

2614

190-230

Record Nos. 3565-6-7

In the
Supreme Court of Appeals of Virginia
at Richmond

T. H. WILLIAMS, ET ALS

v.

COMMONWEALTH

TRAVIS DELEON TRIPLETTE

v.

COMMONWEALTH

TRAVIS DELEON TRIPLETTE

v.

COMMONWEALTH

FROM THE CIRCUIT COURT OF WYTHE COUNTY

RULE 14.

¶5. NUMBER OF COPIES TO BE FILED AND DELIVERED TO OPPOSING COUNSEL. Twenty copies of each brief shall be filed with the clerk of the court, and at least two copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

¶6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and names of counsel shall be printed on the front cover of all briefs.

M. B. WATTS, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

190VA280

RULE 14—BRIEFS

1. Form and contents of appellant's brief. The opening brief of the appellant (or the petition for appeal when adopted as the opening brief) shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the record where there is any possibility that the other side may question the statement. Where the facts are controverted it should be so stated.

(d) Argument in support of the position of appellant.

The brief shall be signed by at least one attorney practicing in this court, giving his address.

The appellant may adopt the petition for appeal as his opening brief by so stating in the petition, or by giving to opposing counsel written notice of such intention within five days of the receipt by appellant of the printed record, and by filing a copy of such notice with the clerk of the court. No alleged error not specified in the opening brief or petition for appeal shall be admitted as a ground for argument by appellant on the hearing of the cause.

2. Form and contents of appellee's brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate reference to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this court, giving his address.

3. Reply brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him, not referred to in his petition or opening brief. In other respects it shall conform to the requirements for appellee's brief.

4. Time of filing. (a) *Civil cases.* The opening brief of the appellant (if there be one in addition to the petition for appeal) shall be filed in the clerk's office within fifteen days after the receipt by counsel for appellant of the printed record, but in no event less than thirty days before the first day of the session at which the case is to be heard. The brief of the appellee shall be filed in the clerk's office not later than fifteen days, and the reply brief of the appellant not later than one day, before the first day of the session at which the case is to be heard.

(b) *Criminal Cases.* In criminal cases briefs must be filed within the time specified in civil cases; provided, however, that in those cases in which the records have not been printed and delivered to counsel at least twenty-five days before the beginning of the next session of the court, such cases shall be placed at the foot of the docket for that session of the court, and the Commonwealth's brief shall be filed at least ten days prior to the calling of the case, and the reply brief for the plaintiff in error not later than the day before the case is called.

(c) *Stipulation of counsel as to filing.* Counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

5. Number of copies to be filed and delivered to opposing counsel. Twenty copies of each brief shall be filed with the clerk of the court, and at least two copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and names of counsel shall be printed on the front cover of all briefs.

7. Non-compliance, effect of. The clerk of this court is directed not to receive or file a brief which fails to comply with the requirements of this rule. If neither side has filed a proper brief the cause will not be heard. If one of the parties fails to file a proper brief he cannot be heard, but the case will be heard *ex parte* upon the argument of the party by whom the brief has been filed.

SUPREME COURT OF APPEALS

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RICHMOND, VIRGINIA

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IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 3565

**T. H. WILLIAMS AND MRS. T. H. WILLIAMS, PART-
NERS DOING BUSINESS AS WILLIAMS
MOTOR COMPANY, Plaintiffs in Error,**

versus

COMMONWEALTH OF VIRGINIA, Defendant in Error.

PETITION FOR WRIT OF ERROR.

*To the Honorable Chief Justice and Associate Justices of the
Supreme Court of Appeals of Virginia:*

Your Petitioners, T. H. Williams and Mrs. T. H. Williams, partners doing business as Williams Motor Company, respectfully represent that they are aggrieved by a certain final judgment entered in the Circuit Court of Wythe County on the 4th day of February, 1949, forfeiting a 1946 model Ford Truck, Motor Number 99T-908159, carrying North Carolina License Number 892038. This is a companion case to that of the *Commonwealth of Virginia v. One Hundred and Ninety-Three Cases of Whiskey* and was tried in the Circuit Court of Wythe County with that case. A petition for writ of error is filed contemporaneously in the forfeiture case and the record filed in said case is asked to be treated as if filed also in the instant case. If counsel for the Commonwealth

has any objection to this course being pursued the request is made that such objection be promptly made so that if necessary a copy of the same record may be filed with this petition.

NAMES OF PARTIES.

This writ of error is being prosecuted by T. H. Williams and Mrs. T. H. Williams on behalf of Ford Motor Truck, 1946 Model, Motor Number 99T-908159, North Carolina 1947 License Tag Number 892038. The Commonwealth of Virginia is the party who will be interested in sustaining the judgment of the Court below. Your Petitioners and Travis

DeLeon Triplette are the only other parties who will
2* *be affected by a reversal of the judgment. W. P. Parsons, Commonwealth Attorney of Wythe County, represented the Commonwealth of Virginia in the lower Court.

PROCEEDINGS IN THE LOWER COURT.

In the interest of brevity and economy, the statement as to the proceedings in the lower court contained in the petition in the proceeding for the forfeiture of the whiskey is adopted here, with the addition of the statement that your Petitioners claimed a lien on the truck and filed a conditional sales contract and a certificate of title issued by the State of North Carolina showing the purchase money lien.

ERRORS ASSIGNED.

The assignment of error is the overruling of the demurrer to the evidence and entering the final judgment in favor of the Commonwealth as set out in the companion case, and also the failure of the Court to recognize Petitioner's lien on the Ford Truck.

QUESTIONS INVOLVED.

The questions involved are the same as those in the companion case, plus the question arising as to the validity of Petitioner's lien. For reasons assigned the Court is asked to consider the statement of questions involved in the companion case.

STATEMENT OF FACTS.

The statement of facts is identical with the statement in the companion case and for the reasons assigned will not be repeated here.

In addition to the above statement of facts Petitioners set forth that they hold a lien on said Truck *of \$600.00, 3* plus interest from May 28, 1947, which was evidenced by a chattel mortgage securing a note, and was set forth on the certificate of title to said truck.

ARGUMENT.

The Court is asked to consider the argument set out in the companion case involving the forfeiture of the whiskey as if herein set out at length because the questions are identical, with the exception that there is the additional ground next noticed, upon which the judgment of the Circuit Court of Wythe County should be reversed.

Petitioners introduced the chattel mortgage note and certificate of title mentioned in the statement of facts. This chattel mortgage was not recorded in North Carolina, but the lien was disclosed on the certificate of title. Under these circumstances it is conceded that there was not a full compliance with sub-section (i) of section 38-a of the statute, in that there was no proof that the lien had been perfected by the recordation of the chattel mortgage in North Carolina. There is no statutory provision in the North Carolina Code similar to that of Virginia providing the effect to be given to the endorsement on the certificate of title of the lien. An inspection of the certificate, however, shows that the State of North Carolina employs a certificate of title similar to that employed in Virginia and that there are appropriate places for the entry of first and second liens, and that in the instant case the certificate itself shows a first lien in favor of the Williams Motor Company of North Wilksboro, North Carolina, in the amount of \$1,200.00 for a conditional sales 4* contract dated the 28th day of *April, 1947. It is respectfully submitted that as a matter of comity this lien should be recognized and the Court is requested to establish this as the proper procedure to be had in Virginia.

CONCLUSION.

For the reasons above set out it is respectfully submitted that the judgment complained of overruling the demurrer to

the evidence should be reversed and that the Supreme Court entering such judgment as the Circuit Court should have entered will sustain the demurrer to the evidence and direct the release of the forfeiture decreed by the Circuit Court, or if this cannot be done that the lien in favor of Petitioner as shown on the certificate of title and the unrecorded conditional sales contract be recognized and that the forfeiture decreed be subject to this lien.

