

Reed 2742  
191-738

**Record No. 3731**

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In the  
**Supreme Court of Appeals of Virginia**  
at Richmond

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**WILLIAM T. WRAY AND OTHERS**

v.

**COMMONWEALTH OF VIRGINIA**

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FROM THE CORPORATION COURT OF THE CITY OF NORFOLK

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**RULE 5:12—BRIEFS.**

§5. **NUMBER OF COPIES.** Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three 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 the names and addresses of counsel submitting the brief shall be printed on the front cover.

M. B. WATTS, Clerk.

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

191 VA 738



## RULE 5:12—BRIEFS

**\$1. Form and Contents of Appellant's Brief.** The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official 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 printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

**\$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 references 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 opening brief. In other respects it shall conform to the requirements for appellee's brief.

**\$4. Time of Filing.** As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) The opening brief of the appellant shall be filed in the clerk's office within twenty-one days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. The brief of the appellee shall be filed in the clerk's office not less than twenty-one days, and the reply brief of the appellant not less than two days, before the first day of the session at which the case is to be heard.

(b) Unless the appellant's brief is filed at least forty-two days before the beginning of the next session of the Court, the case, in the absence of stipulation of counsel, will not be called at that session of the Court; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) 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.** Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three 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 the names and addresses of counsel submitting the brief shall be printed on the front cover.

**\$7. Effect of Noncompliance.** If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.



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IN THE

**Supreme Court of Appeals of Virginia**

AT RICHMOND

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**Record No. 3731**

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VIRGINIA:

In the Supreme Court of Appeals held at the Court-Library Building in the City of Richmond on Wednesday the 26th day of April, 1950.

WILLIAM T. WRAY AND OTHERS,      Plaintiffs in error.

*against*

COMMONWEALTH OF VIRGINIA,      Defendant in error.

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From Corporation Court of the City of Norfolk.

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Upon the petition of William T. Wray, John A. Cason and Louise L. Cason a writ of error is awarded them to a judgment rendered by the Corporation Court of the city of Norfolk on the 23rd day of December, 1949, in a certain proceeding by information wherein the Commonwealth of Virginia was plaintiff and the said petitioners were defendants, upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said corporation court in the penalty of fifteen hundred dollars, with condition as the law directs

**RECORD**

Virginia:

Pleas before the Corporation Court of the City of Norfolk, on the 23rd day of December, 1949.

Be it remembered, that heretofore, to-wit: In the Corporation Court of the City of Norfolk, on the 5th day of December, 1949.

Commonwealth

*v.*

Chevrolet Sedan Delivery, Va. Lic. #Conv 2-527, Motor #FAM-76303.

**INFORMATION.**

This day came the Attorney for the Commonwealth and filed an information against said automobile alleging its unlawful use in Violation of Section 38 and 38A of the ABC Act and praying that the same be condemned and forfeited to the Commonwealth of Virginia.

(The following is the information referred to in the foregoing order)

BE IT REMEMBERED, that H. Lawrence Bullock, Attorney for the Commonwealth in the City of Norfolk, and who for said Commonwealth prosecutes in its behalf, in his proper person comes into the said Court here on this day and gives the said Court here to understand and be informed that on the 26th day of November, 1949, he received a notice and report in writing of the seizure of a certain conveyance and vehicle, to-wit, one Chevrolet Sedan Delivery, bearing Virginia license number CONV2-527, motor number FAM-76303, which was sized in the City of Norfolk, Virginia, pursuant to section 38 and 38-a of an Act of the General Assembly, commonly known as the Alcoholic Beverage Control Act, as amended, and it is here alleged that at the time of said seizure aforesaid, Alcoholic beverages illegally acquired were found in said conveyance and vehicle and that Alcoholic beverages were being illegally transported and found in said conveyance and vehicle in amounts in excess of one quart, other than wine and beer purchased from persons licensed to sell same in the State of Virginia.

WHEREFORE, the said Attorney for the Commonwealth prays the consideration of this Court in the premises aforesaid,

and that the said conveyance and vehicle be forfeited and condemned, and sold to enforce said forfeiture, and the proceeds thereof be disposed of according to law; and that William T. Wray, 2643 Somme Avenue, Norfolk, Virginia, owner of said automobile, titled in Virginia, and National Bank of Commerce, Church Street, Norfolk, Virginia, owner of a lien on said automobile, and all other persons concerned or interested be cited to appear and show cause why said property should not be condemned and sold to enforce the forfeiture.

