

Commonwealth

Jury vs. Falony

David F. Dove

~~Received of the Clerk of the Circuit Court  
of Rockingham County the original  
papers in the above case.~~

- 1 W. H. Hitchel  $\frac{1}{2}$
- 2 John S. Bradley  $\frac{1}{2}$
- 3 John H. Hasler  $\frac{1}{2}$
- 4 J. W. Thompson  $\frac{1}{2}$
- 5 Ernest C. Wilson  $\frac{1}{2}$
- 6 Homer L. Linneman
- 7 Robert L. Gancy
- 8 L. L. Gancy
- 9 M. D. Longley
- 10 J. C. Heavick
- 11 A. J. Thompson
- 12 James C. Linsky



*A true copy*

COMMONWEALTH OF VIRGINIA,  
ROCKINGHAM COUNTY,

TO-WIT:

To *L. H. Funder*, a Constable of said County:

WHEREAS, *J. W. Stultz & J. C. Sumner* of the said county, has this day made complaint and information on oath before me, *L. P. Souder* a Justice of the said county, that

*David E. Don* of the said county, on the *8<sup>th</sup>* day of *March* 19*12*, in the said county, did

*In the night-time of that day in the said County, unlawfully and feloniously break and enter a certain store house the property of the said J. W. Stultz & J. C. Sumner adjoining to Camp Orchard, with the dwellings of the said J. W. Stultz & J. C. Sumner, with intent to commit larceny therein, and did purloin and carry away (to-wit) certain United States currency of the value of \$107.00 of the money and some of the said J. W. Stultz & J. C. Sumner in said store house then and there lawfully found, taken and there unlawfully and feloniously did steal, take and carry away.*

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 of the said *David E. Don*

to answer the said complaint, and to be farther dealt with according to law. And you are required to summon *F. A. Yankey, W. H. Yankey, A. B. Yankey, Benjamin E. Lantz and Addison Halterman*

to appear and give evidence in behalf of the Commonwealth, on the examination touching the said offence.

Given under my hand and seal this *12<sup>th</sup>* day of *March*, in the year 19*12*.

*L. P. Souder* J. P. [SEAL]

Commonwealth  
of Virginia  
vs.

David S. Dove

The within named  
David S. Dove appeared  
in Court ready for  
trial. L. P. Souders J.P.

David S. Dove the accused  
was recognized to person-  
ally appear before the  
District Court of  
Rockingham County  
on the first day of the  
next term thereof, to  
answer the within  
Complaint for which  
he now stands charged  
L. P. Souders J.P.

FILED

MAR 27 1912

D. H. LEE MARTZ,  
CLERK.

Statement of Costs in examination  
The Commonwealth of Virginia,  
v. L.

David F. Dove for felony	
To issuing warrant of arrest	.50 c
" examining charge of felony	.50
" T. H. Fausler summoning 11 witness	3.30
" F. A. Yankey for 1 days attendance	.50
" A. B. Yankey " " "	.50
" W. H. Yankey " " "	.50
" Addison Hatterman " "	.50
" J. C. Turner " "	.50
" J. W. Stultz " "	.50

The above named witnesses attended  
for the Commonwealth.

Total

\$ 7.30

L. P. Sonder J. P.

8m

It is not essential to proof of guilt by circumstantial evidence that the facts and circumstances established should produce on the minds of the jury absolute and demonstrative certainty, but it is sufficient if they produce moral certainty of the commission of the offense charged, to the exclusion of reasonable doubt.

Nicholas' Case, 91 Va. 751

It is not essential to proof of guilt by circumstantial evi-  
dence that the facts and circumstances established should produce on  
the mind of the jury absolute and demonstrative certainty, but it  
is sufficient if they produce moral certainty of the commission of the  
offense charged, to the exclusion of reasonable doubt.

Richardson's Case, 91 Va. 781



The court instructs the jury, as a matter of law, that in considering the case the jury are not to go beyond the evidence to hunt up doubts, nor must they entertain such doubts as are merely chimerical or conjectural. A doubt, to justify an acquittal, must be reasonable doubt, and it must arise from a candid and impartial investigation of all the evidence in the case, and unless it is such that, were the same kind of doubt interposed in the graver transactions of life, it would cause a reasonable and prudent man to hesitate and pause, it is insufficient to authorize a verdict of not guilty. If, after considering all the evidence, you can say that you have an abiding conviction of the truth of the charge, you are satisfied beyond a reasonable doubt.

