We the jury find the accused Nedith guilty — R. S. Kimper foreman

October term, 1918.

Mapp Law.

COMMONWEALTH

vs. **Indictment**

Nedith Malone

For Felony

~~**For Misdemeanor**~~

A TRUE BILL

C. D. Kazendesser

Foreman

Harry M. Strickler
Attorney for the
Commonwealth.

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 Nedith Malone within one year next prior to the finding of this indictment, in said County, did unlawfully sell, offer, keep, store and expose for sale, give away, transport, manufacture, dispense, solicit, advertise and receive orders for ardent spirits, it being his second offense, he having been convicted under the prohibition law in the said Court on the 6th day of February, 1917,

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 Henry H. Early & W. L. Dillard, witnesses sworn in Court and sent before the Grand Jury to give evidence.

NEEDITH MALONE)
)
Ads.)
)
COMMONWEALTH.)

In Michie's Digest, Volume 12, page 781, it is said; "A subsequent statute revising the whole subject matter of a former one and evidently intended as a substitute for it, though it contains no express words to that effect, must on principles of Law as will as in reason and common sense operate a repeal of the former Law."

Herron Vs. Carson, 26 West Virginia, page 62; Somers Vs. Commonwealth, 97 Virginia, page 759, 338, and 381; State Vs. Cain, 8 West Virginia, page 720, 734; Dovies Vs. Creighton, 33 Grattan, page 696; State Vs. Miners, 38 West Virginia, page 125, 188, and 470; State Vs. Brookover, 38 West Virginia, page 141, 188, and 476; Hagan Vs. Gengon, 29 Grattan, page 705.

"A statute is repealed by implication when there is a subsequent one revising the whole subject matter of the first"-

Cooley Vs. Supervisors, 2 West Virginia, page 416.

In the case of Somers Vs. Commonwealth, 97 Virginia, page 759, cited above, it is said;

"The repeal of a statute by implication is not favored by the courts. The presumption is always against the intention to repeal where express terms are not used, or the latter statute does not amend the former. To justify the presumption of an intention to repeal one statute by another, the two statutes must be irreconcilable. If by a fair and reasonable construction they can be reconciled, both must stand. If, however, they are inconsistent and irreconcilable, then an intention to repeal is presumed, but only to the extent of the repugnance. Fulkerson Vs. Bristol, 95 Virginia, 1; Davies & Co. Vs. Creighton, 33

MEREDITH MADONE
Esq.
COMMONWEALTH

In Minute, a Direct Volume 18, page 187, it is said:

"A memorandum setting forth the whole subject matter to be considered was a separately intended as a formal one and evidently intended to contain no express weight of final effect, when though it contained on principles to law as illy as it reason and common sense operate a report of the formal law."

Hetton v. Carson, 22 West Virginia, page 25: Scott v. Wheeling, 25 W. Va. 228, and 227: Scott v. Commonwealth, 29 Virginia, page 127, 128, and 129: Scott v. Carson, 2 West Virginia, page 250, 257, 258: Dowlen v. Creighton, 22 Gratt., page 196: State v. Minter, 22 West Virginia, page 152, that, in the case of Somers v. Commonwealth, 29 Virginia, page 604: Hamm v. Gordon, 25 Gratten, page 207.

"A statute is referred to implication when there is a supposed omission and reviving the whole subject matter to be considered by the Legislature." 5 West Virginia, page 216.

In the case of Somers v. Commonwealth, 29 Virginia, page 604, cited above, it is said:

"The report of a statute is to be implication of the intention of the Legislature." The presumption is always against the intention of repeal where express words are not used, or the intention of repeal where express words are not used, or the intended repeal is not clear and certain. The presumption is always against the intention of repeal where express words are not used, or the intention of repeal where express words are not used, or the intended repeal is not clear and certain.

"A statute is referred to implication when there is a supposed omission and reviving the whole subject matter to be considered by the Legislature." 5 West Virginia, page 216.

Cooley v. Supervisors, 5 West Virginia, page 216.

In the case of Somers v. Commonwealth, 29 Virginia, page 604, cited above, it is said:

"The report of a statute is to be implication of the intention of the Legislature." The presumption is always against the intention of repeal where express words are not used, or the intention of repeal where express words are not used, or the intended repeal is not clear and certain.

