

178-418 1638

Record No. 2431

In the
Supreme Court of Appeals of Virginia
at Richmond

W. L. VAN DYKE

v.

COMMONWEALTH OF VIRGINIA

FROM THE COURT OF HUSTINGS FOR THE CITY OF PORTSMOUTH

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 printed in type not less in size than small pica, and shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed records. The record number of the case shall be printed on all briefs.

The foregoing is printed in small pica type for the information of counsel.

M. B. WATTS, Clerk.

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IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 2431

W. L. VAN DYKE

versus

COMMONWEALTH OF VIRGINIA.

PETITION FOR WRIT OF ERROR AND SUPERSEDEAS.

To the Honorable Justices of the Supreme Court of Appeals of Virginia:

W. L. Van Dyke, petitioner, respectfully represents that he is aggrieved by a final judgment of the Court of Hustings for the City of Portsmouth, rendered on the 16th day of November, 1940, sentencing him to pay a fine of five hundred dollars (\$500.00) and costs, pursuant to the verdict of a jury on an appeal from the Civil and Police Justice on a warrant charging petitioner with violating Chapter 166 C Uniform Small Loan Act of the Code of Virginia (R., pp. 1, 5). A transcript of the record is herewith filed to which reference is made.

The facts are undisputed and are contained entirely in a stipulation put before the jury, which was all the evidence put before the jury, as is shown in the bill of exceptions * (R., 2* pp. 9, 10, 11), and which reads as follows:

“Commonwealth

v.

W. L. Van Dyke.

“It is hereby stipulated between the Commonwealth’s Attorney of the City of Portsmouth, Lawrence W. I’Anson, Esquire, on behalf of the Commonwealth, and James G. Martin, Esquire, attorneys for the defendant, that the said W. L. Van Dyke, while acting as manager for C. E. Jarvis, Jr., trading as Southern Credit Company, and not licensed to do business under the Uniform Small Loan Law of this State, but licensed as a loan company under the ordinances of the City of Portsmouth, on April 29th, 1940, in the City of Portsmouth, in the State of Virginia, to-wit, at the office of the said Southern Credit Company, 216 New Kirn Building, took in an instrument in writing, called and known as a “Conditional Obligation”, a copy of which is hereto attached signed by J. M. Floyd, marked as Exhibit “A” and intended to be read as a part hereof, which will fall due, mature and become payable on May 15th, 1940, for the sum of (\$11.00) Eleven & No/100 Dollars, of which (\$10.00) Ten & No/100 Dollars represents the return of the amount advanced to the said obligor, and (\$1.00) One & No/100 Dollars, represents the fee charged under the said contract by the said defendant therefor, and that the defendant is in the business of handling such transactions.

“May 18, 1940.

“JAS. G. MARTIN,
Attorney for W. L. Van Dyke.

“L. W. I’ANSON,
Attorney for Commonwealth.”

3* * “No. 7526E

“CONDITIONAL OBLIGATION

Portsmouth, Va. Apr. 29, 1940.

“\$11.00

1. “On 5/15/40, 19.., for value received, the undersigned maker promises to pay to Southern Credit Company, or its assignee, at its office in this city, the sum of \$11.00 Dollars without interest until maturity, and thereafter interest at six per cent per annum until paid, provided, however, that if the

undersigned maker shall, within the period from date hereof to date of maturity, involuntarily suffer by any cause either death, permanent and total physical disability, irrevocable loss of the sight of an eye, loss of a hand (at or above the wrist) or a foot (at or above the ankle), continuous sickness for sixty days, involuntary loss of employment for sixty days for any cause, permanent transfer from this city to another city, or damage exceeding fifty per cent of total value thereof to household furniture now owned by undersigned maker while at home address given below, or destruction by fire to the principal place of business in which the undersigned is actively and regularly employed, whereby the undersigned is deprived of his or her regular employment for at least sixty consecutive days thereafter—then the whole or any part of this obligation remaining unpaid at that time shall not be payable at any time, and this obligation and any security taken to secure its payment shall be unenforceable.

“2. The undersigned maker hereby irrevocably:

“(a) represents and warrants, for the purpose of obtaining money on this obligation, that his total indebtedness, exclusive of this obligation, does not exceed \$.;

“(b) agrees that if this obligation is not paid at maturity (and none of the events enumerated in paragraph 1 hereof shall have happened prior to date of maturity), to pay all costs and expenses incurred or expended in efforts to collect this obligation, including a reasonable attorney’s fee;

“(c) stipulates that this is an original transaction, and is not a renewal or extension of any other transaction prior to date hereof;

4* ““(d) stipulates that the charges included in the amount repayable on this obligation are compensation for the risk assumed by the Company in connection with this transaction and that such charged shall not at any time be considered as “interest” for the “loan or forbearance of money”, within the meaning of the Virginia statutes.