Horton's Case, 99 Va. 858.

The court instructs the jury, as a matter of law, that in considering the case the jury are not to go beyond the evidence to hunt up doubts, nor must they entertain such doubts as are merely chimerical or conjectural. A doubt, to justify an acquittal, must be reasonable doubt, and it must arise from a candid and impartial investigation of all the evidence in the case, and unless it is such that were the same kind of doubt interposed in the gravest transactions of life, it would cause a reasonable and prudent man to hesitate and pause, it is insufficient to authorize a verdict of not guilty. If, after considering all the evidence, you can say that you have an abiding conviction of the truth of the charge, you are entitled beyond a

Instruction No. \_\_\_\_.

The court instructs the jury, that to warrant the conviction of the person accused of crime every fact necessary to establish his guilt must be proved beyond a reasonable doubt, and especially is this so, when as here, a conviction is sought upon circumstantial evidence alone, which is always to be acted upon with the utmost caution. It is not sufficient therefore that the evidence creates a suspicion of guilt. The accused is entitled to an acquittal unless the fact of guilt is proved to the exclusion of every reasonable hypothesis of his innocence.

Kibler's Case, 94 Va. 813.

... of the ...  
... of the ...  
... of the ...  
... of the ...

... of the ...  
... of the ...  
... of the ...  
... of the ...  
... of the ...  
... of the ...  
... of the ...  
... of the ...

... of the ...

Instruction No. \_\_\_\_\_.

The court instructs the jury that the law presumes the accused to be innocent until he is proven guilty beyond all reasonable doubt and if there is upon the mind of the jury any reasonable doubt of the guilt of the accused the law makes it their duty to acquit him. His guilt is not to be inferred because the facts proven may be consistent with his guilt, but they must be inconsistent with his innocence. Mere suspicion or probability of his guilt, however strong, is not sufficient to convict nor is it sufficient if merely the greater weight or preponderance of evidence supports the charge in the indictment, but to warrant his conviction his guilt must be proven so clearly that there is no reasonable theory consistent with the evidence upon which he can be innocent.

Instruction No. \_\_\_\_\_

The court instructed the jury that the law presumes the  
accused to be innocent until he is proven guilty beyond all reasonable  
doubt and it is the duty of the jury to acquit if there is any reasonable  
doubt of the guilt of the accused. The law does not require the jury to  
convict him. His duty is not to be influenced by sympathy or pity  
shown for the defendant with his guilt, but they must be in-  
sistent with his innocence. There is no presumption of guilt of his  
guilt, however strong, is not sufficient to convict nor is it suf-  
ficient if nearly the greater weight or preponderance of evidence  
supports the charge in the indictment, but to convict his guilt  
his guilt must be proven so clearly that there is no reason-  
able theory consistent with the evidence upon which he can be inno-

cent.

Instruction No. \_\_\_\_\_.

The court instructs the jury that if the commonwealth relies for a conviction in this case upon evidence wholly or in part circumstantial, then it is essential that the circumstances should to a moral certainty exclude every reasonable hypothesis consistent with the proof, except the one that David F. Dove unlawfully and feloniously broke and entered the storehouse of Shultz & Turner with intent to commit larceny as charged in the indictment, and unless the circumstances do, to a moral certainty, exclude every reasonable hypothesis consistent with the proofs, except the one that said David F. Dove did break and enter said store house as charged in the indictment, then they should find the prisoner not guilty.

Indention No.