"A statute is referred to implication when there is a supposed omission and reviving the whole subject matter to be considered by the Legislature."

Hetton v. Carson, 22 West Virginia, page 25: Somers v. Commonwealth, 29 Virginia, page 127, 128, and 129: Scott v. Carson, 2 West Virginia, page 250, 257: Dowlen v. Creighton, 22 Gratt., page 196: State v. Minter, 22 West Virginia, page 152, that, in the case of Somers v. Commonwealth, 29 Virginia, page 604: Hamm v. Gordon, 25 Gratten, page 207.

"A statute is referred to implication when there is a supposed omission and reviving the whole subject matter to be considered by the Legislature." 5 West Virginia, page 216.

Cooley v. Supervisors, 5 West Virginia, page 216.

In the case of Somers v. Commonwealth, 29 Virginia, page 604, cited above, it is said:

"The report of a statute is to be implication of the intention of the Legislature." The presumption is always against the intention of repeal where express words are not used, or the intention of repeal where express words are not used, or the intended repeal is not clear and certain.

Grattan, 696; and Sutherland on Statuary Construction, Section 138. But where the latter statute was plainly intended to embrace the whole legislation on the subject to which it refers, and to be wholly substituted for all former statutes on the same subject it must be held to be a legislative declaration that whatever is embraced in it shall prevail, and whatever is excluded is discarded and repealed. Fox Vs. Commonwealth, 16 Grattan, 1; McCready Vs. Commonwealth, 27, Grattan 982; Davies & Company Vs. Creighton, 33 Grattan, 696; and Sutherland on Statuary Construction, Secs. 155 and 156. Laws are presumed to be passed with deliberation, and with a knowledge of all existing laws on the same subject and their various provisions."

See also the case of Brown Vs. Western State Hospital, 110 Virginia, page 321 and 328.

In Vansant Vs. Commonwealth, 108 Virginia, page 135, 137, the language of the court is peculiarly applicable to the case at bar, it is said;

> "We think it plain that the second amendment operated as a repeal of the first amendment, upon the principle announced by this court in Somers' Case, 97 Virginia, 760. 33 S. E. 381, where it is said;'The repeal of a statute by implication is not favored by the courts. The presumption is always against the intention to repeal where express terms are not used, or the latter statute does not amend the former. To justify the presumption of an intention to repeal one statute by another, the two statutes must be irreconcilable. If by a fair and reasonable construction they can be reconciled, both must stand. If, however, they are inconsistent and irreconcilable, then an intention to repeal

Ex parte: Ana Zmarzlang on Habeas Corpus Application. Rec-
ord. 158.

"Ana Zmarzlang on Habeas Corpus Application. Rec-
ord. 158 and 159. Ewan Ste Brennan to be sgbelwong ll existang jewa on the
illegation. Ana aldr a knowledge to ll existing jewa on the
same subject but that vertry experienc."

Ex parte: Ana Zmarzlang on Habeas Corpus Application. Rec-
ord. 158 and 159. Ewan Ste Brennan to be bessed aldr de-
ll ewan. 159 and 160. Ana Zmarzlang on Habeas Corpus Application.
Ex parte: Ana Zmarzlang on Habeas Corpus Application. Rec-
ord. 158 and 159. Ewan Ste Brennan to be bessed aldr de-
cision 158. But where the jurisdiction of the court is doubtful
be to embrace the whole jurisdiction on the subject of which
the Letter. But to be avoidy especially for all jurisdic-
ation on the same subject it than be held to be a juris-
dictional declaration that whatever is decided is binding
Ewan Ste Brennan to the same subject. Ewan Ste Brennan is al-
ll made it is decided whatever is binding upon the parties
Ex parte: Ana Zmarzlang on Habeas Corpus Application. Rec-
ord. 158 and 159. Ewan Ste Brennan to be bessed aldr de-
cision 158. But where the jurisdiction of the court is doubtful
be to embrace the whole jurisdiction on the subject of which
the Letter. But to be avoidy especially for all jurisdic-
ation on the same subject it than be held to be a juris-
dictional declaration that whatever is decided is binding
upon the parties. Ewan Ste Brennan is all made it is decided
Ex parte: Ana Zmarzlang on Habeas Corpus Application. Rec-
ord. 158 and 159. Ewan Ste Brennan to be bessed aldr de-
cision 158. But where the jurisdiction of the court is doubtful
be to embrace the whole jurisdiction on the subject of which
the Letter. But to be avoidy especially for all jurisdic-
ation on the same subject it than be held to be a juris-
dictional declaration that whatever is decided is binding
upon the parties. Ewan Ste Brennan is all made it is decided

