

G. N. 6

O. O. 12

Commonwealth

July

Wm O'Donnell

1 J. K. Summers

2 M. W. Firebaugh

3 Percy S. Suter

4 R. R. Liskay

5 Hefner Messier

6 J. S. Armstrong

7 J. W. Pickering

~~8/10/58~~

HON. S. H. LETCHER, JUDGE,
LEXINGTON, VIRGINIA.
D. H. LEE MARTZ, CLERK.

J. S. MESSERLEY, }
GEORGE W. HESS, } DEPUTIES.
C. H. BRUNK, }

IN THE
CIRCUIT COURT
— OF —
ROCKINGHAM COUNTY, VIRGINIA.

May Term, 1908
STATEMENT OF COSTS.

Commonwealth Plaintiffs,

vs.
Daniel O'Donnell Defendants.

Attorney and Writ Tax,	<i>paid by check</i>	\$10 00
Circuit Clerk,	<i>paid</i>	8 00
Sheriff,	<i>paid to Croushore</i>	4 00
Commissioner,	<i>W. T. Ingram - Reimburse</i>	4 00
Printer,	<i>Ingram - Reimburse</i>	19 17
		<hr/>
		\$45 17
<i>Cost of Appeals paid</i>		21 00
<i>7 in. paper</i>		50 00
		<hr/>
		\$116 17

sent on check \$2.77
paid

\$20⁰⁰ sent to clerk of Appeals
also 20⁰⁰

Atteste.

D. H. Lee Martz Clerk.

Cornwall's
replaced, to be
copied in bill of
Ex. No 2. J. N. H.

Corn's - No. Replaced & substituted
given for this & for those on same subject
opened by defence

The Court instructs the Jury that the word "intoxicated" as used in the indictment in this case and in the law under which a sale of liquor to an intoxicated person is prohibited, means such inebriation as attracts observation and becomes known to others or gives them reason to believe the person is intoxicated.

See Halstead against Horton, 28 W. Va., 727.

18 S. E. 952, etc.

Account of the
deposition of
J. H. H.
J. H. H.
J. H. H.

Given for the purpose of showing
the facts of the case

The Court instructs the jury that the word "intoxicated" as
used in the indictment in this case and in the law under which a sale
of liquor to an intoxicated person is prohibited, means such inebri-
ation as affects observation and becomes known to others or gives
them reason to believe the person is intoxicated.
See *Hainford against Horton*, 28 W. Va. 437.
10 W. Va. 437, etc.

St./

Refused

III.

The jury are instructed that even though they may believe from the evidence that J. N. Sherrard did, on the 26th day of May 1908, while intoxicated, procure intoxicating liquor at the bar room of the Defendant, Daniel O'Donnell, yet, if they further believe from the evidence, that the sale thereof to said Sherrard was not made by said Daniel O'Donnell, in person, but was made by his agent, in the absence of the Defendant and without his knowledge, they must find the Defendant not guilty, even though they may believe that such agent knew of the intoxicated condition of said Sherrard at the time of the sale.

W. J. [unclear]

III.

The jury are instructed that even though they may believe from

while intoxicated, produce intoxicating liquor at the bar room of
the Defendant, Daniel O'Donnell, yes, if they further believe from
the evidence, that the sale thereof to said Sheppard was not made
by said Daniel O'Donnell, in person, but was made by his agent, in
the absence of the Defendant and without his knowledge, they must
find the Defendant not guilty, even though they may believe that
such agent knew of the intoxicated condition of said Sheppard at
the time of the sale.

B

Refused

IV.

The jury are instructed that, in order that they may find that J. N. Sherrard, at the time he procured intoxicating liquor at the bar room of the Defendant, was intoxicated, within the meaning of the law, they must believe, from the evidence, beyond every reasonable doubt, that at the time he so procured such intoxicating liquor, he was in a condition, due to the previous use of such liquor, of enthusiasm, frenzy, or madness, or in a state of delirium.