The court instructs the jury that if the evidence  
shows that a conspiracy in fact existed among the  
parties to the crime, then it is essential that the circumstances  
surrounding the crime be such as to indicate that a  
conspiracy was entered into by the parties. It is not  
sufficient that the parties were merely present at the same  
place and time, or that they were in the same room, or that  
they were engaged in conversation at the same time and place,  
unless the circumstances so indicate. The evidence must  
show that the parties had a common design or purpose,  
and that each party knew of the design or purpose of the  
others, and that they agreed to pursue the same.



$$\begin{array}{r}
 10160 \\
 1400 \\
 \hline
 11560 \\
 13021 \\
 \hline
 1465
 \end{array}$$

$$\begin{array}{r}
 1660 \\
 2 \\
 \hline
 12.00
 \end{array}$$

$$\begin{array}{r}
 17 \\
 370 \\
 150 \\
 3000 \\
 75 \\
 9 \\
 \hline
 5920 \\
 618 \\
 \hline
 260
 \end{array}$$

$$\begin{array}{r}
 240 \\
 680 \\
 \hline
 5.70 \\
 71 \\
 \hline
 77.95
 \end{array}$$

$$\begin{array}{r}
 202 \\
 700 \\
 800 \\
 800 \\
 1001 \\
 \hline
 55.54
 \end{array}$$

kolon

75 Jany  
 20 Sep  
 60 corn  
 150 end  
 60 Mpa  
 190 corn  
 3.00 only  
 72 only  
 40 corn  
 20 Pat  
 1.00 fi

1087

W2  
 \$110  
 7.10  
 \$9.00

PAF \$1.00  
 \$6.30  
 \$1.00  
 \$1.00  
 \$5.70

1500  
 110  
 100  
 240  
 950

500  
 1087  
 900  
 650  
 1605  
 447.42

kolon

no. 2  
 20 Mpa  
 80 Mpa  
 36 corn  
 40 corn  
 20 Pat  
 1.00 fi  
 \$296

PAF  
 \$240

820  
 200  
 650

If you find him not guilty you will say so and no more.  
If you find him guilty of burglary as charged in the first  
Count of the indictment you will say so, and determine  
his punishment <sup>with death or</sup> imprisonment in  
the punishment for a felon not less than five nor more than  
eighteen years - If you find him not guilty of burglary but  
guilty of housebreaking as charged in the second and third  
Counts of the indictment you will say so, and ascertain the  
term of his imprisonment in the punishment, or that such term  
be not less than one nor more than two years, <sup>in your discretion</sup> ~~or that such term~~  
~~the punishment in the County jail not exceeding twelve months~~  
and ~~the punishment of fine~~ <sup>not exceeding five hundred dollars,</sup>  
If you find him not guilty of the felony of brand  
arising as charged in the indictment you will say so and  
ascertain the term of his imprisonment in the punishment  
or that such term be not less than one nor more than  
two years. If you find him not guilty of any of the felonies  
aforesaid but guilty of Petit Larceny you will say so  
and ascertain the term of his imprisonment in the County  
jail for not less than fifteen days nor more than six months  
or the punishment of fine for which fine he will be  
liable your doctars nor more than one hundred dollars -

