

E. N. C

W. O. O

L. S. S

Communitarian

July } Mission

Chas. C. Conant

1 John R. Blathorne

2 Saml J. Halsey

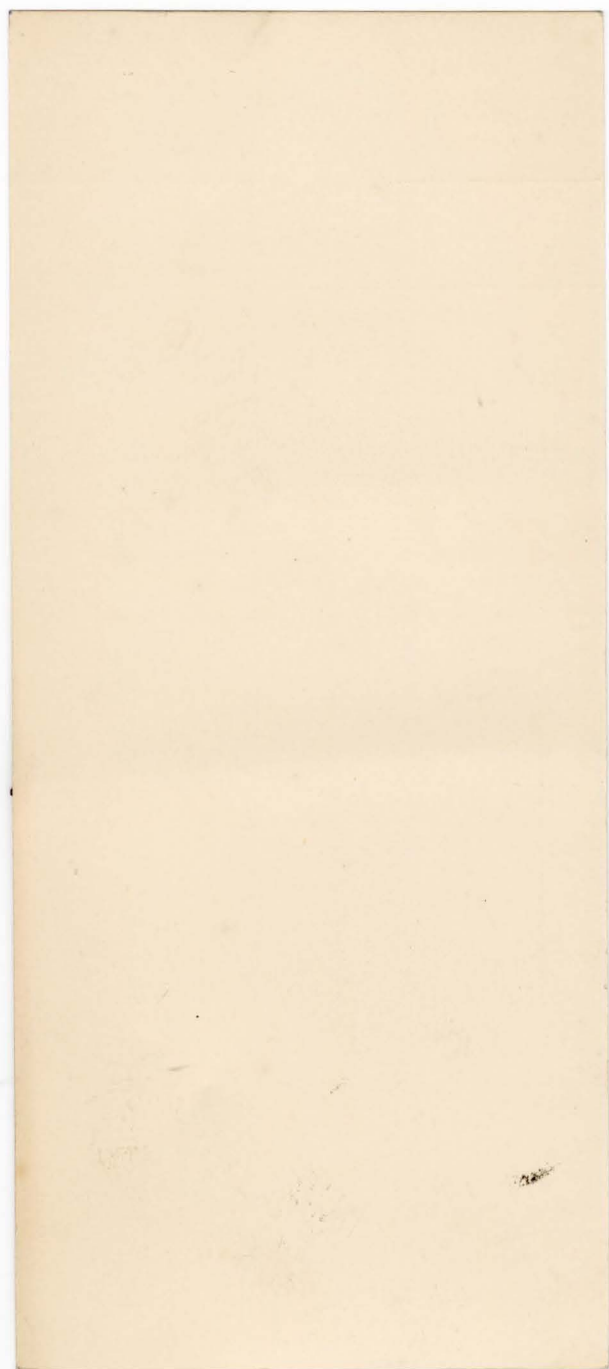
3 E. W. Heatwole

~~4 W. P. Hufferman~~

5 W. P. Hufferman

6 W. H. Myers

7 F. H. Shaw



I.

The jury are instructed that in this case the burden rests upon the Commonwealth to prove, by evidence, beyond every reasonable doubt, that the Defendant, C. C. Conrad, either in person, or through his duly authorized agent, sold and delivered to Chas. Mitchell beer, as charged in the indictment; and that if the Commonwealth has failed to so prove said fact beyond every reasonable doubt, it is their duty to acquit the Defendant.

Any person standing behind the bar, ^{with his knowledge} and serving customers of the saloon was an agent of the accused within the meaning of this instruction.

The jury are instructed that in this case the burden rests upon the Government to prove, by evidence, beyond every reasonable doubt, that the Defendant, C. C. Gentry, either in person, or through his duly authorized agent, sold and delivered to Chas. Mitchell, a quantity of the substance charged in the indictment; and that if the Government fails to do so, the jury are to acquit the Defendant.

It is their duty to acquit the Defendant if they believe the evidence is not sufficient to establish the crime charged in the indictment.

II.

The jury are instructed that even if they believe beyond every reasonable doubt, from the evidence, that Chas. Mitchell obtained beer at the bar room of Chas. G. Conrad, ^{that fact alone} ~~but it~~ is not sufficient, but in order to a conviction they must further believe from the evidence, beyond every reasonable doubt, that the beer was sold to said Mitchell ~~_____~~

of blood has been used to
the in order to a comparison that which further returns from the
word of the red room of when. C. Conlan, who is to not sufficient
consequently, from the evidence, that since, Margaret O'Connell
there is no doubt that she is the person who

III.