H. LAWRENCE BULLOCK

Attorney for the Commonwealth.

Subscribed and sworn to before me in the City of Norfolk, Virginia, on the 5th day of December, 1949.

H. B. VESEY, JR.,  
Notary Public.

Filed 12/5/49  
IRA B. WHITE, D. C.

### NOTICE AND SUMMONS.

Commonwealth of Virginia:

To the Sergeant of the City of Norfolk, Greeting:

page 3 } WHEREAS, an information was filed in the Corporation Court of the City of Norfolk on the 5th day of December, 1949, by H. Lawrence Bullock, Commonwealth Attorney, seeking the condemnation forfeiture and sale of a certain conveyance and vehicle, to-wit: Chevrolet Sedan Delivery, Virginia License Number CONV2-527, Motor Number FAM-76303, which was seized on November 26th, 1949, in the City of Norfolk, Virginia, on account of it being unlawfully used in violation of the Alcoholic Beverage Control Act of Virginia.

WE COMMAND YOU, THEREFORE, THAT YOU SUMMON William T. Wray, 2643 Somme Avenue, Norfolk, Virginia, owner of said automobile and National Bank of Commerce, Church Street, Norfolk, Virginia, lienor and all other persons concerned or interested in said conveyance and vehicle to appear in the Corporation Court of the City of Norfolk, on the 23rd day of December 1949, to show cause why said property

## Supreme Court of Appeals of Virginia

should not be condemned, forfeited and sold to enforce the forfeiture, pursuant to sections 38 and 38-A, of an Act of the General Assembly of Virginia, commonly known as the Alcoholic Beverage Control Act of Virginia, as amended.

And have then there this writ.

Witness, W. L. Prieur, Jr., Clerk of our said Court, at his office, the 5th day of December, 1949, in the 174th year of our foundation.

W. L. PRIEUR, JR., Clerk.  
By: IRA B. WHITE, D. C.

page 4 }

## RETURN ON SUMMONS.

Executed Dec. 9, 1949, by delivering a copy of the within to F. P. Lawler, Jr., Manager, National Bank of Commerce, Church St. Branch, a Corporation, in the City of Norfolk, wherein he resides and wherein the said Corporation is doing business.

LEE F. LAWLER,  
Sergt. City of Norfolk, Va.  
By: C. B. LESNER, Deputy.

Not finding the defendant, William T. Wray, at his usual place of abode I executed the within in the City of Norfolk, Virginia this 5 day of Dec. 1949, by delivering a copy hereof, and giving information of its purport to His Wife, found there, she being then and there a member of his family and above the age of sixteen years.

LEE F. LAWLER,  
Sergeant of the City of Norfolk, Virginia.  
By: C. B. LESNER, His Deputy.

And heretofore in the Clerk's Office of the Corporation Court of the City of Norfolk on the 9th day of December, 1949, the following bond was duly executed:

KNOW ALL MEN BY THESE PRESENTS, That we, William T. Wray and John A. Cason and Louise L. Cason, are held and firmly bound unto the Commonwealth of Virginia, in full and just sum of One Thousand Dollars to the payment whereof, well and truly to be made, we bind ourselves, our heirs,

executors and administrators, jointly and severally,  
page 5 } firmly by these presents, and we hereby waive the  
benefit of our Homestead Exemption as to this debt,  
obligation and contract; and we also waive any claim or right to  
discharge any liability to the Commonwealth arising under this  
bond, with coupons detached from the bonds of this State

As Witness our hands and seals this 9th day of December,  
1949, in the 174th year of the Commonwealth.