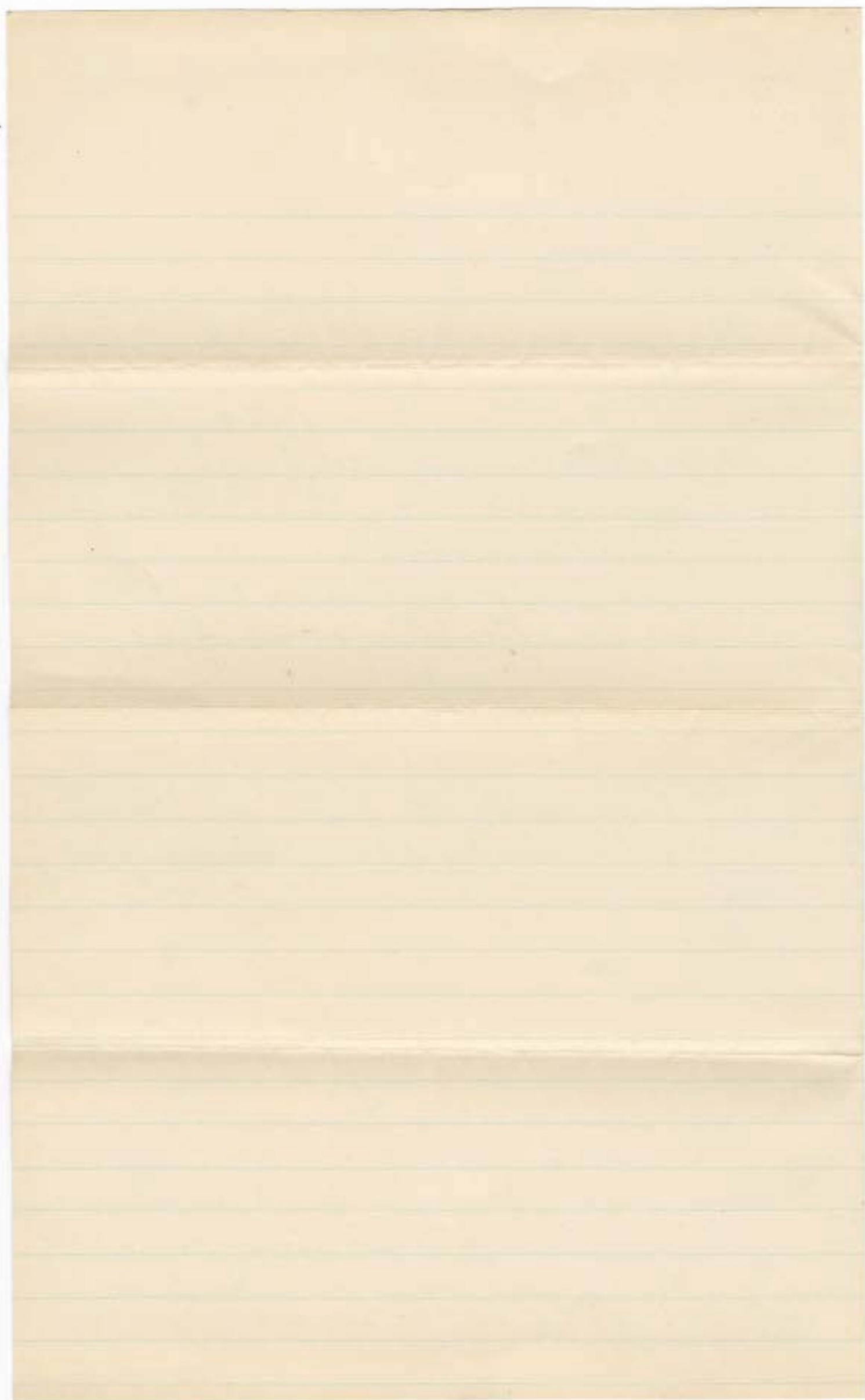
Commencement  
of  
David F. Davis

Shang

Commonwealth of Virginia }  
Rockingham County } to wit:

Be it remembered, that on the 23<sup>rd</sup> day of March 1912 David F. Dove and Samuel Dove of the said County, come before me, L.P. Bonds a Justice of the said County, and severally and respectfully acknowledged themselves to be indebted to the Commonwealth of Virginia, in manner and form following, that is to say: The said David F. Dove in the sum of Fifty dollars (\$50<sup>00</sup>) good and lawful money of the United States and the said Samuel Dove in the sum of Nine hundred and fifty dollars (\$950<sup>00</sup>) of like good and lawful money, to be respectively made and levied on their several goods and chattels, lands and tenements, to the use of the Commonwealth of Virginia, if the said David F. Dove shall make default in the performance of the condition underwritten. The said David F. Dove and Samuel Dove hereby waive the benefit of their exemption as to this obligation.

The condition of the above recognizance is such, that if the above bound David F. Dove do and shall personally appear before the Circuit Court of Rockingham County on the first day of the next term thereof, then and there to answer the Commonwealth for and concerning a certain felony by him committed in feloniously breaking and entering the store house of J.M. Stultz and J.P. Sumner in said County, on the 8<sup>th</sup> day of March 1912 in the night time of that day, did feloniously steal take and carry