The jury are instructed that though they may believe from the evidence that Chas. A. Hammer did approach J. T. Lam and D. E. Croushorn, or either of them, and make the statements and requests attributed by said Croushorn and Lam, to said Hammer, that yet, since the Defendant, C. C. Conrad, is not shown to have been in any wise connected with said conduct of said Hammer, the evidence of the said Croushorn and Lam can be considered only in so far as the same may tend to show the animus or bias of the said Hammer as a witness in this cause, and is not to be taken as evidence showing the guilt of the Defendant of the offense charged against him in the indictment.

Instruction No. 1

The jury are instructed that in this case the burden rests upon the Commonwealth to prove, by evidence, beyond every reasonable doubt, that the defendant, C. C. Conrad, either in person or through his duly authorized agent, sold and delivered to Chas. Mitchell beer, as charged in the indictment; and that if the Commonwealth has failed to so prove said fact beyond every reasonable doubt, it is their duty to acquit the defendant. Any person standing behind the bar, with his knowledge, and serving customers of the saloon, was an agent of the accused within the meaning of this instruction.

Instruction No. 1

The jury are instructed that in this case the burden rests upon the Commonwealth to prove, by evidence, beyond every reasonable doubt, that the defendant, D. C. Conner, either in person or through his duly authorized agent, sold and delivered to Chas. Mitchell beer, as charged in the indictment; and that if the Commonwealth has failed to so prove said fact beyond every reasonable doubt, it is their duty to acquit the defendant. Any person standing behind the bar, with his knowledge, and serving customers of the saloon, was an agent of the saloon within the meaning of this instruction.

Instruction No. 2

The jury are instructed that even if they believe beyond every reasonable doubt, from the evidence, that Chas. Mitchell obtained beer at the bar room of Chas. C. Conrad, that fact alone is not sufficient, but in order to a conviction they must further believe from the evidence, beyond every reasonable doubt, that the beer was sold to said Mitchell.

Instruction No. 4

The Court instructs the jury that if they believe from the evidence that Chas. C. Conrad sold lager beer to Chas. Mitchell as charged in the indictment, it is the duty of the jury to find said Chas. C. Conrad guilty regardless of whether or not such conviction would result in the license of said Chas. C. Conrad being revoked.

Instruction No. _____

The Court instructs the jury that if they believe from the evidence that Chas. J. Conroy sold lager beer to Chas. Mitchell as charged in the indictment, it is the duty of the jury so find and Chas. J. Conroy guilty regardless of whether or not such violation would result in the license of said Chas. J. Conroy being revoked.

Instruction No. 5

The Court instructs the jury that though they believe from the evidence that Chas. Mitchell misrepresented his age to the bar tender in the bar room of Chas. C. Conrad, yet that fact does not justify the acquittal of the accused, if the jury believe from the evidence beyond a reasonable doubt that a sale of beer was in fact made to said Mitchell, as charged in the indictment.

Instruction No. _____

The Court instructs the jury that though they believe from the evidence that Case Mitchell misrepresented his age to the bar tender in the bar room of Case C. Court, yet that fact does not justify the conviction of the accused. If the jury believe from the evidence beyond a reasonable doubt that a sale of beer was in fact made to said Mitchell, as charged in the indictment.

Instruction No. 6

The Court instructs the jury that, in arriving at a verdict in this case, they are the sole judges of the facts, and of the credibility of the witnesses and of the weight to be given to the evidence or any part of it. When witnesses testify opposite to each other, the jury is not bound to regard the weight of the evidence as evenly balanced, but they have a right in determining the weight to be given to the testimony of various witnesses, to take into consideration their interest in the result of the case, if they have any, their relationship to the parties involved, their feeling or bias, if any is shown, their appearance and demeanor on the witness stand, their apparent intelligence, the reasonableness or unreasonableness of their statements, their means of information and all the surrounding circumstances appearing on the trial, and to give or deny credit to the testimony of any witness as, under the circumstances, they may deem proper or to such extent as they think proper.

The Court instructs the jury that, in arriving at a verdict in this case, they are the sole judges of the facts, and of the credibility of the witnesses and of the weight to be given to the evidence of any part of it. When witnesses testify opposite to each other, the jury is not bound to regard the weight of the evidence as evenly balanced, but they have a right in determining the weight to be given to the testimony of various witnesses, to take into consideration their interest in the result of the case, if they have any, their relationship to the parties involved, their standing or bias, if any is shown, their experience and demeanor on the witness stand, their apparent intelligence, the reasonableness or unreasonableness of their statements, their means of information and all the surrounding circumstances appearing on the trial, and to give or deny credit to the testimony of any witness as, under the circumstances, they may deem proper or to such extent as they think proper.

beer was in fact made
by said Mitchell as charged in the indictment

The Court instructs the jury that if they believe from the evidence that Chas. C. Conrad sold Lager beer to Chas. Mitchell as charged in the indictment - it is the duty of the jury to ~~convict~~ find said Chas. C. Conrad guilty - regardless of ~~the~~ whether for ~~or~~ - such conviction would result - in the license of said Chas. C. Conrad being revoked.