“Undersigned Maker,

“(Signed) J. M. FLOYD, (Seal)
“Home address with street and city.”

The error assigned is that the trial court erred in not setting aside the verdict as being contrary to the law and the evidence without evidence to support it and plainly wrong.

The argument will be brief, the case being within a small scope.

There were only three instructions, all given without objection, and instruction number 2, given without objection, constituting the law of the case, reading as follows (R., p. 12):

“The Court instructs the jury that unless they believe from the evidence beyond every reasonable doubt that there was no substantial risk of the loss of the money by reason of any of the stipulations in the contract, it is the duty of the jury to find the defendant not guilty.”

The case depended entirely upon whether the contract was a contract of hazard in which there was hazard to the principal money or whether the contract was not a contract of hazard but a contract for usurious interest at more than six per cent per annum. The statute alleged to have been violated, Chapter 166 C of Michie's Code of Virginia of 1936, Section 4168(38) reads as follows:

“No person, co-partnership or corporation shall engage in the business of making loans of money, credit, goods, or things in action in *the amount or to the value of three hundred 5* dollars (\$300.00) or less, *and charge, contract for, or receive a greater rate of interest than six per centum per annum therefor*, except as authorized by this act, and without first obtaining a license from the chief examiner of the banking division of the State corporation commission, hereinafter called the chief examiner.” (Italics added.)

That statute is very similar to Section 5551 of the Code as to interest in general, which reads, in part:

“Legal interest shall continue to be at the rate of six dollars upon one hundred dollars for a year, and proportionately for a greater or less sum, or for a longer or shorter time; and no person upon any contract shall take for the loan or forbearance of money or other thing above the value of such rate.”

We must consider then whether or not the contract at bar has been proved beyond all reasonable doubt not to be a contract of hazard.

We submit that it is plainly a contract of hazard, expressly stipulating for the loss of the whole amount in the event of the happening of any one or more of the following hazards, to-wit: that the maker should:

1. Die.
 2. Become permanently and totally disabled.
 3. Loss the sight of an eye.
 4. Lose a hand.
 5. Lose a foot.
 6. Become sick for sixty days.
 7. Lose employment for sixty days.
 8. Be transferred from the City of Portsmouth.
 9. Have more than fifty per cent of his household furniture destroyed by fire.
- 6* *10. Have the place of business where he actively worked destroyed by fire, depriving him of employment for sixty days.

It is to be noted that the happening of any one or more of said hazards would entirely cancel the contract, and we submit that these are plainly hazards permeating the contract.

We maintain that the principles involved are covered by the case of *Boulware v. Newton*, 18 Gratt. 708, holding the contract in that case not usurious but a contract of hazard.

The opinion in that case says in part, page 719:

“But whenever the repayment of the *principal* as well as the interest is made to depend upon the happening of contingent events, and may thus be jeopardized, a reservation of a larger sum than the interest, is accounted a compensation for the risk thus incurred and is not deemed usury. This principle is as old as the case of *Roberts v. Tremayne*, Cro. Jac. 507, where it was laid down: ‘If I lend £100 to have £120 at the year’s end, upon a casualty, if the casualty goes to the interest only, and not to the principal, it is usury, for he is sure to have his principal again, come what will come; but if the interest and principal were both in hazard, it is not then usury.’ ”

And it is stated in 66 C. J. 194 in part:

“The usury statutes being intended to prohibit extortionate certain gains from the lending of money, it is essential, to constitute usury, that the principal sum be payable absolutely and at all events; and accordingly the statutes have no application to those uncertain transactions in which the person who furnishes the money needed incurs risk of losing in whole or in part the principal sum loaned, or in which the amount repayable is contingent upon conditions beyond the control of the parties.”

7* *A jury verdict will not be permitted to stand when it is not justified by the evidence; and a jury cannot arbitrarily decide a case and have its verdict stand; and in a criminal case the evidence must show guilt beyond all reasonable doubt, supported by credible evidence and not rest merely upon conjecture.

Dixon v. Com., 162 Va. 798, 801.

Levine's Loan Office v. Starke, 140 Va. 712, 716.