The names of the parties and counsel as required by the rules of the Court have been set out heretofore.

A copy of this petition was delivered to W. P. Parsons, Commonwealth's Attorney of Wythe County, on the 25th day of March, 1949.

If a writ of error is granted this petition will be relied on as an opening brief.

Respectfully,

S. B. CAMPBELL,
G. P. YOUNG,
Counsel.

5*

*CERTIFICATE.

We, S. B. Campbell and George P. Young, Attorneys at Law, qualified to practice in the Supreme Court of Appeals of Virginia, whose address is Wytheville, Virginia, state that in our opinion the judgment complained of in the foregoing petition ought to be reviewed.

S. B. CAMPBELL,
GEO. P. YOUNG.

Received March 26, 1949.

M. B. WATTS, Clerk.

April 22, 1949. Writ of error awarded by the court. No bond required.

M. B. W.

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IN THE
Supreme Court of Appeals of Virginia

· AT RICHMOND

Record No. 3566

TRAVIS DELEON TRIPLETTE, Plaintiff in Error,

versus

COMMONWEALTH OF VIRGINIA, Defendant in Error.

PETITION FOR WRIT OF ERROR.

*To the Honorable Chief Justice and Associate Justices of the
Supreme Court of Appeals of Virginia:*

Your Petitioner, Travis DeLeon Triplette, respectfully represents that he is aggrieved by a certain final judgment of the Circuit Court of Wythe County entered on the 13th day of December, 1948, finding your Petitioner guilty of the illegal transportation of ardent spirits and fixing his punishment at a fine of \$500.00 and a suspended jail sentence of ninety days. This is a companion case to that of the *Commonwealth of Virginia v. One Hundred and Ninety-Three Cases of Whiskey*, and was tried in the Circuit Court of Wythe County with that case. A petition for writ of error is filed contemporaneously in the forfeiture case and the record filed in said case is asked

to be treated as if filed also in the instant case. If counsel for the Commonwealth has any objection to this course being pursued the request is made that such objection be promptly made so that if necessary a copy of the same record may be filed with this petition.

NAMES OF PARTIES.

This appeal is being prosecuted by Travis DeLeon Triplette and the Commonwealth is the party who will be interested in sustaining the judgment of the Court below. W. P. Parsons, Commonwealth's Attorney of Wythe County, represented the Commonwealth of Virginia in the lower Court.

2* *PROCEEDINGS IN THE LOWER COURT.

This case is one of three companion cases, as set out in the petition for writ of error filed in the proceedings for the forfeiture of one hundred and ninety-three cases of whiskey. The proceedings in the instant case are identical with the proceedings in the other case and in the interest of brevity and economy, reference is made to that petition for a complete statement of the proceedings in the lower court, the errors assigned, the questions involved and the statement of facts, and that petition is asked to be read as a part hereof as fully as if herein set out at length.

ERRORS ASSIGNED.

The assignment of error is the overruling of the demurrer to the evidence and entering final judgment for conviction.

QUESTIONS INVOLVED.

These are the same as those set out in the previous petition, and for reasons assigned will not be repeated.

STATEMENT OF FACTS.

The statement of facts is the same as set out in the other petition, and for reasons assigned will not be repeated.

ARGUMENT.

Your Petitioner adopts the argument contained in the petition for writ of error in the proceeding forfeiting the One Hundred and Ninety-Three Cases of Whiskey, and prays that the same may be considered as fully as if herein set out at length.

In addition to the argument presented in the forfeiture case, Petitioner points out that the present proceeding is a criminal case in which the burden was upon the Commonwealth to prove every fact essential to guilt *beyond a 3* reasonable doubt. Among the facts to be proved was the regulation under which he was convicted as set out in the warrant against him. There was entire failure of proof and, therefore, it was error to overrule Petitioner's demurrer to the evidence, and, therefore, Petitioner is now entitled to a final judgment in his favor.

CONCLUSION.

For the reasons above set out it is respectfully submitted that the judgment complained of overruling the demurrer should be reversed and that the Supreme Court entering such judgment as the Circuit Court should have entered will sustain the demurrer to the evidence and enter final judgment dismissing the Petitioner.

The names of the parties as required by the rules of this Court have been set out heretofore.

A copy of this petition was delivered to W. P. Parsons, Commonwealth's Attorney for Wythe County, on the 25 day of March, 1949.

Petitioner is now on bond pending the termination of the matters set out in this petition.

If a writ of error is granted this petition will be relied on as an opening brief.

Respectfully,

S. B. CAMPBELL,

G. P. YOUNG,

Counsel.

4* *We, S. B. Campbell and George P. Young, Attorneys at Law qualified to practice in the Supreme Court of Ap-

Supreme Court of Appeals of Virginia

peals of Virginia, whose address is Wytheville, Virginia, state that in our opinion the judgment complained of in the foregoing petition ought to be reviewed.

S. B. CAMPBELL,
GEO. P. YOUNG.

Received March 26, 1949.

M. B. WATTS, Clerk.

April 22, 1949. Writ of error awarded by the court. No bond required.

M. B. W.

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Statutes Cited

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IN THE
Supreme Court of Appeals of Virginia
AT RICHMOND.

Record No. 3567

TRAVIS DELEON TRIPLETTE, Plaintiff in Error,

versus

COMMONWEALTH OF VIRGINIA, Defendant in Error.

PETITION FOR WRIT OF ERROR.

*To the Honorable Chief Justice and Associate Justices of the
Supreme Court of Appeals of Virginia:*

Your Petitioner, Travis DeLeon Triplette, respectfully represents that he is aggrieved by a certain final judgment entered by the Circuit Court of Wythe County on the 13th day of December, 1948, forfeiting one hundred and ninety-three cases of ardent spirits. Your Petitioner files herewith a transcript of the record in said proceeding which he prays to be read herewith.

NAMES OF PARTIES.

This appeal is being prosecuted by Travis DeLeon Triplette on behalf of one hundred and ninety-three cases of whiskey. The Commonwealth of Virginia is the party who will be interested in sustaining the judgment of the Court below. W. P. Parsons, Commonwealth's Attorney, of Wythe County, represented the Commonwealth of Virginia in the lower Court.

PROCEEDINGS IN THE LOWER COURT.

This case is one of three companion cases and this petition is asked to be considered in the companion cases of *Commonwealth v. Ford Truck*, North Carolina license number 892038, and *Commonwealth v. Travis DeLeon Triplette*. All three of these cases arise out of the same transaction and the facts therein are identical and identical questions 2* of law are presented.

Travis DeLeon Triplette was arrested in Wythe County, Virginia, while en route from Cairo, Illinois, to North Wilksboro, North Carolina, while driving a truck loaded with one hundred and ninety-three cases of legally acquired whiskey, bearing proper Government stamps. A warrant of arrest was issued for Triplette which is found at page 2 of the transcript of the record. A search warrant was issued for the search of the truck and informations were filed by the Commonwealth's Attorney against the whiskey and against the truck. All parties denied the right of the Commonwealth to forfeit the whiskey and the truck and to convict the defendant of illegal transportation. A demurrer to the evidence, found at page 10, *et seq.*, of the record was filed, in which the Commonwealth joined, and upon mature consideration of the demurrer to the evidence the Court decided in favor of the Commonwealth and ordered the forfeiture of the whiskey and the truck and found the defendant guilty.