The Court instructs the jury that ~~though they believe from the evidence that Charles Mitchell misrepresented his age to the bar tender in the bar room of Charles C. Conrad yet that fact - does not justify the acquittal of the accused if the evidence justifies the jury in determining that a sale of Lager beer was in fact made to said Chas. Mitchell as charged in the indictment - believe from the evidence beyond a reasonable doubt that a sale of~~

Pen. (Course)

Inclusions not
seen

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...September.....term, in the year 1909...
upon their oaths present that.....

Charles C. Conrad

on the.....16th.....day of.....August....., in the year 1909..., in the said County,

did..he..the..said..Charles..C..Conrad..then..and..there..having..a..license...

to sell intoxicating liquor by retail at his barroom on the south
side of Water Street in the town of Harrisonburg in said County, did
at his said barroom in said county on said 16th day of August 1909

sell to one Charles Mitchell ~~intoxicating liquor~~ *alcoholic beverages, to wit Lager*

beer, the said Charles Mitchell then and there being a person under the age
of twenty-one years.

against the peace and dignity of the Commonwealth of Virginia.

Upon the evidence of *Chas. Mitchell, Joe Chapman, Marvin Sherman*
& *Joe Shultz*.....witnesses sworn in open Court and sent to the
Grand Jury to give evidence.

.....Clerk.

We the Jury find the defendant
not guilty

E. W. Stebbins, Foreman

Commonwealth

vs.

INDICTMENT for a
misdemeanor.

Charles C. Conrad.

A TRUE BILL.

C. E. Jennings
Foreman.

1909 Sept. 27.

Done plus with formal
& recorded

We, the jury, according to the evidence,
find the defendant not guilty.

E. W. Heatwole, Foreman

Mr. The young according to the
find the important of
C. J. 1850

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.....September.....term, in the year 1909.,
 upon their oaths present that.....

.....Charles C. Conrad.....

on the.....16th.....day of.....August....., in the year....., in the said County,

did he the said Charles C. Conrad then and there being the keeper...
 of a bar-room and having a license from the State of Virginia to
 sell intoxicating liquor by retail at his said bar room on Water
 Street in the town of Harrisonburg in said County, did on said 16th
 day of August 1909 at his said bar-room in said County ~~provide~~
 furnish to Joseph Shultz intoxicating and malt liquors, he the said
 Joseph Shultz 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 *Chas. Mitchell, Jr. Chapman* -
Marvin Sherman + Joe Shultz.....witnesses sworn in open Court and sent to the
 Grand Jury to give evidence.

.....Clerk.

"Ardent spirits" by the definition of the act, includes all "liquids which will produce intoxication" - "Whiskey, wine, beer x x x" and all other intoxicating liquors. The words "malt liquors, containing 2 1/4 per cent. alcohol and which produce intoxication" are confusing and therefore unfortunately used in that connection, but they do not in designating merely liquors & liquids commonly recognized & declared by the act to be intoxicating within its intent, and manifestly had in contemplation the near beer provided for by sec. 23 1/2 (which, however, must itself not be intoxicating), and they do not in any way detract from the more comprehensive words making any intoxicating liquor "ardent spirits" & coming

under the regulation of the act. ~~The~~ indictment charges the sale of "intoxicating and malt liquors" - Equivalent intoxicating malt liquors, and dispense under the act & for as the description of the liquor concerned.

Commonwealth

vs. { INDICTMENT for
misdemeanor

Charles C. Conrad

A TRUE BILL.

Charles C. Conrad
Foreman

1909

Wm. J. Conrad

Not pro.

Code sec. 3628

Byrd Law.

For Law in book

Page 2262

10 Pa. Law Reg. 1021

Law Reg. 234

Pollard's Bi. em. 3828

Byrd Law. 23 1/2

The indictment charges the accused with "furnishing" at his bar room where he had license ^{to sell}. I can not conceive of any form of furnishing at his place of business which would not be "dispensing" within the meaning of sec. 19 of Byrd Law. If "furnishing" under such circumstances is not dispensing, then the bar keeper can stay at his place of business and "furnish" liquors to the thirsty on Sunday & with equal propriety do the same on election day, for I take "dispense" & "dispose of" as used in that section to be synonymous. The act is a regulation ^{lawful & not} primarily of the licensed liquor business and the facts that one is a liquor dealer & the place where business is done are relevant and material matters in construing the provisions the act ^{of the law & determining} their application to a particular case.