Bohlkin v. Portsmouth, 146 Va. 340, 348.

Vandenbergh v. Buckingham Ap't Corp., 142 Va. 397, 411.

The hazards under the contract in question are *very real* and *very numerous*, and there was no collateral, or other security.

This case is quite different from *Missouri, Kansas and Texas Trust Co. v. Krumseig*, 172 U. S. 351, wherein the contract was to be released if the obligor died, *but the holder insured the life of the obligor* and so took no hazard.

In the case at bar, we submit that the compensation charge was not usurious interest but a charge for very real hazards, some of the hazards being such as often appear in insurance policies.

8* *This petition is adopted as the opening brief, a copy hereof was mailed to the Commonwealth's Attorney of the City of Portsmouth on the 16th day of January, 1941; this petition will be presented to Justice John W. Eggleston at his office in the City of Norfolk (with a transcript of the record and a check for \$1.50 payable to the Clerk of the appellate court); and counsel for petitioner desire to state orally the reasons for granting the writ.

Petitioner prays that a writ of error and *supersedeas* may be granted, said verdict and judgment reviewed, set aside and reversed, said error corrected, a final judgment rendered for petitioner, or a new trial granted, and such other relief granted as may be adapted to the nature of the case.

W. L. VAN DYKE,
by W. L. DEVANY, JR.,
National Bank of Commerce Building,
Norfolk, Virginia.
JAS. G. MARTIN,
Western Union Building, Norfolk,
Virginia.

The undersigned, an attorney duly qualified to practice in the Supreme Court of Appeals of Virginia, certify that in my

opinion the judgment complained of in the foregoing petition ought to be reviewed.

JAS. G. MARTIN,
Western Union Building, Norfolk,
Virginia.

Received Jan. 7, 1941.

J. W. E.

February 18, 1941. Writ of error and *supersedeas* awarded by this court. Bond, \$750.

M. B. W.

RECORD

VIRGINIA:

Pleas before the Court of Hustings for the City of Portsmouth, at the Courthouse thereof, on the 28th day of December, 1940:

Commonwealth

v.

W. L. Van Dyke.

VIOLATING CHAPTER 166 C UNIFORM SMALL LOAN ACT OF THE CODE OF VIRGINIA.

Be it remembered that M. E. Bristow, obtained a warrant against W. L. Van Dyke on the 21st day of May, 1940, in the City of Portsmouth, Virginia, in the words and figures as follows:

State of Virginia,
City of Portsmouth, To-Wit:

TO ANY POLICE OFFICER OF THE CITY TO
EXECUTE.

WHEREAS M. E. Bristow, No. Street
..... of the said City, has this day made complaint and information on oath before me, Harry Cuthriell, Civil and Police Justice of said City, that W. L. Van Dyke, No. Street of said City, on the

3 day of May, 1940, in said City, did Unlawfully violate Chapter 166 C Uniform Small Loan Act of the Code of Virginia.

THESE ARE THEREFORE, in the name of the Commonwealth, to COMMAND YOU forthwith to apprehend and bring before me or the substitute Civil and Police Justice of the said City, the body of the said W. L. Van Dyke to answer the said complaint, and to be further dealt with according to law.

page 2 } Given under my hand and seal this 21 day of May, 1940.

HARRY CUTHRIELL, (Seal)
Civil and Police Justice.

And at another day, to-wit: At the Court of Hustings for the City of Portsmouth, held at the courthouse of said City, on the 29th day of June, 1940.

At this day came the Attorney for the Commonwealth and the defendant, W. L. Van Dyke, being called, appeared in Court in answer to his recognizance, and thereupon, on his motion, by counsel, it is ordered that this case be continued to the July term, next, 1940, of this Court; and the said W. L. Van Dyke being under a continuing bond to appear at any and all proceedings that may be had relative to said charge, he is hereby directed to make his appearance before this Court on the 1st day of the July term, next, 1940, of this Court, at ten o'clock A. M., and thereupon, the said W. L. Van Dyke is discharged from custody until that time.

And at another time, to-wit: At the Court of Hustings for the City of Portsmouth, held at the courthouse of said City, on the 18th day of July, 1940.

At this day came again the Attorney for the Commonwealth and the defendant, W. L. Van Dyke, being called, appeared in Court in answer to his recognizance, and thereupon, on motion of the defendant, by counsel, it is ordered that this case be continued until the 20th day of September, 1940; and the said

W. L. Van Dyke, being under a continuing bond to
page 3 } appear at any and all proceedings that may be had relative to said charge, he is hereby directed to make his appearance before this Court on the 20th day of September, 1940, at ten o'clock, A. M., and thereupon, the said defendant, W. L. Van Dyke is discharged from custody until that time.