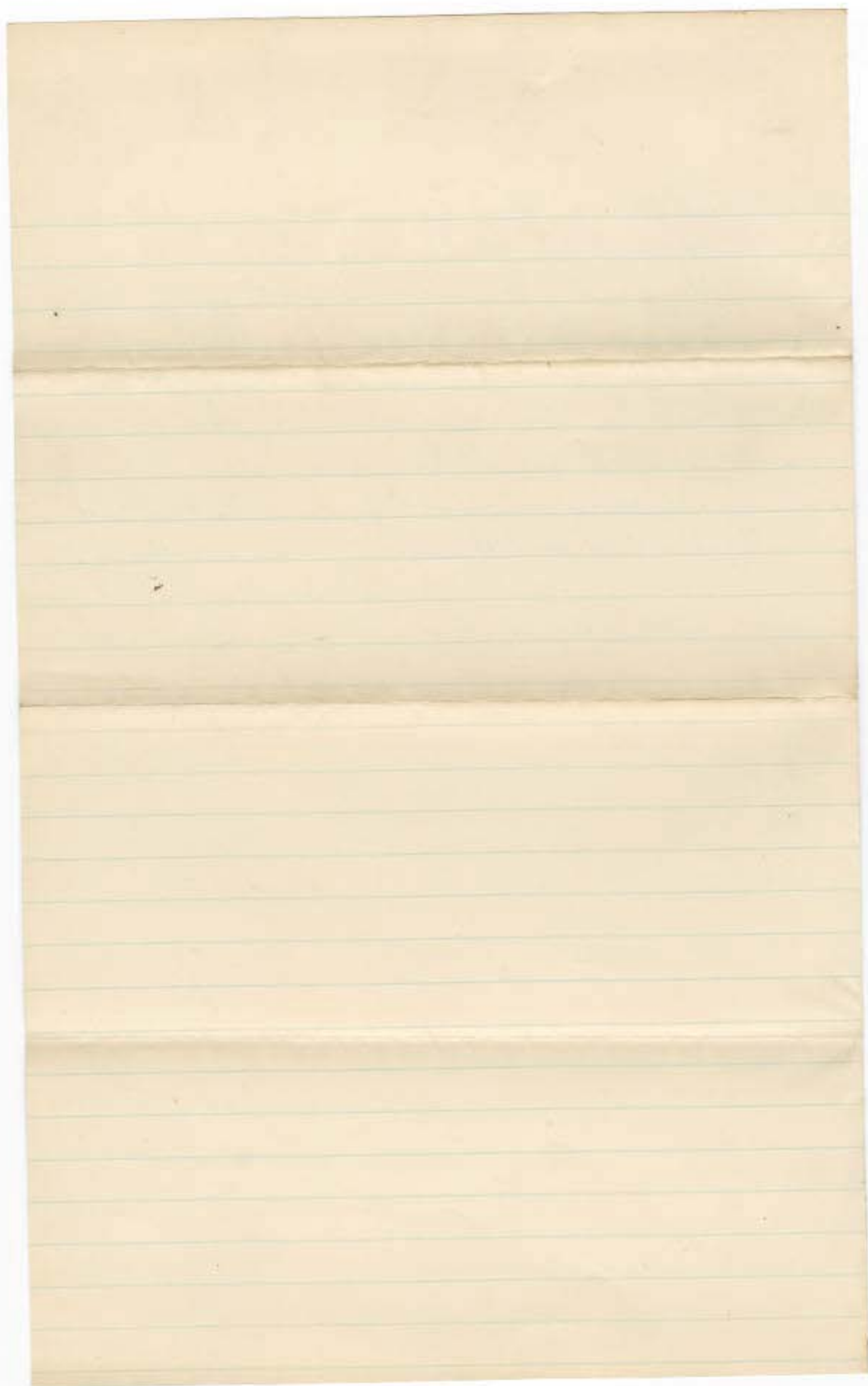


away, the sum of One hundred and seven dollars  
(\$ 107<sup>00</sup>) of United States currency, the money and  
coin of the said J. M. Stultz and J. C. Sumner.

Wherein the said David F. Don stands charged, and  
shall not depart thence without the leave of the said  
Court, then the above recognizance shall be void,  
else to remain in full force and virtue.