Can,

51

Q. D. muel

Inducted
reference

Reference
IV.

... was instructed that, in order that they may find
... at the bar room of the Defendant, was intoxicated, within the mean-
ing of the law, they must believe, from the evidence, beyond every
reasonable doubt, that at the time he so procured such intoxicating
liquor, he was in a condition, due to the previous use of such li-
quor, of enthusiasm, frenzy, or weakness, or in a state of delirium.

C/

Repared
v.

They jury are instructed that in order that they may find that J. N. Sherrard was ^{intoxicated} at the time he procured the liquor, shown in the evidence to have been gotten by him in the bar room of Daniel O'Donnell, the Defendant, ~~intoxicated~~, they must believe from the evidence, beyond every reasonable doubt, that, owing to the previous use of ardent spirits, or some~~thing~~ similar beverage, the said Sherrard was in a state of stupor or of such excitement as to have lost control of his mentality, or not to have been reasonably able to control his physical powers.

Guinn

I.

The jury are instructed that the Defendant is presumed to be innocent until and unless his guilt is established by the evidence beyond every reasonable doubt.

II

Guinn

The Court instructs the jury that the word intoxicated as used in the indictment means a materially changed condition produced by the immoderate or excessive use of intoxicants as contrasted with normal condition & conduct

Opinion

The jury are instructed that the Defendant is presumed to be innocent until the contrary is established by the evidence beyond every reasonable doubt.

Opinion

The Court has heard the evidence and the law and has reached its verdict. The Defendant is found guilty of the crime charged. The Court has heard the evidence and the law and has reached its verdict. The Defendant is found guilty of the crime charged.

2/ *Genin*

III

The jury are instructed that even though they may believe from the evidence that the defendant, O'Donnell, did, on the 26th day of May, 1908, sell intoxicating liquor to J. N. Sherrard, and that the said Sherrard was, at the time of such sale, in an intoxicated condition, that yet they must find the defendant not guilty, unless they further believe from the evidence that, at the time of such sale, the defendant, ^{or his salesman who sold the liquor} knew that said Sherrard was intoxicated.

Page 10

The jury are instructed that even though they may believe from the evidence that the defendant, O'Donnell, did, on the 28th day of May, 1908, sell intoxicating liquors to J. M. Sperry, and that the said Sperry was, at the time of such sale, an intoxicated condition, that yet they must find the defendant not guilty, unless they find or believe from the evidence that, at the time of such sale, the defendant ~~intended~~ knew that said Sperry was an intoxicated person.

IV

The Court instructs the Jury that if they believe from the evidence that J. L. Sherrad purchased half a pint of whiskey at the bar-room of Daniel O'Donnell on the 26th of May, 1908, whether said purchase was made from said O'Donnell or some person employed by him in his said bar-room, and that at the time of said sale the said

Sherrad was intoxicated and that said intoxication of said Sherrad *so that the seller must have observed the fact that he was intoxicated* at that time was perfectly apparent, they shall find the accused guilty and shall ascertain his punishment which shall be a fine of not less than \$50.00 nor more than \$100.00.