The Condition of the above obligation is such that:

Whereas, the Attorney for the Commonwealth, has filed in  
the name of the Commonwealth, an information against a certain  
Chevrolet Sedan Delivery, Va. Lic. #Conv 2-527, Mo. # FAM-  
76303, in the Clerk's Office of the Corporation Court of the City  
of Norfolk, alleging that said automobile was seized because  
said automobile was being used illegally to transport alcoholic  
beverages in violation of Section 38 and 38A of an Act of the  
General Assembly of Virginia, known as the Alcoholic Beverage  
Control Law and

Whereas, William T. Wray, owner of the said seized property  
desires to obtain possession thereof before the hearing on the  
information filed against the same and

Whereas, Lee F. Lawler, Sergeant for the City of Norfolk,  
Virginia, has inspected and appraised the said seized property,  
under oath, at its fair cash value of \$800.00 and forthwith made  
return thereof in writing, to the Clerk's Office of the Corporation  
Court of the City of Norfolk, the Corporation Court of the City  
of Norfolk, being the Court in which the proceedings are pend-  
ing.

page 6 } Now, Therefore, if the said William T. Wray, shall  
well and truly perform the final judgment of the Cor-  
poration Court of the City of Norfolk, on the trial of said in-  
formation, and with a further condition to the effect that if  
upon the hearing on the information, the judgment of the said  
Court be that said property, or any part thereof, or such interest  
and equity as the owner may have therein, be forfeited, judgment  
may thereupon be entered against William T. Wray and John  
A. Cason, and Louise L. Cason, the obligors on this bond, for  
the penalty hereof, without further or other proceedings against  
them hereon to be discharged by the payment of the appraised  
value of the property so seized and forfeited, and costs, upon  
which said judgment, execution may issued, on which the Clerk  
shall endorse "no security be taken"; then the above obligation  
shall be void, otherwise to remain in full force and virtue.

WILLIAM T. WRAY, (Seal)  
JOHN A. CASON, (Seal)  
LOUISE L. CASON, (Seal)



## Supreme Court of Appeals of Virginia

In the Clerk's Office of the Corporation Court of the City of Norfolk.

John A. Cason and Louise L. Cason, the surety in the above bond made oath before me, Ira B. White Deputy Clerk of the said Court, that their estate, after the payment of all their debts and of such liabilities as he may have incurred as security for others, and, after deducting all legal exemptions, is worth the sum of \$1,000.00, the penalty of the above bond. As witness my hand this 9th day of December, 1949.

page 7 }

W. L. PRIEUR, JR., Clerk (Seal)  
IRA B. WHITE, D. C.

## ANSWERS FILED.

Commonwealth of Virginia,

Complainant

v.

1 Chevrolet Sedan Delivery Truck, motor number FAM-76303

## ANSWER.

To the Honorable R. B. Spindle, Jr., Judge:

The Answer of William T. Wray to an Information filed against the above styled vehicle for answer thereto or to so much thereof as he is advised that it is material to answer, answers and says:

(1) That he is the owner of the Chevrolet Sedan Delivery Truck, bearing motor number FAM-76303 which is subject to a lien to the National Bank of Commerce of Norfolk, Virginia.

(2) That he has perfected his title to this vehicle prior to it's seizure; that he was ignorant of the fact that such vehicle was being used for illegal purposes, when it was so seized, and that such illegal use was without his connivance or consent, express or implied.

Wherefore, your petitioner prays that said vehicle be not condemned or forfeited, but that it be returned to him without costs.

WILLIAM T. WRAY.

page 8 } William T. Wray being first duly sworn doth depose  
and say that the allegations set forth above are true  
except so far as they are therein stated to be upon information and

that so far as they are therein stated to be upon information, he believes them to be true.

Sworn to and subscribed before me this 21st day of December, 1949.

BERNARD GLASSER,  
Notary Public.

Filed 12-22-49  
IRA B. WHITE, Deputy  
Clerk.

My commission expires January 20th, 1950.

ANSWER.

Commonwealth of Virginia

v.

Chevrolet Sedan Delivery Truck, Motor No. FAM-76303, 1948  
Model.

PETITION AND ANSWER OF NATIONAL BANK OF  
COMMERCE OF NORFOLK AND CARROLL  
M. HOLLAND, TRUSTEE.

For answer to the Information heretofore filed in the above entitled proceeding, National Bank of Commerce of Norfolk comes and says:

First. That it is a national banking association doing a banking business in the City of Norfolk, State of Virginia.

Second. That in the usual course of its banking business it loaned to William T. Wray the sum of Seven hundred six dollars eighty-eight cents (\$706.88) as evidenced by note dated November 7, 1949, signed by William T. Wray, payable on demand. Payment of said note is secured by a deed of trust to Carroll M.