Memo for Commonwealth upon Demurrer to Indictment vs. C. C. Conrad.

As to indictment for sale to Mitchell.

While it is true that the Byrd Law by Sec. 30 repeals Sec. 141 of the Tax Law and that so far as the law governing sales of liquors to minors is concerned, it is now embraced in the provision made by Sec. 19 of the Byrd Law, still an indictment which charges the sale of lager beer, although preceded in the indictment by the words, "alcoholic beverages" is a sufficient averment of violation of law. Sec. 19 prohibits sale of ardent spirits. Ardent spirits, by terms of Sec. 1 of the Byrd law includes beer, and therefore, a sale of beer is a sale of ardent spirits. Furthermore, ardent spirits includes intoxicating liquors and when it is alleged in the indictment that there was a sale of lager beer, the Court will take judicial cognizance of the fact that lager beer is an intoxicating liquor. (See note to Byrd Law 13 Va. Law-Reg., page 924, Thomas vs. Commonwealth, 90 Va., page 95).

As to additional objection to this indictment that it fails to allege whether or not the lager beer contained less than two and one-fourth per cent. in volume of alcohol. - Such an averment would be in the nature of a negative averment and under various authorities found cited as to negative averments on page 412, Vol. 7, Enc. Dig. of Va. and W. Va. Rep., such negative averment was necessary. As to negative averments concerning liquors, see 23 Cyc., page 238 (C).

As to Indictment charging furnishing of intoxicating and malt liquors to Shultz and Smith.

While Sec. 19 of Byrd Law supercedes Sec. 141 of Tax Law of 1904, yet does it supercede Sec. 3828 of Code so far as the latter relates to "furnishing" intoxicating and malt liquor to minors?

The prohibition in the Byrd Law is limited in two respects not found in Sec. 3828 of the Code;

1st It prohibits selling and dispensing whereas Sec. 3828 prohibits

It is true that the word "beer" in the law covering sales of alcoholic beverages is a sufficient synonym of "intoxicating liquor" and that the word "beer" in the law prohibiting the sale of beer is a sufficient synonym of "intoxicating liquor".

Section 1701 of the 1917 Act prohibits the sale of beer, and therefore, the sale of beer is a sale of intoxicating liquor. Furthermore, the sale of beer is a sale of intoxicating liquor when it is alleged in the indictment that there was a sale of beer, the court will take judicial notice of the fact that beer is an intoxicating liquor.

As to additional objections to the indictment, that it fails to allege whether or not the liquor contained therein was one-tenth per cent. in volume of alcohol, such an averment would be in the nature of a negative averment and under various authorities found to be unnecessary. See, for example, *United States v. ...*, 100 F.2d 1000, 1001 (9th Cir. 1937).

The prohibition in the 1917 Act is limited in two respects. First, it prohibits the sale of beer, and secondly, it prohibits the sale of intoxicating liquor. The word "beer" in the law prohibiting the sale of beer is a sufficient synonym of "intoxicating liquor" and that the word "beer" in the law prohibiting the sale of beer is a sufficient synonym of "intoxicating liquor".

a dealer selling, bartering, giving, furnishing or causing to be sold,
bartered, given or furnished;

2d The prohibition in the Byrd law is only as to ardent spirits,
whereas Sec. 3828 embraces "spirituous or intoxicating or malt li-
quors, which language includes all spirituous and all malt liquors,
whether intoxicating or not (according to opinion of Judge Mc.Lemore
in Gay vs. Commonwealth, 15 Va. Law Reg., 361 and authorities there
cited, whereas under the definition of the Byrd Law ardent spirits
would not embrace non alcoholic drinks. There is no question that the
Byrd Law was designed to put greater limitations on the liquor traffic
but to construe Sec. 19 as repealing Sec. 3828 would be to produce
the contrary result and it is not to be presumed, therefore, that such
repeal was intended.

To adopt the Byrd Law as entirely superceding the Code Sec.
3828 would further limit the law as to other persons than dealers
furnishing &c. to minors, the sole prohibition in the Byrd Law being
against buying for a minor &c., and in such cases the prohibition in
the Byrd Law is only as to intoxicating liquors, that is, ardent
spirits, while here too, the Code Sec. 3828 would apply as well to
"spirituous or intoxicating or malt liquors."