17

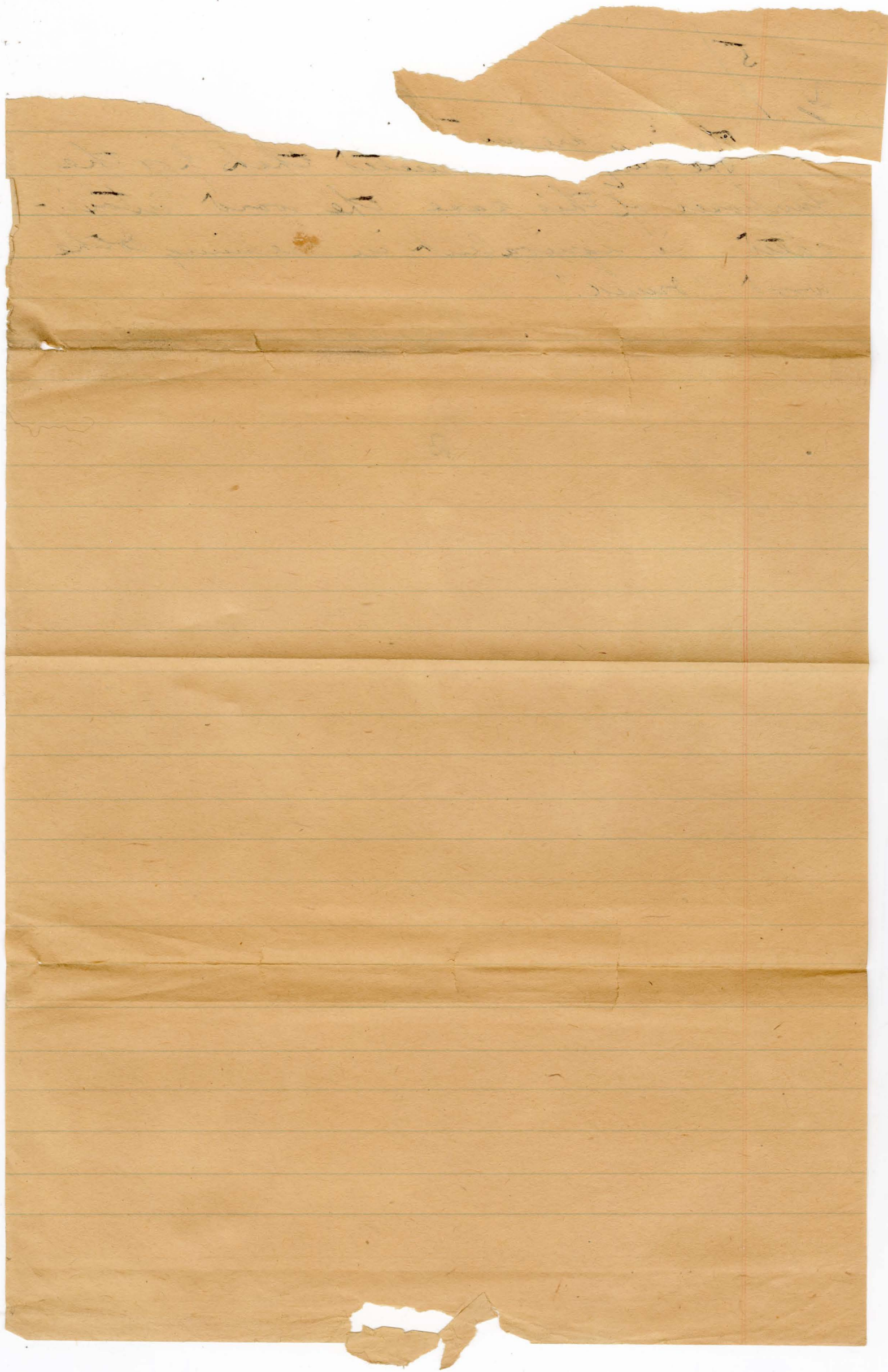
The Court instructs the jury that if they believe from the
evidence that J. L. Sherrard purchased half a pint of whiskey at the
bar-rooms of Daniel O'Honnell on the 25th of May, 1908, whether said
purchase was made from said O'Honnell or some person employed by him
in his said bar-room, and that at the time of said sale the said
Sherrard was intoxicated and that said intoxication of said Sherrard
at that time was perfectly apparent, they shall find the accused
guilty and shall ascertain his punishment which shall be a fine of
not less than \$100.00 nor more than \$100.00.

a 5/

The jury are instructed that for the purposes of this case, the word "intoxicated" is equivalent in meaning to the word "drunk."