The three cases of *Commonwealth v. one hundred and ninety-three cases of whiskey* and the *Commonwealth v. a Ford Truck*, and *Commonwealth v. Travis DeLeon Triplette* were all tried together and the demurrer to the evidence was filed in each case and judgments were entered in the present case and in the case of *Commonwealth v. Triplette* on the 13th day of December, 1948, and later against the *Ford Truck*.

ERRORS ASSIGNED.

The Court erred in overruling the demurrer to the evidence and entering final judgment in favor of the Commonwealth.

3*

*QUESTIONS INVOLVED.

The questions involved are,

First, whether the alleged regulation of the Alcoholic Beverage Control Board, known as Rule 42, was applicable and

effective in Wythe County at the time of the seizure of the one hundred and ninety-three cases of whiskey, the subject of this litigation; and,

Secondly, if it was in effect, did it apply to the whiskey then being transported?

STATEMENT OF FACTS.

The facts in this case are admitted by the demurrer to the evidence found at page 10 of the record. By this demurrer it was admitted that Triplette was arrested in Wythe County on November 3, 1947, while operating a truck en route from Cairo, Illinois, to North Wilksboro, North Carolina. This truck was loaded with one hundred and ninety-three cases of whiskey, the subject of this litigation, which had been purchased from a wholesale liquor dealer in Cairo, Illinois, and was then being transported to North Wilksboro, North Carolina. All the liquor bore the Federal stamp, which it was admitted was necessary to make the sale legal in Illinois. The consignee was a resident of North Wilksboro, North Carolina, who, under the North Carolina State law, had no right to receive the whiskey.

At the time of his arrest Triplette was traveling on the direct route through Virginia from Cairo, Ill., to North Wilksboro. He had no permit from the Virginia Alcoholic Beverage Control Board, and had not posted bond with that Board, nor did he have a bill of lading prescribing the route to be traveled.

J. W. Hutton, Clerk of Wythe County, was summoned as a witness and testified that he was Clerk, and prior to 4* that *time had been Deputy Clerk, and to the best of his knowledge and belief there were no regulations of the Alcoholic Beverage Control Board on file in his office. Mr. Hutton and Mrs. Williams had been Clerk and Deputy Clerk for nine or ten years, and both of them had searched and not been able to find any regulation. Mr. Hutton stood aside, but was later recalled by the Commonwealth's Attorney, Mr. Parsons, and testified that on further search he had found a printed book which is certified as an original exhibit in this case, authenticated by the Court by the endorsement thereon, "J. S. D., Judge." Mr. Hutton testified that this was just a book which he found in the safe in the Clerk's Office and didn't know how it got there, and that it was not certified in any way.

Upon the demurrer to the evidence and joinder in demurrer, the Court held that the whiskey was forfeited and entered the judgment complained of.

ARGUMENT.

As has been previously set out, the assignment of error is the action of the Court in overruling the demurrer to the evidence. The decision of this question revolves around the proper construction of section 49-a of the Alcoholic Beverage Control Act (section 4675 L 49-a of Michie's Code) and section 5 of that Act (Section 4675 (5) of Michie's Code). The first section mentioned attempts to prohibit the transportation,

“Within, into and through the State of Virginia”, of alcoholic beverages in excess of one gallon,

“Except in accordance with regulations adopted by the Virginia Alcoholic Beverage Control Board.”

5* *It is conceded that the General Assembly has the right to make reasonable regulations for the transportation of ardent spirits through the State, and that it also has authority to delegate to the Alcoholic Beverage Control Board power to make and promulgate reasonable regulations governing the same matter. It is too plain for argument that neither the General Assembly nor the Board can absolutely forbid the transportation in interstate commerce of intoxicating beverages. Its power over this branch of interstate commerce extends only to reasonable regulation for the purpose of protecting its own citizens.

It is equally axiomatic that the Alcoholic Beverage Control Board hereinafter spoken of as the Board, has no inherent authority and is dependent upon Legislative grant for the exercise of any power, particularly that of Legislation. Recognizing this principle the General Assembly granted to the Board by section 5 of the Act the power to make regulations subject to the following limitations. They must be reasonable and not inconsistent with the Act nor with the general laws of the State, and they must be deemed necessary by the Board to carry out the purposes and provision of the Act and to prevent among other things the illegal transportation of alcoholic beverages. The enabling clause now continues:

“Such regulations shall be published at least once in some newspaper published in the City of Richmond and in any other manner which the Board may deem advisable, and upon being so published shall have the force and effect of law. *The Board shall certify to the Clerks of all Circuit Courts*

and City Courts of record having criminal jurisdiction, copies of all regulations adopted by the Board; such Clerks shall keep on file for public inspection all such regulations certified to them by the Board." (Italics supplied.)

Section c of this same enabling act now provides that:

6* "Justices and Courts shall take judicial notice of the regulations of the Board made, published and filed in accordance with the provisions of this Act."

As originally passed the enabling act did not contain the italicized sentence providing for certification to the Clerks of the Courts. Sub-section c of the same Act instead of reading as it does now, provided as follows:

"*Prima facie* evidence of any such regulation may be given in all courts and proceedings by the productions of what purports to be an officially printed copy of such regulation, alteration, repeal or amendment."

The Court's attention is particularly directed to these two amendments as both of them are most significant in the present case. At the risk of belaboring the obvious, it is pointed out that the original Act did not require certification to the Clerks of the Court nor the certifying of such regulations and filing as is now the case. The original Act also provided that what purported to be an officially printed copy of the regulation should be received as *prima facie* evidence of the regulation. The present Act not only added the requirement for certification found in sub-section a, but it entirely rewrote sub-section c and required that judicial notice be taken of regulations of the Board,

"Made, published and filed in accordance with the provisions of this Act."

The amendments noticed were made after the decision of *O'Brien v. the Commonwealth*, 165 Va. 870. In the *O'Brien* case there was a failure to introduce the printed copy of the regulation and the Court held that as this had not been done there could be no conviction as there was not even *prima facie* evidence of any regulation.

7* "It is obvious that the admissibility and effect of the printed copy of the regulations was governed entirely by sub-section c. It must be noticed now that the original provision of sub-section c has been entirely eliminated and there

has been substituted therefor the provision noticed above requiring the Courts to take judicial notice of the regulations of the Board,

“Made, published and filed in accordance with the provisions of this Act.”

In the instant case there was an entire absence of proof that the regulations of the Board were made or published in accordance with the enabling act, and there was definite evidence that such regulations, if made and published, had not been certified to the Clerk of the Circuit Court of Wythe County and were not on file in his office as required by law, as the condition precedent to the taking of judicial notice thereof. It is, therefore, respectfully submitted that there was an entire absence of proof of the regulation itself, that there was no attempt to establish the existence of the conditions precedent to the taking of judicial notice of the contents of any regulation, and even further that the evidence positively showed a failure to comply with the mandatory conditions of the statute upon the observance of which the regulation depended for its validity.

There is a further analogy between the instant case and the O'Brien case. In the O'Brien case the whiskey found in the car did not have any stamps or seals on the bottles. No evidence was introduced to establish the fact that the Board had promulgated any rule or regulation concerning the affixing of stamps.