Holland, Trustee, on the 1948 Chevrolet Sedan delivery page 9 } truck, Motor No. FAM-76303, 1948 Model, which is subject of this proceeding. The said note and deed of trust are exhibited herewith, with leave to withdraw same respectfully requested by lienor, National Bank of Commerce of Norfolk.

Third. The lien evidenced by said deed of trust was duly recorded in the office of the Division of Motor Vehicles, at Richmond, Virginia, prior to the seizure of said 1948 Chevrolet Sedan

delivery truck, and said lien is shown on title certificate No. 3886005.

Fourth. No payments have been made and there is a balance due and owing to National Bank of Commerce of Norfolk on said note as follows:

Principal Amount.....	\$706.88
Attorney Fee.....	70.68
Total.....	<u>\$777.56</u>

Fifth. The National Bank of Commerce of Norfolk was ignorant of the fact, if such were the fact, as alleged in the Information, that the above described Chevrolet Sedan delivery truck would be used, or was being used, for illegal purposes when it was seized and, moreover, says that if said Chevrolet Sedan delivery truck was being illegally used, such illegal use was without the connivance or consent, either express or implied, of National Bank of Commerce of Norfolk.

Sixth. The lien held by the National Bank of Commerce of Norfolk on said Chevrolet Sedan delivery truck is a bona fide lien and is superior to the rights of the Commonwealth of Virginia.

Seventh. Carroll M. Holland, Trustee, under said page 10 } deed of trust, is entitled to the possession of said motor vehicle, or to payment in full of the claim of the National Bank of Commerce of Norfolk.

WHEREFORE, Petitioners pray that the above described Chevrolet Sedan delivery truck be appraised in the manner provided by law and if the amount of petitioners' lien exceeds the appraised value of said truck, petitioners pray that the said truck be abandoned to them, or if the said truck has a greater value than the amount of petitioners' lien, the Court should order the said truck to be sold and National Bank of Commerce of Norfolk, petitioner herein, should be paid the full balance due it out of the first proceeds of said sale.

NATIONAL BANK OF COMMERCE OF  
NORFOLK,

By: E. P. MANGRUM, Vice-President.

(Seal)

Attest:

C. M. ETHERIDGE

Cashier.

CARROLL M. HOLLAND.  
Trustee.

Subscribed and sworn to before me this 22nd day of December, 1949.

CHAS. G. BROWN.  
Notary Public.

(Seal)

My commission expires Jan. 28th 1951.  
Filed 12-22-49.

IRA B. WHITE,  
Deputy Clerk.

page 11 } And now in said Court on the 23rd day of December, 1949.

This cause came on this day to be heard upon the information heretofore filed on the 5th day of December, 1949, by the Attorney for the Commonwealth, alleging the unlawful use of said automobile in Violation of Section 38 and 38-a of the Alcoholic Beverage Control Act of Virginia and praying that by reason thereof the same be condemned and forfeited to the Commonwealth of Virginia, and the answer of William T. Wray, owner, duly filed, and the answer of National Bank of Commerce of Norfolk, holder of a lien on said automobile, duly filed, and it appearing that all parties in interest in this cause have been duly cited to appear and are before the Court; thereupon William T. Wray, owner of said automobile, by counsel, moved the Court for a trial by jury to determine the issues raised in his answer to this cause, which motion having been heard by the Court, is overruled, to which action of the Court in overruling said motion, the said owner, by counsel, duly excepted. Thereupon the Court proceeded to hear and determine the case without the intervention of a jury, and having fully heard the evidence and argument of counsel, it is considered by the Court that the said automobile was being unlawfully used in the transportation of alcoholic beverages, at the time of seizure, in violation of Section 38 and 38-a of the Alcoholic Beverage Control Act of Virginia, and the same be condemned and forfeited to the Commonwealth of Virginia, and the Court doth deny the prayers in the answers of said William T. Wray, owner, and National Bank of Commerce of Norfolk, lienor, to which action of the Court in denying its prayers, the said William T. Wray, owner, by counsel,