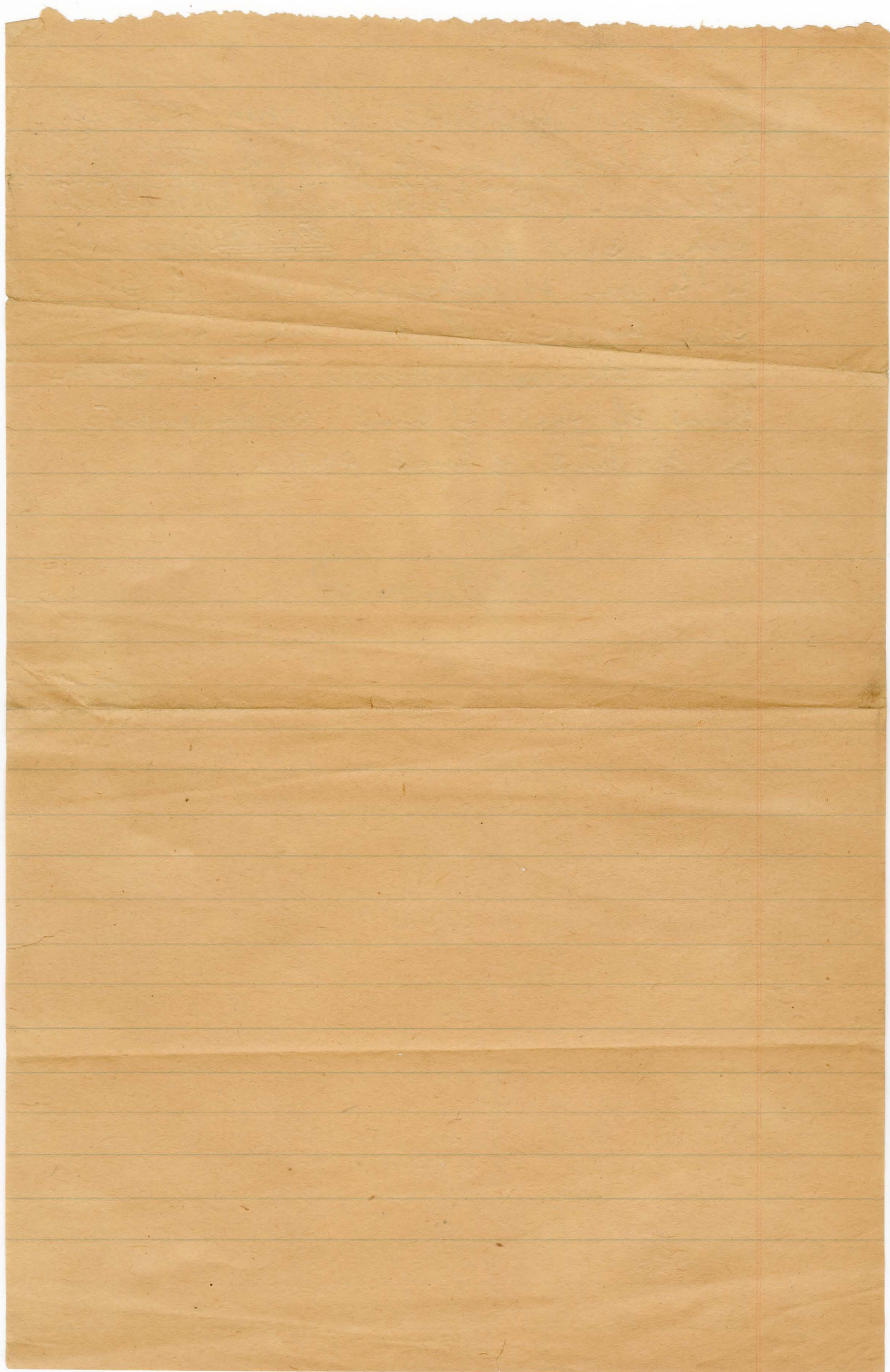
Replied

B



The Court - instruct the jury that if
they believe from the evidence that J. L.
Sherrard ^{purchased of defendant - 1/2 pint - of whiskey & that he} was intoxicated immediately
before such purchase ~~then the~~ presumption
is he was so intoxicated when he purchased
said liquor & the law under such
circumstances presumes that the seller
knew the fact - of such intoxication
at the time of such sale -

Reperno



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 said Court at its.....*May*.....term, in the year 190*8*,
upon their oaths present that.....