is presumed, but only to the extent of the repugnance.*** But where the latter statute was plainly intended to embrace the whole legislation on the subject to which it refers, and to be wholly substituted for all former statutes on the same subject, it must be held to be a legislative declaration that whatever is embraced in it shall prevail, and whatever is excluded is discarded and repealed. Fox Vs. Commonwealth, 16 Grattan, 1; McCready Vs. Commonwealth, 27 Grattan, 982; Davies & Co. Vs. Creighton, 33 Grattan, 696; and Sutherland on Statuary Construction, Secs. 155, 156. In the case under sonsideration, the latter statute does amend the former. The latter was plainly intended to rmbrace the whole legislation on the subject to which it refers, and to be wholly substituted for all former statutes on the same subject. The Sumers' Case, supra, therefore, is in both aspects conclusive of the question before us, and it is plain that upon the passage of the Act of March 17, 1906, all authority ceased to tax trees separate and apart from the land upon which they stand."

These cases are apparently dealing with cases in which there was no express declaration of an intention to repeal the former act.

In the case at bar in the very title of the act, it is declared that the object of the act was to repeal Chapter 146 of the Acts of the Assembly, 1916, approved March 10th, 1916, and all other acts or parts of acts in conflict with this act. Here is an express declaration of the legislative intent as to what they propose to do; and Chapter 388 of the Acts of 1918, approved March 19th, 1918, purports covering and it is to cover the entire field dealing with the liquor traffic, the former act being re-enacted and made part of the latter act.

It is, therefore, respectfully submitted that under the authorities referred to and upon a consideration of the act itself, it is clear that the indictment in this case does not charge a felony and that the defendant could not be guilty of a felony, but that the second offense must be an offense against the Act approved March 19th, 1918.

Respectfully submitted,

Thos. A. Lewis
Atty for Wadsack Nelson

Medith Malone
07
Barrett

Where a statute repeals and reenacts the provisions of the former law, such provisions reenacted are construed as never ceasing to operate. 12 Mich 1785 Barnes v Com, 97 Va 759; 33 S.E. 381 Tennant v Irvine, 124 W Va, 387. The parts of the old statute which are reenacted in the new one not repealed but preserved. As to them the new statute is only declaratory of the former law.

It is plain that there was no design on the part of the legislature to obliterate convictions under the act of 1916 so that another offence committed after the latering of fact of the act of 1918 would not be a felony when the first conviction was under the act of 1916. As a matter of fact the act of 1918 does not in terms repeal that of 1916. The caption of the act does indeed mention the repeal of the act of 1916 as one of its objects, but the body of the act contains no such repeal and the caption is no part of the law — D.M.M.

Clem vs. Nedith Malone

1 Minor E. Kyger ✓
2 E. H. Myers ✓
3 Robert L. Yancey ✓
4 J. B. Armentrout ✓
5 W. D. Maddox
6 Z. P. Grey
7 S. A. Shutters
8 R. H. Bridges
9 A. S. Kemper
10 S. O. Grey
11 A. J. S. Hirle
12 ~~Jno F. Floyd~~
13 J. P Van Pelt
14 ~~S. H. Jones~~
~~C. V. Bennett~~
~~R. L. Woodson~~

If you find the defendant not guilty you shall say and no more.

If you find him guilty of felony as charged in the indictment you shall so and then ascertain his punishment by confinement in the penitentiary for not less than one year ~~and nor~~ nor than five years or by confinement in gaol not less than six months nor more than twelve months and by a fine not exceeding five hundred dollars