And at another day, to-wit: At the Court of Hustings for the City of Portsmouth, held at the courthouse of said City, on the 3rd day of October, 1940.

At this day came again the Attorney for the Commonwealth and the defendant, W. L. Van Dyke, being called, appeared in Court in answer to his recognizance, and tendered a plea of "Not Guilty", to which plea, the Attorney for the Commonwealth replied generally, and issue is joined thereon, and thereupon, came a jury, to-wit: E. H. Hanes, C. W. Darley, G. L. Lipscomb, J. H. Branch and E. G. Corprew, who being duly sworn the truth of and upon the premises to speak, and having fully heard the evidence and argument of counsel, retired to their room to consult of their verdict, and after some time returned into Court, having found the following verdict: "We, the jury, find the defendant guilty and fix punishment at Five hundred dollars (\$500.00) fine. J. H. Branch, Foreman. Date Oct. 3, 1940"; whereupon, the defendant, W. L. Van Dyke, by counsel, moved the Court to set aside the said verdict and grant him a new trial on the ground that the said verdict is contrary to the law and evidence, which motion is continued until the 5th day of October, 1940, of this Court, at ten o'clock, A. M., and *and* thereupon, the said W. L. Van Dyke and F. L. Williamson, 906 Colley Avenue, Norfolk, Virginia, his surety, this day, in open Court, severally acknowledged themselves indebted to the Commonwealth of Virginia, in the sum of Six Hundred (\$600.00) Dollars, each of their respective goods and chattels, lands and tenements to be levied and for the use of the Commonwealth to be rendered: Yet upon the condition that if the said W. L. Van Dyke shall appear before this Court on the 5th day of October, 1940, at ten o'clock A. M., and at any time or times to which these proceedings may be continued or further heard, and before any Court hereafter having cognizance of such proceedings, to answer for the offence with which he is charged, namely, Violating Chapter 166 C Uniform Small Loan Act of the Code of Virginia, and shall not depart thence without the leave of this Court or any Court in which said proceedings may be had, this recognizance is to be void but otherwise to remain in full force and effect until the said charge is fully disposed of or until it is declared void by order of a competent Court; and the obligors hereto waived the benefit of their homestead exemptions as to this obligation.

And at another day, to-wit: At the Court of Hustings for the City of Portsmouth, held at the courthouse of said City, on the 17th day of October, 1940.

At this day came again the Attorney for the Commonwealth and the defendant, W. L. Van Dyke, being called, appeared in Court in answer to his recognizance, and the Court having fully heard the motion of the defendant to set aside the verdict of the jury rendered herein, and grant him a new page 5 } trial on the ground that the said verdict is contrary to the law and evidence, doth take time to consider of its opinion; and the said W. L. Van Dyke, being under a continuing bond to appear at any and all proceedings that may be had relative to said charge, he is hereby directed to make his appearance before this Court on the 1st day of the November term, next, 1940, of this Court, at ten o'clock, A. M., and thereupon, the said W. L. Van Dyke is discharged from custody until that time.

And at another day, to-wit: At the Court of Hustings for the City of Portsmouth, held at the courthouse of said City, on the 16th day of November, 1940.

This day came again the parties by their Attorneys, and the Court having considered the motion of the defendant, heretofore made and argued, to set aside the verdict, doth overrule said motion, to which action and ruling of the Court the defendant duly excepted. It is therefore considered and adjudged by the Court that the said defendant pay the fine of five hundred dollars, pursuant to said verdict, and the costs of the prosecution.

And the defendant desiring to present a petition for a writ of error and *supersedeas* to this judgment, it is further ordered that the execution hereof shall be suspended for sixty days from this date upon the defendant giving bond before the Clerk of this Court, with surety deemed sufficient by said Clerk, in the penalty of \$1,000.00, conditioned according to law.

page 6 } And at another day, to-wit: At the Court of Hustings for the City of Portsmouth, held at the courthouse of said City, on the 18th day of November, 1940.