Daniel O'Donnell

on the.....*18th*.....day of.....*June*....., in the year 190*8*, in the said County,

*he said Daniel O'Donnell then and there having
license to sell liquor by retail at his barroom on
Water Street in the town of Harrisonburg in said County,
did sell to one Edward Heath at said barroom
ardent-spirits and malt-liquors, he ^{said} Edward
Heath then and there being a person under
twenty-one years of age*

against the peace and dignity of the Commonwealth of Virginia.

Upon the evidence of.....

.....witness... sworn in open Court and sent to the
Grand Jury to give evidence.

.....Clerk.

Commonwealth

25.

INDICTMENT.

James D. Donnell

Not A TRUE BILL.

E. J. Higgins

Foreman.

Witness

*Wm. M. & Will
H. S. Williams
Frank. Todd*

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 said Court at its.....*May*.....term, in the year 190.....*8*,
upon their oaths present that.....

Daniel O'Donnell

on the.....*26th*.....day of.....*May*....., in the year 190.....*8*, in the said County,

as said Daniel O'Donnell then and there having
license to sell liquor by retail at his barroom on
Water Street in the town of Harrisonburg in said County
did sell to one J. L. Sherrard one ~~half~~ ^{half} pint of whisky
he said Daniel O'Donnell then and there knowing
the said J. L. Sherrard to be intoxicated

against the peace and dignity of the Commonwealth of Virginia.

Upon the evidence of.....

.....witness... sworn in open Court and sent to the
Grand Jury to give evidence.

.....Clerk.

We the Jury find the ~~defendant~~ ^{accused} Daniel O'Donnell guilty
in manner and form as charges in the indictment and assess
his fine at Fifty dollars.

J. W. Pickering.

Ford

Commonwealth

vs.

INDICTMENT.

Daniel O'Donnell

A TRUE BILL.