The situation was exactly the same in the O'Brien case 8* *as it is in the instant case. The Board had the right to regulate the transportation within the State of alcoholic beverages in excess of one gallon just as it has to regulate such transportation through the State. The evidence is set out in full in an agreed statement of facts and the opinion points out that the record failed to show that any regulation had been adopted by the Board. In the case at bar, as previously pointed out, the facts are stronger from the standpoint of the Petitioner than they were in the cited case, because not only did the evidence of the Commonwealth fail to disclose the adoption of any regulation by the Board, but the defense called the Clerk of the Circuit Court of Wythe County who testified that he had examined his Office and to the best of his knowledge and belief no such regulations were on file, that he had made search and had also checked with the Deputy Clerk and none could be found. Subsequently the Clerk did find the printed blue book filed as an original exhibit, but which it was admitted was not certified in any way

and was simply found in the Clerk's Office and the Clerk did not know how it got there. Even this book, although purporting to contain what are called regulations of the Virginia Alcoholic Beverage Control Board, and purporting to contain a statement of the Board as to the effective date of the regulations, all of which is printed, is in no way certified and does not purport so to be. The only information given in the statement is that at a meeting of the Board in the City of Richmond the regulations had been adopted by the Board but there is no certificate or even recital of publication and filing in accordance with paragraph a section

5 of the Act. There was, therefore, absolutely nothing 9* before the Court by way of proof of the fact of publication or filing, *non constat* that there was even any legal evidence of adoption by the Board of any such regulation. On a similar state of facts the Court stated in the O'Brien case:

"While, as a general rule Courts take judicial notice of general statutory laws, they are not required, and cannot be expected, to take such notice, of the rules and regulations of an administrative body, as that in the case here, nor can the trial court or this Court assume that the Board has adopted any particular regulation as to which there is an entire lack of proof. The statute itself provides how regulations adopted by the Board may be proved, and manifestly contemplates that at least the *prima facie* evidence therein mentioned shall be produced."

The cited case seems conclusive on the question raised in the instant case.

Upon a demurrer to the evidence the Court considers only legal evidence. Therefore, the printed blue book was no evidence as to its contents. The book itself might be introduced in evidence to show that it was in the Clerk's Office, but this did not tend in any way to establish the contents of any purported regulation of the Board. As has already been pointed out, sub-section c of the original Act permitting the introduction in evidence of what purported to be an official copy of the regulation, was repealed prior to the occurrence of the transactions now the subject of investigation. Sub-section c as originally enacted did permit the introduction in evidence of the printed regulation, and further provided that this should constitute *prima facie* evidence of the regulation. In the instant case attention is directed to the fact that proof of the regulation was challenged specifically by the first ground of the demurrer and the Commonwealth

was put on notice that it had failed to prove the alleged regulation.

10* *It must be recalled that in the case at bar the offense alleged to have been committed is not a common law offense, but it merely a *malum prohibitum* as to which the General Assembly itself, and, *a fortiori* the Board could exercise only a limited jurisdiction, being subject in all such regulations to the superior power of the Congress over interstate commerce.

The case of *Dickerson v. the Commonwealth*, 181 Va. 313, is instructive as defining the power of the State of Virginia under the decisions of the Supreme Court of the United States. That Court has now permitted reasonable regulations affecting the interstate transportation of liquor in the interest of safety, health and well-being of local communities, in order to give assurance that the liquor will be transported without diversion or unlawful distribution within the State.

As has been pointed out, the absolute prohibition of the transportation of ardent spirits in interstate commerce by a State would be invalid and of no effect. The State can only enact a reasonable regulation to protect its own citizens from unlawful acts against its own sovereignty. It is admitted that at the time of arrest the whiskey was being transported on the direct route through Virginia from Cairo, Ill., to North Wilkesboro, N. C., and there is no suggestion at all in the record that there was any diversion or attempted diversion of any part of this liquor within the State of Virginia. The warrant issued in this case charged that the whiskey was being transported;

“In violation of Section 49A of the Virginia A. B. C. Act and sections 42, 43 and 44 of the regulations of the Virginia A. B. C. Board.”

11* *As has been previously pointed out, Section 49a of the A. B. C. Act is void if construed as an absolute prohibition against the transportation in interstate commerce of ardent spirits. It is also obvious that as the Commonwealth failed in any way to prove the adoption of any rules or regulations of the Alcoholic Beverage Control Board, and as under the O'Brien case the Court could not take judicial notice of the contents of any such rules even if they had been adopted by the Board, because there was no evidence of publication or certification, it must follow that there was no law effective in the jurisdiction of the Circuit Court of Wythe County which could possibly have justified the judgment of

the Circuit Court of Wythe County in the forfeiture proceedings.

It is interesting to note that paragraph b of section 5 of the A. B. C. Act reads:

“Nothing in this Act contained shall require such regulations to be uniform in their application.”

A plausible explanation of such an unusual provision suggests itself in the fact that the Legislature recognized that regulations might be effective in one county and not in another county, and the fact that they were not uniform in their application over the entire State was not to affect the validity of the regulation in the jurisdictions in which they did apply. This may have been intended to relieve the Commonwealth from the burden of proving in Clark County that the regulation, if effective in that County, was also effective in Buchanan County. If so, the converse is equally true and the fact that the regulation may have been effective in one county is no evidence, even had it been introduced, that it was effective in Wythe County.

12* *Attention is also called to the fact that as this case was decided upon a demurrer to the evidence in which the Commonwealth joined, that there can be no remanding of the case for further proceedings. The Commonwealth had the election to join or not to join in the demurrer. It could have requested time and had an opportunity to present evidence that the regulation or regulations upon which it relied had been adopted, and to have presented to the Court properly certified copies of the same. The Commonwealth did not see fit to pursue this course and, therefore, it is fair to assume that it did not feel that it could have bettered its case. Under these circumstances there has been a complete and full trial upon what may be presumed to be the best evidence that the Commonwealth could produce, which, as pointed out, is clearly insufficient to justify a judgment in its favor.

In consideration of the foregoing your Petitioners prays that a writ of error and *supersedeas* may be awarded to the judgment of the Circuit Court of Wythe County, and that upon a hearing the Supreme Court of Appeals of Virginia will reverse the judgment of the Circuit Court of Wythe County and enter final judgment in favor of your Petitioner.

The ardent spirits seized are now in the custody of the Sheriff of Wythe County, and it is not contemplated, nor

requested, that the *supersedeas*, if granted, shall operate to change the custody of such ardent spirits, but the *supersedeas* is prayed only to be in the nature of a stay of execution of the order of forfeiture.

13*

*CONCLUSION.

For the reasons above set out it is respectfully submitted that the judgment complained of overruling the demurrer to the evidence should be reversed, and that the Supreme Court entering such judgment as the Circuit Court should have entered will sustain the demurrer to the evidence and direct the release of the forfeiture decreed by the Circuit Court.

The names of parties and counsel as required by the rules of the Court have been set out heretofore.

A copy of this petition was delivered to W. P. Parsons, Commonwealth's Attorney of Wythe County, on the 25 day of March, 1949.

If a writ of error is granted this petition will be relied on as an opening brief.

Respectfully,

S. B. CAMPBELL,
G. P. YOUNG,
Counsel.

CERTIFICATE.

We, S. B. Campbell and Geo. P. Young, Attorneys duly qualified to practice in the Supreme Court of Appeals of Virginia, whose address is Wytheville, Virginia, state that in our opinion the judgment complained of in the foregoing petition ought to be reviewed.

S. B. CAMPBELL,
G. P. YOUNG.

Received March 26, 1949.

M. B. WATTS, Clerk.

April 22, 1949. Writ of error awarded by the court. No bond required.

M. B. W.

RECORD

AFFIDAVIT FOR SEARCH WARRANT.

State of Virginia,
County of Carroll, to-wit:

This day A. L. Fulcher, ABC Investigator personally appeared before me, Trial Justice of said County, and made oath that he verily believes that a certain..... located in District of said County at or near..... and described further as 1946 Ford Truck, License #892038 and Motor #99T-908159 North Carolina and occupied by or in possession of Travis DeLeon Triplette unlawfully contains, contrary to law, Ardent Spirits; because Information and further made oath that such information was received through a reliable person, or that he has reasonable cause for such belief.