page 12 } duly excepted. And it appearing to the Court that the said automobile was released on the 9th day of December, 1949, to the said William T. Wray, owner, upon the execution of a bond, in accordance with the statute in such cases made and provided, on the application of said William T. Wray,



owner, in the penalty of One Thousand Dollars, with John A. Cason and Louise L. Cason, sureties on said bond, it is ordered that judgment be entered against the said William T. Wray, principal, and John A. Cason and Louise L. Cason, obligors on said bond, in the sum of One Thousand Dollars, said judgment to be satisfied upon payment of Eight Hundred Dollars and the costs of this proceeding. Thereupon the said William T. Wray, owner, moved the Court for time in which to apply for a writ of error to the foregoing judgment, which motion having been heard by the Court, is sustained, and it is ordered that upon the execution of a suspending bond in the penalty of One Thousand Dollars, with surety to be approved by the Court, on or before the 30th day of December, 1949, that the foregoing judgment be postponed for the period of Sixty Days from the 30th day of December, 1949.

And later in said Court on the 13th day of February, 1950.

That day came William T. Wray, owner of said automobile, National Bank of Commerce of Norfolk, lienor, John A. Cason and Louise L. Cason, sureties on bond posted to release said automobile, by counsel, petitioners, and came as well the Attorney for the Commonwealth, and thereupon the petitioners presented the transcript of the record and incidents of the trial, including the motions and objections of the parties, the rulings of page 13 } the Court and the exceptions of the parties, and the same was signed and made a part of the record and lodged with the Clerk, after proper notice in writing to the Attorney for the Commonwealth, all in due time.

The following is the transcript of the record referred to in the foregoing order:

page 14 } Index.

In the Corporation Court of the City of Norfolk, Virginia.

Commonwealth of Virginia

v.

1 Chevrolet Sedan Delivery Virginia License No. CONV 2-527,  
Motor No. FAM-76303.

### NOTICE OF APPEAL

William T. Wray, Owner of Record, Petitioner.

National Bank of Commerce, Lienor, Petitioner.

To: Mr. H. Lawrence Bullock, Commonwealth's Attorney;  
Mr. Hamilton Plack, counsel for the National Bank of Commerce,  
Lienor.

PLEASE TAKE NOTICE, That on the 14th of February, 1950, at 10:00 A. M. o'clock the undersigned will present to the Honorable R. B. Spindle, Jr., Judge of the Corporation Court of the City of Norfolk, Virginia, at the court house of said city, the stenographic report of the testimony and other proceedings of the trial of the above-entitled case for certification by said Judge, and will, on the same date, make application to the Clerk of said court for a transcript of the record in said case, for the purpose of presenting the same to the Supreme Court of Appeals of Virginia with a petition for a writ of error and *supersedeas* to the final judgment of the trial court in said case.

WILLIAM T. WRAY,  
JOHN A. CASON and,  
LOUISE L. CASON.

By: BERNARD GLASSER  
HERMAN S. SACKS,  
Attorneys, 508 National  
Bank of Commerce  
Bldg. Norfolk, Va.

Legal service of the above  
notice is hereby accepted  
this 8th day of February, 1950.

H. LAWRENCE BULLOCK,  
Commonwealth's Attorney,  
HAMILTON PLACK,  
Attorney for Lienor.

page 16 } In the Corporation Court of the City of Norfolk,  
Virginia.

Commonwealth of Virginia

v.

1 Chevrolet Sedan Delivery Virginia License No. CONV 2-527,  
Motor No. FAM-76303.

William T. Wray, Owner of Record, Petitioner  
National Bank of Commerce, Lienor, Petitioner

#### TRANSCRIPT OF TESTIMONY.

Stenographic transcript of the testimony introduced and proceedings had upon the trial of the above-entitled case in said court on the 23rd day of December, 1949, before the Honorable R. B. Spindle, Jr., Judge of said court.

Appearances: Mr. H. Lawrence Bullock, Commonwealth's Attorney.

Mr. Hamilton Plack, counsel for the National Bank of Commerce, Lienor.