In the case of Gay vs. Commonwealth, cited by Judge
Mc.Lemore found reported in September Law Register, page 360, it was
contended that the Byrd Law repealed Sec. 587 of the Code relating
to sales of malt liquors etc. in local option territory. Judge
Mc.Lemore held contrary to this contention and his reasoning applies
to the proposition at bar respecting the implied repeal of the provi-
sions of Sec. 3828 as to furnishing liquor to minors.

If, however, the Byrd Law does repeal Sec. 3828 and in or-
der to be an offence, therefore, the accused must "dispense" ardent
spirits to the minor, the word "furnish", as found in these indict-
ments, being equivalent to "dispense", makes a sufficient averment.

That words of the Statute may be substituted by synonymous
terms, e. e. "voluntarily" for "wilfully" see Trimble's Case, 2 Va.

... the word "voluntarily" for "willingly" see *Triffin's Case*, 2 Va. 175, 176. That words of the statute may be substituted by synonyms means, being equivalent to "discharge", as found in these latter parts to be an offense, therefore, the accused must "discharge" or "bar" to bar an offense, the word "willingly", as found in these latter parts of Sec. 5888 as to furnishing liquor to minors. It, however, the Byrd law does reveal Sec. 5888 and in or- stions of Sec. 5888 as to furnishing liquor to minors. to the proposition at bar respecting the implied repeal of the provi- to become void contrary to this contention and his reasoning applies to sales of malt liquors etc. in local option territory. Judge concerned that the Byrd law repealed Sec. 587 of the Code relating He. Parsons found reported in September Law Register, page 560, it was In the case of *Gay vs. Commonwealth*, cited by Judge "voluntarily or intoxicating liquor." "intoxicating or intoxicating liquor" as well to spirits, while here too, the Code Sec. 5888 would apply as well to the Byrd law is only as to intoxicating liquors, that is, against buying for a minor etc., and in such cases the prohibition in furnishing etc. to minors, the sole prohibition in the Byrd law being 5888 would further limit the law as to other persons than minors. To show the Byrd law as entirely superseding the Code Sec. reveal was intended. the contrary result and it is not to be presumed, therefore, that such but to construe Sec. 5888 as revealing Sec. 5888 would be to produce Byrd law was designed to put greater limitations on the liquor traffic would not embrace non alcoholic drinks. There is no question that the cited, whereas under the definition of the Byrd law spirit drinks in *Gay vs. Commonwealth*, 15 Va. Law Reg., 281 and authorities there whether intoxicating or not (according to opinion of Judge McParsons quors, which language includes all spirituous and all malt liquors, whereas Sec. 5888 restricts "intoxicating or intoxicating or malt li- 2d The prohibition in the Byrd law is only as to spirit drinks. ordered, then or furnished;

Cases, 143; Dull's Case, 25 Gratt., 965; Minor's Crim.Law, page 253.

Concerning the defects in indictment for violation of Revenue Law, see Code Sec. 4011.

In Tefft vs. Commonwealth, 8 Leigh, 721, the offence of retailing ardent spirits is sufficiently charged by charging sale of whiskey, brandy and other liquors.

ARTICLE 1. GENERAL AND OTHER PROVISIONS.

SECTION 1. The purpose of this Act is to provide for the better regulation of the practice of the profession of the legal profession in the State of New York.

SECTION 2. The Board of Law Examiners is hereby created, and its powers and duties are defined as follows: (a) The Board shall be composed of seven members, five of whom shall be lawyers in good standing in the State of New York, and two of whom shall be laymen.

SECTION 3. The Board of Law Examiners shall have the honor and respect due its office, and shall exercise its powers and perform its duties in a fair and impartial manner, and shall be subject to the supervision and control of the Governor and the Senate.

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...September.....term, in the year 1909., upon their oaths present that.....

Charles C. Conrad

on the.....16th.....day of.....August....., in the year 1909., in the said County,.....

~~did~~ he the said Charles C. Conrad then and there being the keeper of a barroom and having a license from the State of Virginia to sell intoxicating liquor by retail at his Barroom on Water Street in the town of Harrisonburg in said County, did on said 16th day of August 1909 at his said Barroom in said County ~~and~~ furnish to Robert Smith spirituous, intoxicating and malt liquors, he the said Robert Smith being then and there a person under twenty one years of age

against the peace and dignity of the Commonwealth of Virginia.

Upon the evidence of.....

Chas Mitchell, Joe Shultz - Jm Chapman

Marvin Sherman

.....witness, sworn in open Court and sent to the

Grand Jury to give evidence.

.....Clerk.

Commonwealth

vs. { INDICTMENT. for
misdemeanor

Charles C. Conrad

A TRUE BILL.

[Handwritten Signature]
Foreman.

1909

nov 2

not paid