Given under my hand this 4th day of November, 1947.

J. E. CROCKETT, J. P. (Seal)

SEARCH WARRANT.

State of Virginia,
County of Carroll, to-wit:

To any Police Officer, Greeting:

Whereas, A. L. Fulcher, ABC Investigator has this day made oath before me that he verily believes that a certain Truck located in District of said County at or near..... and described further as 1946 Ford Truck, License 892038 N. C. Motor #99T-908159 and occupied by or in possession of Travis DeLeon Triplette unlawfully contains, contrary to law, Ardent Spirits and that such information was received through a reliable person, or that he has reasonable cause for such belief.

These are therefore, in the name of the Commonwealth, to command you forthwith in the day or night to enter the said premises above described and there diligently search for the said Ardent Spirits and if the same, or any part thereof, be found upon such search to bring the same, and the person, or persons, in whose possession same are found, before the Trial Justice Court of said County to be disposed of

or dealt with according to law. And this you shall in no wise omit.

Given under my hand and seal this 4th day of November, 1947.

J. E. CROCKETT, J. P. (Seal)

(over)

Commonwealth of Virginia

v.

Travis Deleon Triplette

SEARCH WARRANT.

Issued 11-4-47.

The within warrant executed in the County of Wythe on the 4th day of November, 1947, by searching the within described premises and seizing the following

193 Cases of legal whiskey.

1—1946 Ford Truck, License 892038 and Motor #99T-908159 and arresting Travis Deleon Triplette.

A. L. FULCHER,
A. B. C. Officer.

page 2 } Commonwealth of Virginia,
County of Wythe, to-wit:

To the Sheriff of the said County or any State Police:

Whereas, Fulcher and Boone of said County has this day made complaint and information on oath before me, H. M. Heuser, Trial Justice (Thelma Blalock, Clerk of Trial Justice), of the said County, that Travis Deleon Triplette in the said County did on the 3rd day of November, 1947: Unlawfully transport alcoholic beverages in excess of one gallon, to-wit: 579 gallons, in violation of Section 49-a of the Virginia ABC Act, and Sections 42, 43 and 44 of the Regulations of the Virginia ABC Board, in that these alcoholic beverages were being illegally transported through the Commonwealth of Virginia.

THESE ARE, THEREFORE. To command you, in the name of the Commonwealth, to apprehend and bring before the said Trial Justice the body of said Travis Deleon Trip-

lette to answer the said complaint and to be further dealt with according to law. And you are also directed to summon H. V. Boone, A. L. Fulcher as witnesses.

Given under my hand and seal, this 4 day November, 1947.

.....T. J. (seal)
.....
Clerk of Trial Justice Court.
J. E. CROCKETT, J. P.

(over)

Address Purlear, N. C.
Age, 30.
Color White.
Married (x) Single () Divorced ().
Occupation Farmer.
Charge transportation.
Plea Not Guilty.

Commonwealth Witnesses Day Miles Total

November 10, 1947

The defendant having agreed to submit matter of confiscation of the liquor at this time and Howard Church of N. Wilkesboro, N. C. having filed a claim to said liquor the said questions are hereby certified along with this warrant to the Circuit Court of Wythe County and the said liquor seized as aforesaid.

H. M. HEUSER, T. J.

The following witnesses were recognized to appear before the Circuit Court of Wythe County on the day of, 19..., under the penalty of \$.....

..... T. J.

STATEMENT OF FINE AND COSTS..

Fine	\$500.—
Costs as Following:	
Trial	2.00
Bail	
Warrant	1.00

Arrest	
Commonwealth Attorney	
Clerk of Court	1.25
Sheriff or Sergeant	
Jail or Commitment50
Summoning—Witnesses	
Witnesses	
Other J. E. C. Ser. War.	1.00
Mileage	
Total Fine and Costs	<u>\$505.75</u>
\$500.00 cash Bond	Nov. 10

Docket No. 5438-a.

Commonwealth

v.

Travis Deleon Triplette

WARRANT OF ARREST.

Executed this, the 4th day of Nov., 1947. Arresting Travis D. Triplette & Seizing 193 cases of whiskey.

A. L. FULCHER,
A. B. C. Officer.

Upon the examination of the within charge, I find the accused guilty and fix punishment at

Fine	\$500.00
Costs	5.75
Total	<u>\$505.75</u>

and 90 days suspended sentence.

Nov. 10-1947.

H. M. HEUSER, T. J.

Appealed cash bond \$505.75.

page. 3 }

(NOTICE)

Virginia:

In the Clerk's Office of the Circuit Court for Wythe County.

WHEREAS, an information has this day been filed in the office aforesaid by W. P. Parsons, Attorney for the Commonwealth, alleging the seizure of a certain 1946 Ford truck, motor No. 99T-908159, carrying North Carolina license No. 892038, by A. L. Fulcher, State Inspector, while engaged in the illegal transportation of 193 cases of whiskey, on or about the 3rd day of November, 1947, in violation of the Alcoholic Beverage Control Act as amended. Said truck was delivered to the Sheriff for Wythe County, Virginia; and

WHEREAS, said information prays that said truck be condemned and sold and the proceeds thereof disposed of according to law in order to enforce forfeiture thereof:

THEREFORE, notice is hereby given to Travis DeLeon Triplette and all persons concerned in interest, that they are hereby cited to appear on the 19th day of January, 1948, that being the first day of the January, 1948, term of Wythe County Circuit Court, at the court house in Wytheville, Virginia, at 9:00 A. M. on that date, to show cause why the prayer for forfeiture, condemnation, and sale of said truck to the Commonwealth of Virginia should not be granted.

Given under my hand this November 12, 1947.

J. W. HUTTON

Deputy Clerk, Wythe County Circuit Court

page 4 } Commonwealth of Virginia,
Wythe County, to-wit:

In the Circuit Court for Wythe County.

Be it remembered that W. P. Parsons, Attorney for the Commonwealth of said Circuit Court for Wythe County, Virginia, and who in this behalf prosecutes for said Commonwealth, in his own proper person comes into said court on this the 19th day of January, 1948, and here gives the Court to understand and be informed that on or about the 3rd day of November, 1947, in said county of Wythe and state of Virginia, a certain Ford truck, 1946 model, motor No. 99T-908159, carrying North Carolina license No. 892038, was seized by

A. L. Fulcher, State Inspector, while engaged in the illegal transportation of 193 cases of whiskey in violation of the Alcoholic Beverage Control Act as amended.

A man giving his name as Travis Deleon Triplette, of Purlear, Wilkes County, North Carolina, was operator of the truck at the time of seizure, and also claims to be the owner of same, and he was arrested.

Said truck was delivered to the Sheriff of said county and the ardent spirits being transported in said truck were ordered confiscated by order entered by Hon. H. M. Heuser, Trial Justice for Wythe County, Virginia.

All of which facts were reported to the Attorney for the Commonwealth, as required by law:

NOW, THEREFORE, in pursuance of law, said Attorney prays said Court that said truck be condemned and sold and the proceeds thereof disposed of according to law, and that Travis Deleon Triplette, of Purlear, Wilkes County, North Carolina, and all persons interested therein, be cited to appear and show cause why said truck should not be condemned and forfeited to the Commonwealth.

/s/ W. P. PARSONS
Commonwealth's Attorney for
Wythe County, Virginia

page 5 } I hereby certify that the foregoing information
was this day sworn to by W. P. Parsons before me,
the undersigned Deputy Clerk for Wythe County Circuit
Court.

Given under my hand this November 12, 1947.

J. W. HUTTON
Deputy Clerk, Wythe County
Circuit Court

Filed in the office of the Clerk of the Circuit Court of Wythe County, Virginia.