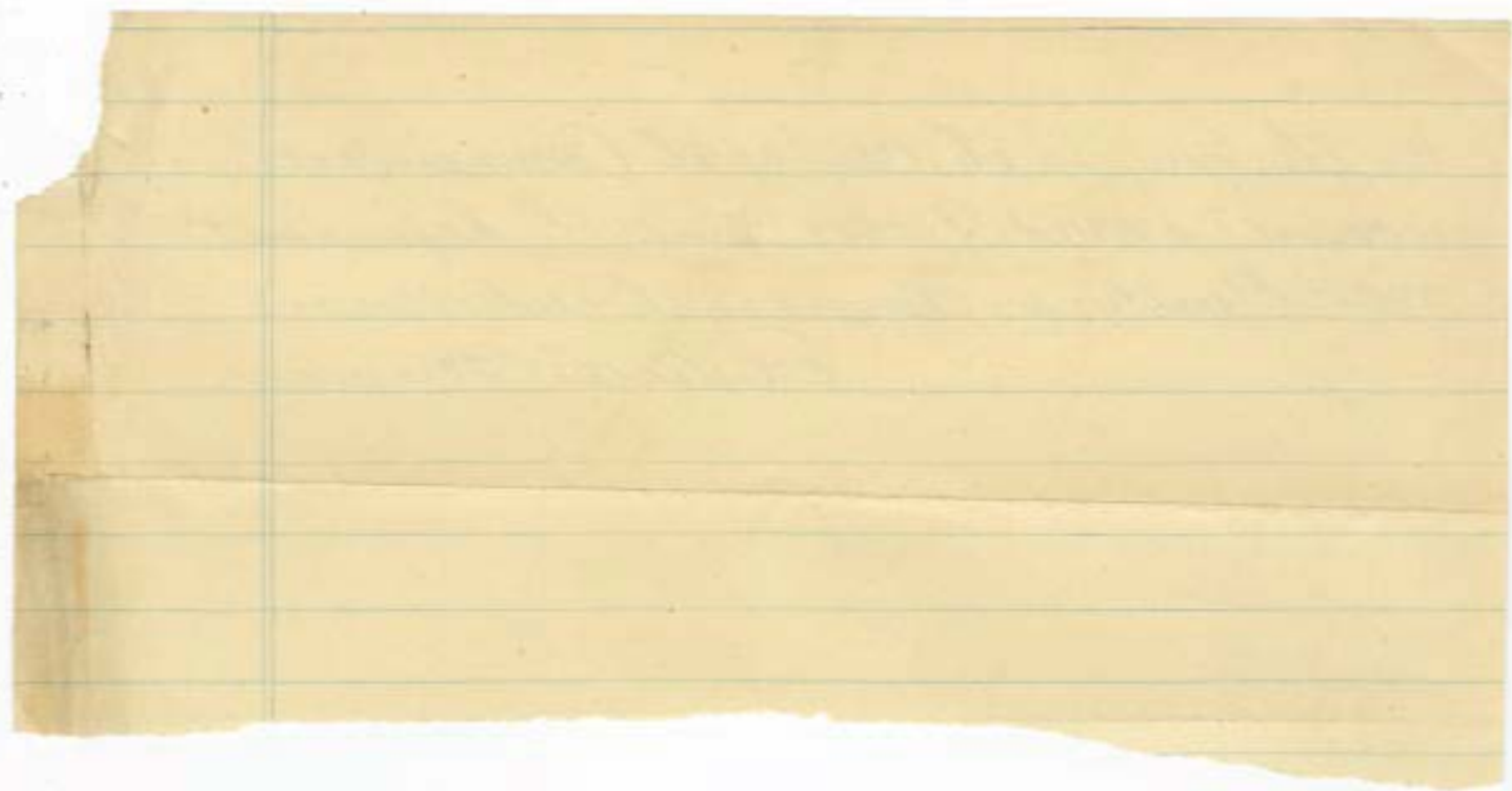
Taken and acknowledged before me, in the said  
County, the day and year first above written.

L. P. Souders J.P.





We the jury in the Case of the Commonwealth  
against David F. Dove find the defendant  
not Guilty as charged in the indictment.  
Edwison Foreman.