D. J. O'Donnell

Ford

Witness

J. J. O'Donnell

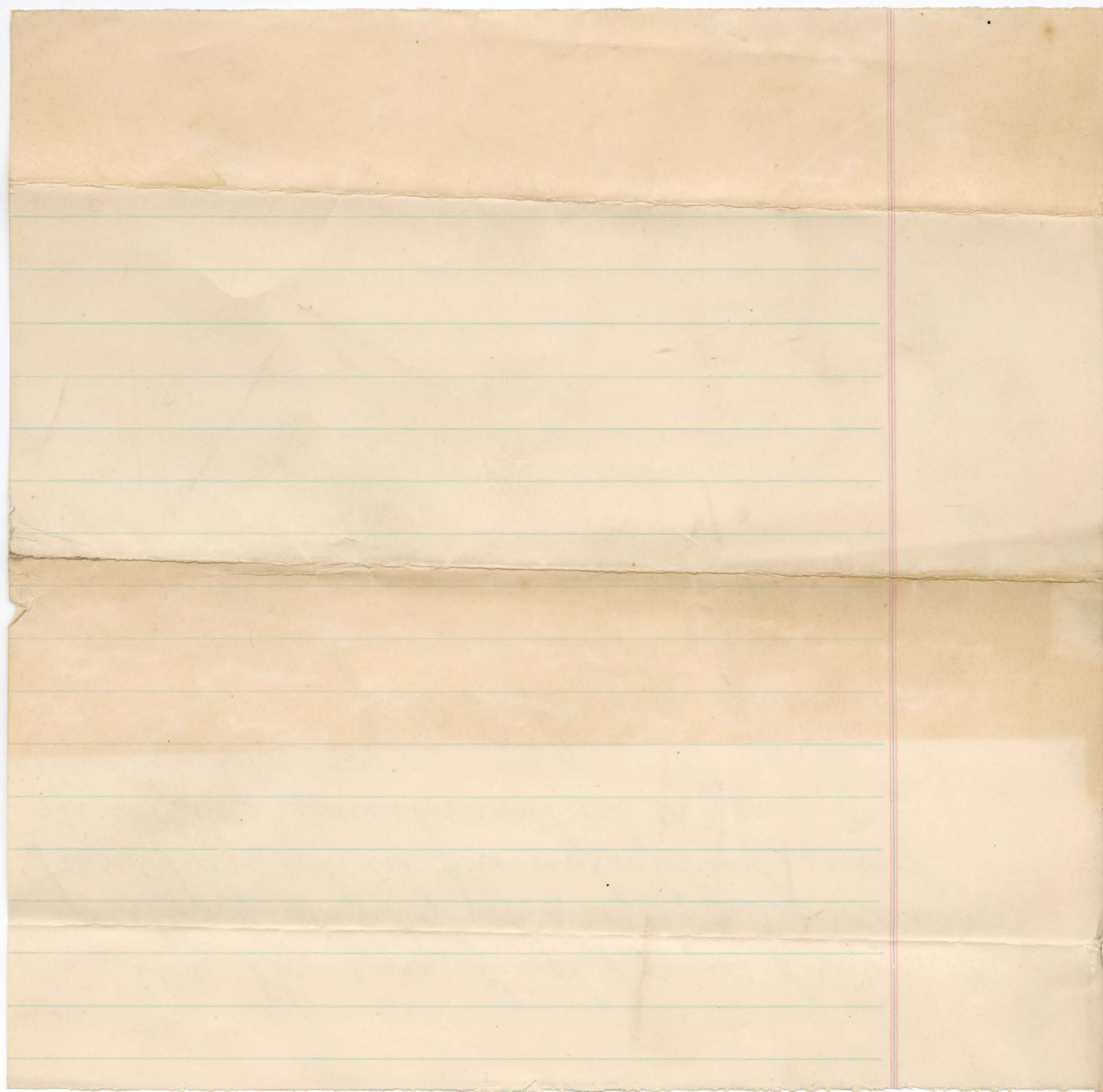
W. J. O'Donnell

J. J. O'Donnell

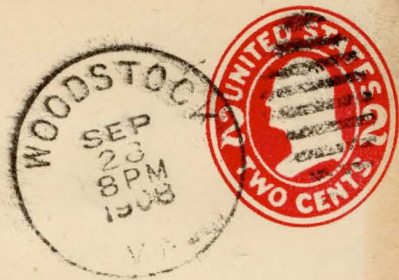
D. E. O'Donnell

We the jury find Daniel O'Donnell
guilty of selling whiskey to J. L. Sheppard
as charged in the indictment, and
fix his punishment at a fine of
Fifty dollars.

J. W. Pickering foreman,



After 5 days, return to
WALTON & WALTON,
Lock Box 338,
WOODSTOCK, VA.



Col.D.H.Lee Martz,
Harrisonburg, Va.

4 Jan 1021
Summers 3.44
Finbough 3.28
Suter 2.20

919.17

Comer " B. Donnell

Auto 10.00

Chair 8.00

Wool 4.00

App 4.00

82.61

126

44.12

26.01

76.1

7.11

8.17

5.21

2.11

12.1

2.1

Remainder

lot of appurtenances

Time

debt due com

45.23

21.00

50.00

116.23

2.77

119.00

116.23

2.77

119.00

36

70

106.00

1.5

18

1.0

20

240

75

36

40

20

1.00

118.04

800

1.82

220

10

115

008

587

072

00.15

00.02

110.2

119.0

110.2

119.0

110.2

119.0

110.2

110.2

VIRGINIA:

*In the Supreme Court of Appeals, held at the Court
House thereof, in the City of Staunton on Tuesday,
the 15th day of September, 1908.*

Daniel O'Donnell - - - - -Plaintiff in Error
against

Commonwealth of Virginia - - - - - Defendant in Error

Upon a writ of error and supersedeas to a judgment
of the Circuit Court of Rockingham County, rendered
on the 27th day of June, 1908.