Mr. Bernard Glasser, counsel for William T. Wray, Owner, and John A. Cason and Louise L. Cason, *Suerities* on bond'

Phlegar & Phlegar  
Shorthand Reporters  
Norfolk, Virginia.

page 17 { Mr. Glasser: Before you swear the witnesses in, I would like to make a motion. If Your Honor please, in this case I represent William T. Wray, the owner of the vehicle. On his behalf, I would like to ask for a jury to determine whether or not he had knowledge of the illegal use of this vehicle and whether or not the illegal use of the vehicle was with his consent or connivance, express or implied.

The Court: Did you file an answer?

Mr. Glasser: Yes, sir.

Mr. Plack: If Your Honor please, I represent the National Bank of Commerce, the lienor in this particular case, and I neither join in nor do I oppose the motion Mr. Glasser is making for continuance. We are ready for a hearing if the Court desires to go ahead with it.

Mr. Bullock: May it please the Court, the questions that Mr. Glasser mentioned to the Court are not proper questions to be submitted to a jury. The only question for the jury under the statute would be whether or not illegal alcoholic beverages were in the car at the time of seizure. Of course, other questions are for the court to determine and not the judge.

The Court: Let me see the statute. I think your point is well taken. The motion for a jury trial is overruled.

page 18 { Mr. Glasser: To which counsel for William T. Wray excepts.

Mr. Bullock: The Commonwealth now desires to acquaint the Court with the status of this automobile. It was seized by the officers on either November 24 or 25, 1949. Information was filed in due course. The titled owner appeared and claimed the car and requested bail. An appraisalment was made by the City Sergeant, to which appraisalment the Commonwealth objected as to its being too low. The Court was about to hear the matter or have it down for hearing at a time when the Commonwealth's Attorney and the claimant agreed that the appraisalment should be considered at \$1,000 in lieu of the \$300 before appraised by the City Sergeant.

It was bailed with surety in the penalty of \$1,000 thereafter, under the statute. Now the Commonwealth is only interested in its claim on the bond if the car were illegally used as alleged. The Bank of Commerce is shown to be a lienor by a certificate of the Director of Motor Vehicles showing that it is so recorded on the Certificate of Title. The Bank of Commerce as lienor has a right to pursue the car wherever it is or may be found. The Bank of Commerce is not interested in this proceeding as a matter of law. The Commonwealth moves that its answer be stricken from the record.

page 19 } Mr. Plack: If Your Honor please, there is no case that I have been able to find that sustains Mr. Bullock's contention here, and the statute very definitely seems to disaffirm what he has to say on the subject.

Section 4675 (38f), which is the section I think applicable at the moment, provides that any person claiming to be the owner of such seized property or to hold a lien thereon, may appear at any time before final judgment of the trial court and be made a party defendant to the information so filed, which appearance shall be by answer under oath.

The Court: I have read the section. I think your point is well taken. You will be heard.

Mr. Glasser: If Your Honor please, counsel for the defendant William T. Wray, desires to except to the action of the Court of the Court and of the Commonwealth's Attorney in changing the bond that was originally set by the Sergeant of this city. The statute very definitely sets out that the appraised value of the car on which bond shall be issued shall be in the discretion of the City Sergeant.

The Court: Do you deny the statement made by the Commonwealth's Attorney that pursuant to a challenge to that evaluation, the defendant owner agreed to a valuation at \$1,000?

page 20 } Mr. Glasser: I say, if Your Honor please, I am not in a position to deny or affirm that; but I say this, that that is contrary to the statute.

The Court: I overrule that.

Mr. Glasser: To which counsel excepts.

The Court: Are you ready to proceed?

Mr. Bullock: The Commonwealth is ready. The witnesses may be sworn.

(The witnesses were sworn and excluded on motion of counsel for the defendant Wray, and the following evidence was introduced:)



OFFICER J. F. ESTES,

called as a witness on behalf of the Commonwealth, and having been first duly sworn, testified as follows:

Examined by Mr. Bullock:

Q. Tell the Court your name.

A. J. F. Estes, Norfolk Police Department.

Q. Your occupation?

A. Patrolman, Norfolk Police Department.

Q. How long have you been a police officer?

A. 23 years.

Q. Did you see this Chevrolet Sedan delivery, Virginia license number CONV 2-527?

A. 2-527, yes, sir.

page 21 } Q. 2-527?