This 12 day of Nov., 1947.

Teste:

ELLA W. DOBYNS, Clerk
By: EMILY J. WILLIAMS, Dep. Clk.

(On back)

Commonwealth

v.

Ford Truck Motor No. 99T-908159

INFORMATION.

page 6 } To the Honorable John S. Draper, Judge of the Circuit Court for Wythe County, Virginia:

I hereby certify that notice of information filed by W. P. Parsons, Attorney for the Commonwealth, in this office on the 12th day of November, 1947, against a certain Ford truck, 1946 model, motor No. 99T-908159, carrying North Carolina license No. 892038, which is charged with being engaged in the illegal transportation of ardent spirits, citing Travis DeLeon Triplette, of Purlear, Wilkes, North Carolina, and all persons concerned in interest to appear and show cause against same at the court house in Wytheville, Virginia, on Monday, January 19, 1948, at 9:00 A. M., that being the first day of the January term of Wythe County Circuit Court, was this day posted at the front door of Wythe County Court House, as required by law.

Given under my hand this 12th day of November, 1947.

J. W. HUTTON
Deputy Clerk, Wythe County
Circuit Court

Filed in the office of the Clerk of the Circuit Court of Wythe County, Virginia.

This 12 day of Nov., 1947.

Teste: .

ELLA W. DOBYNS, Clerk
By: EMILY J. WILLIAMS, Dep. Clk.

(On back)

Comth.

v.

Ford Truck Motor No. 99T-908159

CERTIF. OF CLERK.

page 7 } In the Circuit Court of Wythe County, Virginia:

Commonwealth

v.

Ford Truck 1946 Model, Motor #99T-908159, North Carolina
1947 License tag #892038

ANSWER OF WILLIAMS MOTOR COMPANY.

To the Honorable John S. Draper, Judge of said Court:

The undersigned, T. H. Williams and Mrs. T. H. Williams, respectfully show unto the court the following matters as entitling them to relief from the forfeiture sought by the Commonwealth against the above described Ford truck.

1. Respondents aver that they are partners trading as Williams Motor Company, with their place of business at North Wilkesboro, North Carolina; that on April 28, 1947, they delivered to one Travis Triplette the above described Ford truck under a reservation of title contract whereby the undersigned reserved title to the said motor vehicle until the full amount of the purchase price of \$1,300.00 was paid. The said purchase price was payable at the rate of \$100.00 per month beginning May 28, 1947; that up to this time, six monthly payments of \$100.00 each have been made on the said debt leaving a balance of \$600.00 due, plus interest. To evidence the said indebtedness the said Travis Triplette executed his promissory, negotiable bond to the undersigned for \$1,200.00 which is filed herewith, together with an instrument executed by Travis Triplette to the Williams Motor Company conveying the said Ford truck upon the special trust that if he failed to pay his indebtedness for the purchase price of said truck to the undersigned, the undersigned might take possession of the said truck and sell it and apply the proceeds of sale, so far as necessary, in payment of the balance due on said note, with interest and costs.

page 8 } 2. Respondent further avers to the court that in addition to the note and written instrument above described, the lien to respondents to secure the unpaid purchase money on said truck was recorded on the face of the certificate of title issued by the State of North Carolina to the said Travis Triplette, which is filed herewith and asked to be read as a part hereof, which certificate of title is #Z960269D. It will be seen that upon this certificate of title

a first lien in the amount of \$1,200.00 is recorded in favor of Williams Motor Company under date of April 28, 1947. Respondents aver that they have perfected their lien against the said truck.

3. Respondent avers further that if the said truck was illegally used by the said Triplette, respondent was ignorant of the fact and said illegal use was without respondent's connivance or consent, express or implied; that respondent has a *bona fide* first lien on said truck which had been perfected in the manner prescribed by law prior to the seizure of the said truck.

In consideration of the premises, it is the prayer of respondents that the undersigned be made a party defendant in this proceeding, that the court order the said truck to be released to the Williams Motor Company, that failing this the court protect the lien of the Williams Motor Company against said truck and order it to be paid in full if the said truck is confiscated and sold by the Commonwealth under forfeiture; that if the said truck is forfeited and sold by the Commonwealth of Virginia, that the court order the debt of respondent to be fully paid, with interest, before any costs or moneys are paid to the Commonwealth of Virginia from said sale.

Respectfully,

WILLIAMS MOTOR COMPANY,
By T. H. WILLIAMS
T. H. WILLIAMS, Partner.

page 9 } State of North Carolina,
County of Wilkes, to-wit:

I, Alice M. Williams, a Notary Public in and for the County of Wilkes in the State of North Carolina do certify that T. H. Williams, whose signature appears above on this page personally appeared before me and acknowledged the same and made oath that the facts and matters stated in the foregoing answer are true to the best of his knowledge and belief.

My commission expires

Given under my hand and notarial seal this 9th day of January, 1948.

(Seal) ALICE M. WILLIAMS
Notary Public

page 10 } In the Circuit Court of Wythe County.

Commonwealth

v.

Travis DeLeon Triplette

ON A WARRANT OF ARREST.

Commonwealth

v.

A Ford Truck #99T-908159, Carrying North Carolina License #892038

and

Commonwealth

v.

193 Cases of Whiskey found in said truck

DEMURRER TO THE EVIDENCE.

This day came the Commonwealth by her attorney and the defendant Travis DeLeon Triplette by counsel; and by agreement of parties here entered of record all matters of law and fact are submitted to the Court without the intervention of a jury, and it is agreed that the three proceedings, namely, the criminal warrant of Commonwealth *v.* Travis DeLeon Triplette and the Information against Ford Truck, Motor Number 99T-908159 and the proceeding for forfeiture of the 193 cases of whiskey found in said truck shall be heard together and that the evidence introduced shall be considered as if introduced in each separate case.

Be it remembered that upon the trial of three proceedings as above set out the plaintiff and defendant respectively in each of said proceedings introduced the following evidence:

"It is admitted that the evidence of the Commonwealth will show that the defendant was arrested in Wythe County on the 3rd day of November, 1947, at which time he was page 11 } operating a truck en route from Cairo, Ill., to North Wilkesboro, N. C. The truck was loaded with 193 cases of whiskey and the defendant had in his possession documents showing that 125 cases of Calvert Reserve pints; 25 cases of Four Roses pints; 25 cases of Four Roses half-pints, and 18 cases old Crow pints had been purchased from

J. W. Hutton.

J. B. Wenger, wholesale liquor dealer, Cairo, Ill., and had been sold to Howard T. Church, North Wilkesboro, N. C. That all of this liquor bore the Federal stamp, which was all that was necessary to make the sale legal in Illinois. That Church was a resident of North Wilkesboro, N. C., and under the North Carolina law had no right to receive this shipment. At the time of the arrest the defendant was traveling on the direct route through Virginia from Cairo, Ill., to North Wilkesboro, N. C., and had no permit from the Virginia Alcoholic Beverage Control Board, and had not posted bond with that Board and had no bill of lading prescribing the route to be traveled.

Whereupon the Commonwealth rested."

The defendants to prove and maintain said issue on the part of each, introduced the following evidence.

The witness,

J. W. HUTTON,
being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By S. B. Campbell:

Q. Mr. Hutton, you, I believe, are the Clerk of the Circuit Court of Wythe County?

A. Yes, sir.

Q. Before being Clerk were you Deputy Clerk?

A. Yes, sir.

Q. Please state whether or not there are on file in the Clerk's Office of Wythe County any regulations from the Alcoholic Beverage Control Board?

A. To the best of my knowledge and belief there are none.

CROSS EXAMINATION.