At this day came again the Attorney for the Commonwealth and the defendant, W. L. Van Dyke, pursuant to order herein of November 16th, entered into bond of \$1,000.00 with F. L. Williamson, 906 Colley Avenue, Norfolk, Virginia, his surety, and thereupon, W. L. Van Dyke and F. L. Williamson, 906 Colley Avenue, Norfolk, Virginia, his surety, this day, in open Court, severally acknowledged themselves indebted to the Commonwealth of Virginia, a new bond in the sum of

One Thousand (\$1,000.00) Dollars, each of their respective goods and chattels, lands and tenements to be levied and for the use of the Commonwealth to be rendered: Yet upon the condition that if the said W. L. Van Dyke shall appear before this Court on the 1st day of the January term, 1941, at ten o'clock, A. M., and at any time or times to which these proceedings may be continued or further heard, and before any Court hereafter having cognizance of such proceedings, awaiting the action of the Supreme Court of Appeals of Virginia on an appeal from his conviction in this Court, on the 3rd day of October, 1940, respectively, wherein he was fined \$50.00 and costs on the charge of Violating the Uniform Small Loan Act of the State of Virginia and the judgment of the Court thereon of November 16th, 1940, and shall not depart thence without the leave of this Court or any Court in which said proceedings may be had, this recognizance is to be void but otherwise to remain in full force and effect until page 7 } the said charge is fully disposed of or until it is declared void by order of a competent Court; and the obligors hereto waived the benefit of their homestead exemptions as to this obligation.

And now at this day, to-wit: At the Court of Hustings for the City of Portsmouth, held at the Courthouse of said City, on the 28th day of December, 1940.

At this day came the parties by their Attorneys and the defendant tendered a Bill of Exceptions No. 1, which was this day signed by the Judge of this Court, and made a part of the record in this case, after it appearing, in writing, that the Attorney for the Commonwealth had been given proper notice according to law of the time and place of tendering said Bill of Exceptions.

The Bill of Exceptions referred to in the foregoing order is in the words and figures following, to-wit:

page 8 } To the Commonwealth of Virginia.

Take notice that I will on the 28th day of December, 1940, at 10:30 o'clock A. M., present to the Judge of the Court of Hustings for the City of Portsmouth, Virginia, in his office my bill of exceptions in your case against me lately pending

in that Court in order to have said bill of exceptions authenticated and made part of the record in this case.

Further take notice that on the same day at Noon, I shall apply to the Clerk of said Court in his office for a transcript of the record in this case in order to apply for a writ of error and *supersedeas*.

W. L. VAN DYKE,
by JAS. G. MARTIN,
Of Counsel.

Service accepted this 27th day of December, 1940.

LAWRENCE W. I'ANSON,
Attorney for the Commonwealth.

page 9 } Virginia:

In the Court of Hustings for the City of Portsmouth.

Commonwealth of Virginia

v.

W. L. Van Dyke.

Be it remembered that on the trial of this case the following is the evidence and all the evidence which was introduced, being a stipulation of counsel, to-wit:

page 10 } Commonwealth

v.

W. L. Van Dyke.

It is hereby stipulated between the Commonwealth's Attorney of the City of Portsmouth Lawrence W. I'Anson, Esquire on behalf of the Commonwealth, and James G. Martin *Esquires, attorneys* for the defendant, that the said W. L. Van Dyke, while acting as manager for C. E. Jarvis, Jr., trading as Southern Credit Company, and not licensed to do business under the Uniform Small Loan Law of this State, but licensed as a loan company under the ordinances of the City of Portsmouth, on April 29th, 1940, in the City of Portsmouth, in the State of Virginia, to-wit, at the office of the said Southern Credit Company, 216 New Kirn Building, took in an instrument in writing, called and known as a "Conditional Obligation", a copy of which is hereto attached signed by

J. M. Floyd, marked as Exhibit "A" and intended to be read as a part hereof, which will fall due, mature and become payable on May 15th, 1940, for the sum of (\$11.00) eleven & no/100 Dollars, of which (\$10.00) ten & no/100 Dollars represents the return of the amount advanced to the said obligor, and (\$1.00) one & no/100 Dollars, represents the fee charged under the said contract by the said defendant therefor, and that the defendant is in the business of handling such transactions.

May 18, 1940.

JAS. G. MARTIN,
Attorney for W. L. Van Duke.
L. W. PANSON,
Attorney for Commonwealth.

page 11 }

COPY.

No. 7526E

CONDITIONAL OBLIGATION

Portsmouth, Va. Apr. 29, 1940.