A. Yes, sir.

Q. What motor number?

A. Motor number FAM 76303.

Q. Where did you first observe this delivery truck or car?

A. On November 25, at 11:00 A. M., Officers Stovall, Looney and myself were proceeding—

Q. Where was it at that time?

A. It was parked at the ABC store on the north side of the ABC store, on 42nd and Hampton Boulevard.

Q. Is that point in the City of Norfolk?

A. That is in the City of Norfolk.

Q. You saw it there, you say?

A. Yes, sir. We rode by and saw several men going towards the car with packages, coming out of the ABC store.

By the Court:

Q. Where was that?

A. 42nd and Hampton Boulevard, in the City of Norfolk, and it was parked on the little lot just on the north side of the ABC store, right up against the store, almost.

By Mr. Bullock:

Q. About what time of day was it?

A. At 11:00 A. M., in the morning.

Q. What did you do from the time you saw it, and  
page 22 } what did you see those four men do?

A. Well, I did not think that they saw me, so I pulled around the corner to my right and went east on 42nd street about half a block down 42nd Street, and pulled up in a driveway, into a yard there that I don't know who lives there. We watched from the car and saw each one of these four men that was—that we later arrested—coming out of the ABC store with a package in their hand that we found out later it was a

*J. F. ESTES.*

gallon of whiskey in each package; and put it in the truck and go back into the store. They made several trips, each one of them, and when the truck left the store, pulled off the lot into 42nd Street, they looked down 42nd Street I imagine and immediately come down 42nd Street about 25 feet and then cut back behind the ABC store, went all around the store and I fell in behind them, come out—

Q. That lane leads over to 43rd Street, back of the store?

A. No, it leads over to 41st Street. But they did not go all the way through to 41st Street, they cut across. Grove's Market is next door to the ABC store, so they cut right through that lot and went out on Hampton Boulevard, went down Hampton Boulevard north until they got to 42nd Street again and then they proceeded down 42nd Street, and I was right behind them and I pulled up beside the truck and blew the horn and the driver pulled over and stopped.

page 23 } Q. Who was driving?

A. Samuel C. Cason was driving; James Woodyard was sitting in the center, next to the driver, and Frank J. Bonner was sitting on the outside, which made three in the front seat; and in the back of the truck was a boy, colored boy by the name of David Joynes. I walked over to Mr. Cason and he says, "Come on, let's go; let's go to jail;" said "I have got too much;" said, "I know I have got too much." That is what Mr. Cason said.

Q. What did you find when you took inventory?

A. I looked in the back and saw all these bags of whiskey, so I did not count it at the time. We taken all four of these men in the truck to the Fourth Precinct and found 50 quarts.

By the Court:

Q. How many?

A. 50 quarts of ABC whiskey.

By Mr. Bullock:

Q. Quarts or fifths?

A. 50 fifths of ABC whiskey and 32 pints of ABC whiskey that had just been purchased.

Q. 50 fifths would be ten gallons, wouldn't it?

A. It would be 14 gallons, altogether.

By the Court:

page 24 } Q. 50 quarts and how many pints?

A. 32 pints, 8 gallons—4 gallons, I mean. Mr. Cason—I asked him after we unloaded the whiskey—

*J. F. ESTES.*

Mr. Glasser: I object to any statement that Mr. Cason might have made to him, which is hearsay as far as my client is concerned.

Mr. Bullock: I am not going to pursue that. I doubt the correctness of what Mr. Glasser says but I can prevail independently of any chance in this case and I will not pursue it.

By the Court:

Q. Cason was the driver?

A. Yes, sir. He was charged with violation of the ABC law. In fact, all four of them were arrested and charged with violation of the ABC law.

By Mr. Bullock:

Q. Do you know who the truck belongs to?

A. I had the registration card. Yes, sir, it is registered in the name of W. T. Wray—or it might be W. F. Wray. It is W. T. Wray, I think it is.

Q. Do you know Mr. Wray?

A. Yes, sir.

Q. Do you know what his reputation is as a violator of the Virginia Alcoholic Beverage Control Act?

Mr. Glasser: If Your Honor please, I object to page 25 } the question and to its being answered.

The Court: The objection is sustained. Do you have any authority for it, Mr. Bullock? This is a civil matter. Mr. Wray is the petitioner here by virtue of his answer. If he testifies, that will open up the door to it, on direct evidence by the Commonwealth. I sustain the objection.