State of Virginia, Rockingham County, to-wit:

In the <sup>Circuit</sup> County Court of the 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, UPON THEIR OATH PRESENT, that David H. Dove -

on the 9<sup>th</sup> day of March in the year 1912, in the said county, a certain ~~out~~<sup>store</sup> house, ~~called~~ \_\_\_\_\_ the property of J. W. Stultz and J. C. Turner - ~~not~~ adjoining

~~to~~<sup>and</sup> occupied with the dwelling-house of the said J. W. Stultz and J. C. Turner there situated in the night time of that day, feloniously did break and enter, with intent the goods and chattels of the said J. W. Stultz and J. C. Turner ~~in~~<sup>burglariously</sup> in the said ~~out~~<sup>store</sup> house then and there being, feloniously to steal, take

and carry away. And ~~divers~~<sup>many</sup> notes & pieces of United States Currency, current in this Commonwealth, ~~the~~<sup>the value and denomination of each to the Grand Jurors unknown, the whole however amounting to the</sup>

sum of One hundred and seven (\$107<sup>00</sup>) dollars - ~~and of the value of One hundred and seven (\$107<sup>00</sup>) dollars - ~~of the goods and chattels of the said~~<sup>property money & coin</sup> J. W. Stultz and J. C. Turner ~~in~~<sup>from money of Stultz & Turner</sup> in the said ~~out~~<sup>store</sup> house, then and there being found, then and there feloniously did steal, take and carry away,~~

against the peace and dignity of the Commonwealth of Virginia. And the Jurors aforesaid, upon their oath aforesaid, do further present, that David H. Dove

on the 8<sup>th</sup> day of March in the year 1912, in the said County, a certain ~~out~~<sup>store</sup> house, ~~called~~ \_\_\_\_\_, the property of J. W. Stultz and J. C. Turner -

not adjoining to or occupied with the dwelling-house of the said J. W. Stultz and J. C. Turner -

there situated, in the ~~night~~<sup>night</sup> time of that day feloniously did break and enter, with intent the goods and chattels ~~of the said~~<sup>burglariously</sup> J. W. Stultz and J. C. Turner ~~in~~<sup>store</sup> in the said ~~out~~<sup>store</sup> house then and there being, feloniously to steal,

take and carry away. And ~~divers~~<sup>many</sup> notes & pieces of United States Currency, current in this Common- ~~wealth~~<sup>wealth</sup> ~~the~~<sup>the value and denomination of each to the Grand Jurors unknown, the whole however amounting to the</sup>

sum of One hundred and seven (\$107<sup>00</sup>) dollars - ~~and of the value of One hun-~~<sup>and of the value of One hun-</sup>

dred and seven (\$107<sup>00</sup>) dollars - ~~of the goods and chattels of the said~~<sup>property money & coin</sup> J. W. Stultz and J. C. Turner ~~in~~<sup>from money of Stultz & Turner</sup> in the said ~~out~~<sup>store</sup> house, then

and there being found, then and there feloniously did steal, take and carry away, against the peace and dignity of the Commonwealth of Virginia. And the Jurors aforesaid, upon their oath aforesaid, do further present, that

David H. Dove - on the 8<sup>th</sup> day of March in the year 1912, in the said County, a certain ~~out~~<sup>store</sup> house, ~~called~~ \_\_\_\_\_, the property of J. W. Stultz and

J. C. Turner - not adjoining to or occupied with the dwelling house of the said J. W. Stultz and J. C. Turner -

there situated, in the night time of that day feloniously did enter, without breaking the same, with intent the goods and chattels of the said J. W. Stultz and J. C. Turner ~~in~~<sup>burglariously</sup> in the said ~~out~~<sup>store</sup> house then and there being, feloniously to steal, take and carry away. And

~~divers~~<sup>many</sup> notes & pieces of United States Currency, current in this Commonwealth, ~~the~~<sup>the value and denomination of each to the Grand Jurors unknown, the whole however amounting to the</sup>

sum of One hundred and seven (\$107<sup>00</sup>) dollars - ~~and of the value of One hundred and seven (\$107<sup>00</sup>) dollars -~~

We, the Jury, find the prisoner not guilty  
E. Milton Foreman

Commonwealth

vs } Judgment

David F. Dow  
Felony  
Above title

W. S. Southall, Foreman

May term 1912  
not guilty

Jury not  
guilty

Sumner  
June 13/12  
\$1000