By W. P. Parsons:

Q. Mr. Hutton, don't you know, as a matter of page 12 } fact those regulations have been filed there for some time?

A. Not to my knowledge, Mr. Parsons, and I have checked with Mrs. Williams and she said so far as she knew there

J. W. Hutton.

were not. We have checked the order books and couldn't find them. I don't mean to say it is not there, but I have no knowledge of it.

RE-DIRECT EXAMINATION.

By Mr. Campbell:

Q. You and Mrs. Williams, who is a Deputy who has been in there some ten or more years?

A. Nine or ten years.

Q. And you and she both looked and been unable to find anything?

A. Yes, sir.

By Mr. Campbell: We rest.

J. W. HUTTON,
Recalled.

By Mr. Parsons:

Q. Mr. Hutton, I will ask you whether or not after further search you did not find on file the rules and regulations of the A. B. C. Board, concerning transportation of liquor?

A. I found that book that you have in your hand there.

Q. Through the State of Virginia?

A. Yes, sir; found that book that you have in your hand there, which is the regulation of the A. B. C. Board.

Q. I will ask you if this book is not described as Alcoholic Beverage Acts and 3.2 Beer Law of Virginia, as amended by the General Assembly 1942; regulation and administration orders adopted by the Virginia Alcoholic Beverage Control Board?

A. That's correct, yes, sir.

Q. I will ask you to just file this with the Court.

Which book was filed in evidence as an exhibit and authenticated by the Court by subscribing on said book the legend "J. S. D., Judge".

RE-DIRECT EXAMINATION.

By Mr. Campbell:

Q. Mr. Hutton, this thing that you have just filed here is not certified in any way at all, is it?

J. W. Hutton.

A. No, sir.

Q. And it was just a book that you found there in the Clerk's Office?

A. In the safe in the Clerk's Office.

page 13 } Q. And you don't know how it go in there?

A. No, sir; I have no recollection of its coming there.

Q. And don't know how it got in there?

A. No, sir.

Q. And it is not certified in any way?

A. No, sir.

Q. You don't know when it got in there?

A. No, sir."

The defendant says that the matter aforesaid so introduced and shown in evidence by the plaintiff is not sufficient in law to maintain the issues on the part of the plaintiff, and that the said defendants are not bound by the law of the land to answer the same, and the said defendant states in writing that the grounds of demurrer relied on in this demurrer to the evidence are specifically as follows:

1. The Commonwealth has failed to prove any valid regulation of the Alcoholic Beverage Control Board prohibiting the transportation in interstate commerce of tax paid intoxicant spirits through the County of Wythe.

2. There is no State law which prevents the transportation of legally acquired tax paid liquor through the County of Wythe.

3. The whiskey was being transported in interstate commerce and was not subject to any forfeiture by state authority.

4. The Alcoholic Beverage Control Board had not certified to and filed in the Clerk's Office of Wythe County any copy of its regulations.

5. The evidence discloses that the whiskey in question all bore Federal stamps and other stamps necessary to make the sale legal in Illinois, and that the consignee was a resident of North Wilkesboro, N. C.; and that the defendant Triplette at the time of his arrest was traveling on the direct route through Virginia from Cairo, Ill., to North Wilkesboro, N. C.

CAMPBELL & CAMPBELL

Atty's for demurrants

page 14 } \$1,200.00 Address Purlear Rt. 1, N. C. Date 4-28-1947.

FOR VALUE RECEIVED, I (we) promise to pay WILLIAMS MOTOR CO., or order, the sum of Twelve Hundred Dollars at office of WILLIAMS MOTOR CO., in installments as follows, viz:

\$100.00 in one month after date
 \$100.00 in two months after date
 \$100.00 in three months after date
 \$100.00 in four months after date
 \$100.00 in five months after date
 \$100.00 in six months after date
 \$100.00 in seven months after date
 \$100.00 in eight months after date
 \$100.00 in nine months after date
 \$100.00 in ten months after date
 \$100.00 in eleven months after date
 \$100.00 in twelve months after date

together with interest after Date.....until paid at the rate of six per cent per annum.

This note for the purchases of Automobile type Ford Motor No. 99T-908159 all of the above this day received of them, the title to which remains in WILLIAMS MOTOR CO., or order, until the whole be paid.

The principals and endorsers of this note hereby waive presentment, protest, notice of protest and all benefits of valuation, appraisement and exemption laws. This note becomes immediately due and payable (less any payments made thereon) in event of non-payment at maturity of any installment schedule hereon.

Note No.

TRAVIS TRIPLETT (Seal)

Witness.....

.....(Seal)

(over)

5-28-1947

Chash \$100.00

6-28-47

Chash 100.00

7-28-47

Chash 100.00

Cash 100.00

8-28-47

Cash

9-28-47 100.00

Cash

10-28-47

Cash 100.00

page 15 } State of North Carolina \$1,200.00
WILKES COUNTY

I, Travis Triplett of the County of Wilkes in the State of North Carolina, am.....indebted to Williams Motor Co., of said County in said State in the sum of Twelve Hundred DOLLARS for which they hold my.....not to be paid as follows:

\$100.00 in one month after date
\$100.00 in two months after date
\$100.00 in three months after date
\$100.00 in four months after date
\$100.00 in five months after date
\$100.00 in six months after date
\$100.00 in seven months after date
\$100.00 in eight months after date
\$100.00 in nine months after date
\$100.00 in ten months after date
\$100.00 in eleven months after date
\$100.00 in twelve months after date

together with interest at the rate of.....per cent per annum after

And I further agree that if I shall make default in payment of any one installment when it comes due, that all the remaining installments unpaid shall immediately become due and payable.

And to secure the payment of the same, I Travis Triplette do hereby convey to said WILLIAMS MOTOR CO., these articles of personal property, to-wit:

1946 Ford 1-1/2 Ton Truck Motor #99T-908159

Said property is free and clear from any and all encumbrances.

But on this Special Trust: That if I.....fail to pay said debt and interest or any part of either at the maturity

thereof, or fail to properly care for the personal property herein conveyed, then the WILLIAMS MOTOR CO., or its assigns, may take possession of said property and sell it, or so much thereof as may be necessary, by public auction at the Court House door in Wilkesboro, N. C., or in the county of the undersigned Travis Triplette, mortgagor, first giving 20 days notice in three public places in said County where said sale is to take place as per terms of mortgage, and apply the proceeds of such sale to the discharge of said debt and interest on same and the cost of the sale, and pay any surplus to me, Travis Triplette

Given under my hand and seal, this the 28th day of April 1947

TRAVIS TRIPLETTE (Seal)

Witness.....

.....(Seal)

(over)

page 16 } STATE OF NORTH CAROLINA

DEPARTMENT OF MOTOR VEHICLES No. Z960269D

CERTIFICATE OF TITLE OF A MOTOR VEHICLE

The Commissioner of Motor Vehicles of the State of North Carolina hereby certifies that pursuant to the Motor Vehicle Laws of the said State and Regulations promulgated thereunder an application has been made to the Department of Motor Vehicles for a certificate of title of a Motor Vehicle described as follows:

Make	Style and	Motor Number	Serial Number	Issued
Weight	Fee	Title Number	Year Model	
Ford	Trk.	99T-908159		May 7th
120	60.00	Z960269D	1946	1947
			8G	

TRAVIS TRIPLETTE

R-1

PURLEAR WILKES CO. N. C.

And that the applicant has stated under oath that said applicant is the owner of said motor vehicle and that it is subject to the following liens and none other.

