherwise to remain in full force and virtue.

Taken and acknowledged before me this 17 day of December, 1918.

H. W. Bertram Bail Commissioner.

The foregoing recognizance is certified to Clerk of the Circuit Court of Rockingham County.

OFFICE OF THE CLERK
Supreme Court of Appeals of Virginia,
HAMPTON H. WAYT, CLERK.
Staunton, Va.

Dec.17th.,1918.

This is to certify,that on the petition of Henry Cuthbert Bryan, 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 9th.,day of November,1918,in the cause then therein pending of the Commonwealth of Virginia vs the said Henry Cuthbert Bryan.No bond required.

In case however the said petitioner desires to be admitted to bail,the following requirements as endorsed by one of the judges of the Supreme Court of Appeals of Virginia,upon said petition to be followed.

"The petitioner may be admitted to bail upon application to proper authority upon giving bond and security in the penalty of Five Hundred Dollars,($500.00)"

Teste:-

HHWayt Clerk.

Commonwealth

vs

Henry Cuthbert Bryan

Bail

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF ROCKINGHAM COUNTY, GREETING:

We command you, that you take Henry Cuthbert Bryan if he be found within your bailiwick, and him safely keep, so that you have his body forthwith before the Circuit Court of Rockingham County, at the Court House thereof, to answer us of a certain Misdemeanor whereof he stands indicted.

And have then and there this Write Witness J.F.Blackburn Clerk of our said Court at the Court House the 8 day of Nov. 1918 in the 142nd year of the Commonwealth.

J.F.Blackburn Clerk.

Executed By Arresting Henry Cuthbert Bryan.
and Bringing him in Cort to answer the
Said Complaint This the 9 Day of Nove 1918

W L Dillard S.R.C.

Commonwealth
vs
Capias
Henry Cuthbert Bryan

Whereas H. C. Bryan and C. C. Conrad personally appeared before me, J. H. Downing, Mayor of the City of Harrisonburg, Virginia, on this 9th day of August 1918 and severally acknowledged themselves indebted to the Commonwealth of Virginia, the said H. C. Bryan in the sum of Five Hundred Dollars, and the said C. C. Conrad in like sum, to be levied of their respective goods and chattels, lands and tenements, for the use of said Commonwealth, and they each waive the benefit of their Homestead Exemption as to this obligation and any right to discharge any liability arising to the said Commonwealth under this recognizance, yet upon this condition that if the said H. C. Bryan do appear before the Circuit Court of Rockingham County, Virginia, on the first day of its October term 1918, and not depart therefrom without leave of the Court, then this obligation to be null and void.

Witness the following signatures and seals.

H. C Bryan (seal)

C. C. Conrad (seal)

Whereas H. C. Bryan and C. C. Conrad personally appeared before me, J. H. Downing, Mayor of the City of Harrisonburg, Virginia, on this 9th day of August 1918 and severally acknowledged themselves indebted to the Commonwealth of Virginia, the said H. C. Bryan in the sum of Five Hundred Dollars, and the said C. C. Conrad in like sum,to be levied of their respective goods and chattels, lands and tenements, for the use of said Commonwealth, and they each waive the benefit of their Homestead Exemption as to this obligation and any right to discharge any liability arising to the said Commonwealth under this recognizance, yet upon this condition that if the said H. C. Bryan do appear before the Circuit Court of Rockingham County, Virginia,on the first day of its October term 1918, and not depart therefrom without leave of the Court, then this obligation to be null and void.

Witness the following signatures and seals.

(seal)_____

(seal)_____

DOCKET NO. _____ FILE NO. _____

Commonwealth

VS { IN _____ } $ _____

Henry Cuthbert Bryan

_____ p. q.

_____ p. d.

FINAL ORDER _____ 191____

191____ PROCEEDINGS

	Memo:	Filed.	Process Issued.

CIRCUIT COURT, ROCKINGHAM CO., VA.

Bushnell

QUALITY AND WORKMANSHIP

637-34