This day came again as well the Plaintiff in Error by
counsel as the Attorney General on behalf of the Commonwealth,
and the court having maturely considered the transcript of the
record of the judgment aforesaid and arguments of counsel, is of
opinion, for reasons stated in writing and filed with the record,
that there is no error in the said judgment. Therefore it is
considered that the same be affirmed and that the Defendant in
Error recover of the Plaintiff in Error Thirty Dollars Damages
and also its costs in this behalf expended.

Which is ordered to be certified to the said Circuit Court
of Rockingham County.

A Copy,

Teste: *Alex. Murray, Clerk*

Defendant in Error's costs
in the Supreme Court of Appeals;
Attorney's fee ---\$20.00

Teste:

Alex. Murray Clerk

Daniel O'Donnell

v.

Commonwealth

Copy of Judgment of
Court of Appeals.

Enuncie
Sept 21/08
236

VIRGINIA:

the 1st of September, 1908.

In the Supreme Court of Appeals of the State of Virginia.

Know all Men by these Presents,

THAT WE Daniel O'Donnell and Charles C. Conrad

are held and firmly bound unto the Commonwealth of Virginia, in the sum of Five Hundred

DOLLARS,

to the true payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the 27th day of June

1908, and in the 132 year of the Commonwealth, and we, and each of us hereby waive the benefit of the Homestead exemption as to the obligation of this bond, also any claim or right to discharge any liability to the Commonwealth arising under said bond or by virtue of said office, post, or trust, with Coupons detached from bonds of this State.

The condition of the above obligation is such, That Whereas The above bound D. O'Donnell, a licensed liquor dealer in the town of Harrisburg, was this day convicted in the Circuit Court of Rockingham County of a misdemeanor on the charge of selling ^{intoxically} ardent spirits to an intoxicated, and was thereupon re- quired by the order of the Court to give bond as required by law; Now Therefore if the said D. O'Donnell shall ^{within twelve months} not violate the provisions of the Act of the General Assembly of Virginia approved March 12, 1908 and con- stituting Chapter 189 of said Acts, then this bond shall be void, otherwise to remain in full force and virtue

Daniel O'Donnell (Seal.)
Charles C. Conrad (Seal.)

ROCKINGHAM COUNTY, TO-WIT:

This day
the securit..... in the above bond, personally appeared before..... Clerk
of the Circuit Court of Rockingham County, and made oath that..... property is worth \$.....
after the payment of..... debts, and those which..... security for and expect..... to have to pay.

Given under my hand this..... day of....., 190.....

A Copy—Teste.

Clerk.

Clerk.

Samie O'Donnell

✓ Bond

Commencement

June 27/1908

Walter Hunt

ROCKINGHAM COUNTY, TO-WIT:

OFFICE OF THE CLERK
Supreme Court of Appeals of Virginia,
ALEXANDER W. MAY, CLERK.
Staunton, Va.

August 7, 1908.

This is to certify that on the petition of Daniel O'Donnell, one of the Judges of the Supreme Court of Appeals of Virginia has awarded a writ of error and supersedeas to a judgment of the Circuit Court of Rockingham County, rendered on the 27th day of June, 1908, in a prosecution by the Commonwealth of Virginia against the said O'Donnell for a misdemeanor, provided the petitioner shall enter into bond, with sufficient security, in the clerk's office of the said Circuit Court, in the penalty of Three Hundred Dollars (\$300.00), conditioned as the law directs.

Teste:

Alex. W. May

To the clerk of the Circuit
Court of Rockingham Co., Va.

0-4

1
#3
#27

: 0 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 1040

Leavenworth's Book

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