\$11.00

1. On 5/15/40, 19.., for value received, the undersigned maker promises to pay to Southern Credit Company, or its assignee, at its office in this city, the sum of \$11.00 Dollars without interest until maturity, and thereafter interest at six per cent per annum until paid, provided, however, that if the undersigned maker shall, within the period from date hereof to date of maturity, involuntarily suffer BY ANY CAUSE either death, permanent and total physical disability, irrecoverable loss of the sight of an eye, loss of a hand (at or above the wrist) or a foot (at or above the ankle), continuous sickness for sixty days, involuntary loss of employment for sixty days for any cause, permanent transfer from this city to another city, or damage exceeding fifty per cent of total value thereof to household furniture now owned by undersigned maker while at home address given below, or destruction by fire to the principal place of business in which the undersigned is actively and regularly employed, whereby the undersigned is deprived of his or her regular employment for at least sixty consecutive days thereafter,—then the whole or any part of this obligation remaining unpaid at that time

shall not be payable at any time, and this obligation and any security taken to secure its payment shall be unenforceable.

2. The undersigned maker hereby irrevocably:

(a) represents and warrants, for the purpose of obtaining money on this obligation, that his total indebtedness, exclusive of this obligation, does not exceed \$.....

(b) agrees that if this obligation is not paid at maturity (and none of the events enumerated in paragraph 1 hereof shall have happened prior to date of maturity), to pay all costs and expenses incurred or expended in efforts to collect this obligation, including a reasonable attorney's fee;

(c) stipulates that this is an original transaction, and is not a renewal or extension of any other transaction prior to date hereof;

(d) stipulates that the charges included in the amount repayable on this obligation are compensation for the risk assumed by the Company in connection with this transaction and that such charges shall not at any time be considered as "interest" for the "loan or forbearance of money", within the meaning of the Virginia statutes.

Undersigned Maker,

(Signed) J. M. FLOYD, (Seal)

.....
Home address with street and city

page 12 } And the following three instructions are the instructions granted and read to the jury, and are all the instructions, the first being offered by the Commonwealth and the other two by the defendant, and there was no exception to any instruction, to-wit:

1.

"The Court instructs the jury that no person shall engage in the business of making loans, credit, goods or things in action in the amount or to the value \$300.00 or less, and charge, contract for, or receive a greater rate of interest than 6 per cent per annum therefor, except as authorized by the Uniform Small Loan Act which permits a rate of interest at the rate of 3½ per cent per month.

2.

“The Court instructs the jury that unless they believe from the evidence beyond every reasonable doubt that there was no substantial risk of the loss of the money by reason of any of the stipulations in the contract, it is the duty of the jury to find the defendant not guilty.

3.

“The Court instructs the jury that the law presumes the defendant to be innocent until he is proven guilty as charged in the warrant by the Commonwealth by evidence to moral certainty beyond all reasonable doubt, and to the exclusion of every reasonable theory or hypothesis consistent with innocence. This presumption of innocence goes with the defendant throughout the whole case and applies at every stage thereof, so that unless the jury have an abiding conviction to a moral certainty of the guilt of the accused, they should find the defendant not guilty.”

page 13 } And having heard the foregoing evidence and instructions and argument of counsel, the jury found a verdict of guilty and fixed the punishment at a fine of \$500.00; and the defendant moved to set aside the verdict as contrary to the law and the evidence and not supported by the evidence and plainly wrong, which motion thereafter was argued by counsel and overruled by the Court, to which ruling of the Court the defendant duly excepted on the grounds above stated, and the Court entered judgment against the defendant pursuant to said verdict to which action of the Court the defendant also excepted on said grounds.

And the defendant presented this his bill of exceptions No. 1, on the 28th day of December, 1940, which was duly signed and made part of the record in this case on this 28th day of December, 1940, after it duly appeared in writing that the Commonwealth had been given proper notice of the time and place of presenting the same, and this bill of exceptions is also forthwith lodged and filed with the Clerk of this Court.

KENNETH A. BAIN,
Judge of the Court of Hustings for the
City of Portsmouth.

page 14 } I, Wm. Hodges Baker, Clerk of the Court of
Hustings for the City of Portsmouth, Virginia,
do certify that the foregoing is a true transcript of the record
in the case of Commonwealth of Virginia *v.* W. L. Van Dyke,
lately pending in said Court.

I further certify that the same was not made up and completed and delivered until the attorney for the Commonwealth received due notice thereof, and of the intention of the defendant to apply to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas* to the judgment therein.

Witness my hand this 10th day of January, 1941.

WM. HODGES BAKER,
Clerk of the Court of Hustings for the City
of Portsmouth, Virginia.

A Copy—Teste:

M. B. WATTS, C. C.

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