2nd Lien.		
Amount	Kind	Date
Favor of		
1st Lien		
Amount	Kind	Date
\$1,200.00	C. S. C.	4/28/47
Favor of		
Williams Motor Co.		
N. Wilkesboro N. C.		

He does further certify that he has used reasonable diligence in ascertaining whether or not the facts in said application for a certificate of title are true, and that he is satisfied that the applicant is the lawful owner of the above described motor vehicle or is otherwise entitled to have the same registered in his name. Therefore, he does hereby certify that the above named applicant has been duly registered in the office of the Department of Motor Vehicles as the lawful owner of the above described motor vehicle, or is otherwise entitled to have the same registered in his name, and that it appears upon the official records of the Department of Motor Vehicles that at the date of the issuance of this certificate, said motor vehicle is subject to the liens hereinbefore enumerated, if any, and none other.

As Witness, his hand and the Seal of the Department of Motor Vehicles the day and year set opposite the name of the applicant in the foregoing certificate.

(Seal)

T. B. WARD
Commissioner of Motor Vehicles

(over)

Back illegible

page 17 } Commonwealth of Virginia
v.
Travis DeLeon Triplette

ON A WARRANT OF ARREST.

Commonwealth

v.

Ford Truck #99T-908159, Carrying North Carolina License
#892038

and

Commonwealth

v.

193 Cases of Whiskey Found in Said Truck.

JOINDER IN DEMURRER.

The Commonwealth says that it hath shown in evidence sufficient matter to maintain the issue on its part, and in as much as the defendant doth not deny or in any way answer the said matter, it prays that it may have judgment upon said issue.

COMMONWEALTH

By W. P. PARSONS
Commonwealth's Attorney
of Wythe County.

page 18 } Virginia:

In the Circuit Court for Wythe County, on Monday, the 13th day of December, in the year of our Lord Nineteen Hundred and Forty-eight.

Present: Honorable Jno. S. Draper, Judge.

Commonwealth

v.

Travis DeLeon Triplette

Commonwealth

v.

1946 Ford Truck, Motor No. 99T-908159 Carrying N. C. License No. 892038

Commonwealth

v.

193 Cases of Ardent Spirits Found in a 1946 Ford Truck,
Motor No. 99T-908159

This day came again the Commonwealth by her attorney and the defendant, Travis DeLeon Triplette, by counsel, and the Court having heretofore heard the evidence and the demurrer to the evidence and the joinder in demurrer by the Commonwealth, and having fully considered the demurrer and now being advised of its opinion, doth decide on said demurrer that Travis DeLeon Triplette is guilty, as charged in the warrant, of illegal transportation of ardent spirits, and doth fix his punishment at a fine of \$500.00 and ninety days in jail, which jail sentence is suspended.

Upon the information against the 1946 Ford Truck, motor No. 99T-908159, the Court doth decide that said truck is forfeit to the Commonwealth, subject to such rights as the Williams Motor Company may have as alleged lienor, and an answer having been filed by said Williams Motor Company asserting a lien on said truck, it is ordered page 19 } that such rights as the Williams Motor Company might have to a lien on the truck be, and the same are hereby, transferred to the proceeds from the sale of said truck, and it is ordered that the Sheriff of this County do proceed to sell said truck as provided by law and hold the proceeds therefrom subject to the further order of this Court on the claim of the lienor. The Court not now being advised whether the claim of the lienor is superior to the claim of the Commonwealth for the forfeiture, the question is taken under advisement.

It is further considered that the 193 cases of ardent spirits being transported in the 1946 Ford truck, motor No. 99T-908159, be, and the same are hereby, forfeit to the Commonwealth, and the Sheriff of this County will deliver the same to the proper officers of the Alcoholic Beverage Control Board.

It is further considered that this order be entered in the same force and effect as if entered separately in each of the three proceedings above mentioned, to-wit: Commonwealth v. Travis DeLeon Triplette; Commonwealth v. 1946 Ford Truck, Motor No. 99T-908159; and Commonwealth v. 193 cases of ardent spirits transported in said truck.

Upon motion of the defendant, execution of this judgment is suspended for a period of sixty days to enable him to apply to the Supreme Court of Appeals for a writ of error in each of the above proceedings.

Teste:

JNO. S. DRAPER, Judge.

page 20 } Virginia:

In the Circuit Court for Wythe County, on Monday, the 19th day of January, in the year of our Lord Nineteen Hundred and Forty-eight.

Present: Honorable Jno. S. Draper, Judge.

Commonwealth

v.

Travis D. Triplette

MISDEMEANOR APPEAL--ILLEGAL TRANSPORTA-
TION.

On motion of attorney for the defendant, this case is passed until a later date.

Commonwealth

v.

Ford Truck, Motor No. 99T-908159, (Travis Deleon Triplette)

INFORMATION.

On motion of attorney for the defendant, this case is passed until a later date.

Teste:

JNO. S. DRAPER, Judge.

page 21 } Virginia:

In the Circuit Court for the County of Wythe, on Friday, the 4th day of February, in the year of our Lord Nineteen Hundred and Forty-nine.

Present: Honorable Jno. S. Draper, Judge.

Commonwealth

v.

Travis Deleon Triplette

Commonwealth

v.

1946 Ford Truck, Motor No. 99T-908159, Carrying N. C. License No. 892038

Commonwealth

v.

193 Cases of Ardent Spirits Found in a 1946 Ford Truck, Motor No. 99T-908159

This day came again the Commonwealth by her attorney and the defendant, Travis DeLeon Triplette by counsel, the Williams Motor Company by counsel, and the Court having heretofore heard the evidence and the demurrer to the evidence and the joinder in demurrer by the Commonwealth, and having heretofore overruled said demurrer and found the said Travis DeLeon Triplette guilty, and the Court being now of opinion that the claim of the Commonwealth is superior to the claim of the said Williams Motor Company against the said Ford truck, for the reason that the Williams Motor Company did not have a lien of record in the Register of Deeds office in Wilkes County, North Carolina, where the owner of the automobile resides, doth so decide, and the said truck is hereby declared forfeit to the Commonwealth, and if the said truck has been or shall be sold the proceeds from the sale of the same are likewise hereby declared forfeit to the Commonwealth, and the claim to the Ford truck, or proceeds from the sale thereof, by the Williams Motor
page 22 } Company, is denied, to which judgment of the
Court, as well as to the judgment of the Court on
December 13, 1948, the defendants by counsel excepted.

Upon motion of all the defendants by counsel, execution of this judgment, and of the judgment of the Court entered on Monday, December 13, 1948, is suspended for a period of ninety days to enable said defendants to apply to the Supreme Court of Appeals of Virginia for a writ of error in each of the above proceedings.

Teste:

JNO. S. DRAPER, Judge.

page 23 } Virginia:

In the Clerk's Office of the Circuit Court of Wythe County.

I, J. W. Hutton, Clerk of the Circuit Court of Wythe County, do certify that the foregoing is a true and correct transcript of the record in the cases of Commonwealth *v.* Travis DeLeon Triplette, Commonwealth *v.* 1946 Ford Truck, Motor No. 99T-908159, carrying N. C. License No. 892038, and Commonwealth *v.* 193 Cases of Ardent Spirits found in a 1934 Ford Truck, Motor No. 99T-908159, lately determined in the Circuit Court of Wythe County. I also certify that the printed blue book filed as an exhibit and authenticated by the initials 'J. S. D., Judge' is attached hereto as a part hereof as an original exhibit introduced upon the trial. I do further certify that W. P. Parsons, Attorney for the Commonwealth of Wythe County, had notice of the application for this transcript.

Given under my hand this 8th day of February, 1949.

J. W. HUTTON, Clerk.

A Copy—Teste:

M. B. WATTS, C. C.

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