Mr. Bullock: The Court has permitted the Bank of Commerce to be heard; and it will be very important at a later stage, so far as—

The Court: I think the general reputation of Mr. Wray, what ever it may be, would be immaterial under the present laws. It would be admissible under the old prohibition laws; I do not think it is admissible under the ABC laws.

(After further argument by counsel, the following occurred:)

The Court: I adhere to my ruling. I will await the development of the case.

Mr. Bullock: Very well, sir.

By Mr. Bullock:

Q. Do you know Mr. Cason, the driver of the car?

*Frank P. Lawler.*

A. Yes, sir.

Q. Do you know what his reputation is as a violator of the Virginia Alcoholic Beverage Control Act?  
page 26 } A. Yes, sir.

Q. What is it?

A. Bootlegger.

Mr. Bullock: Answer counsel for the parties.

Mr. Plack: No questions.

Mr. Glasser: No questions.

Mr. Bullock: The Commonwealth rests.

Mr. Glasser: If Your Honor please, I want to move to strike the Commonwealth's evidence, on the ground that they have not shown that William T. Wray had any guilty knowledge of the use of the vehicle.

The Court: The motion is overruled.

Mr. Glasser: To which counsel excepts.

FRANK P. LAWLER,

called as a witness on behalf of the lienor, and having been first duly sworn, testified as follows:

Examined by Mr. Plack:

Q. Mr. Lawler, please state your name and occupation.

A. Frank P. Lawler, manager of National Bank of Commerce, Church Street office.

Q. Mr. Lawler, how long have you been associated with the National Bank of Commerce?

A. 33 years.

page 27 } Q. 33 years?

A. 33.

Q. And what is your present position with the bank?

A. Manager of the Church Street Office.

Q. How long have you been engaged in that capacity Mr. Lawler?

A. 5 years in Church Street offices.

Q. During the course of your duties as manager of the Bank of Commerce, did you have occasion in November of this year to make a loan to W. T. Wray?

A. Yes, sir.

Q. Did you take any security for the loan that you made him?

A. Yes, I took the car, the sedan delivery.

Q. And did you have the title certificate recorded in the Division of Motor Vehicles?

A. Yes, sir.

Q. What was the amount of the loan that you made Mr. Wray?

A. I think it was \$706, some cents, I believe.



*Frank P. Lawler.*

Mr. Bullock: Speak a little louder.

A. (Continuing) \$706.88.

By Mr. Plack:

Q. Is that the note that Mr. Wray signed (handing to witness)?  
page 28 } A. Yes.

Q. You took as security for that note the deed of trust?

A. Yes.

Q. Is that the deed of trust that Mr. Wray signed? (Handing to witness)

A. Yes.

Mr. Plack: If Your Honor please, I will be glad—

By the Court:

Q. Did you take any security besides the car?

A. No, Your Honor.

By Mr. Plack:

Q. Mr. Lawler, have any payments been made by Mr. Wray on this note?

A. No.

By the Court:

Q. When was the loan made?

Mr. Plack: November 7.

The Court: Let the witness—

A. It was around November; an installment loan and the payment was due a month from that date. But the payment was past due. The loan was made November 7, 1949.

The Court: Do you have the title certificate? When was the lien recorded?

Mr. Plack: November 14.

page 29 } By Mr. Plack:

Q. Now, Mr. Lawler, at the time you made this loan or subsequent thereto, did you have any reason to believe that the automobile would be used, if it were used, for the purpose of hauling alcoholic beverages?

A. No.

*Frank P. Lawler.*

CROSS EXAMINATION.

By Mr. Bullock:

Q. Mr. Lawler, can you tell me what the \$706.88 consists of?

A. That consists of the amount he borrowed, including the interest and life insurance.

Q. What would be the principal and what would be the interest and what would be the—

A. I couldn't tell you right off at the start there. I added the interest into the note and also added the insurance into the note, rather than deduct it from the amount he borrowed, so I could include the whole thing in one.

Q. Is that information susceptible of being secured?

A. Yes.

Mr. Bullock: It is rather important, some phases of it.

Mr. Plack: I don't think we are concerned particularly with the characteristics of the note. The subject seems page 30 { to be as to whether a loan was made and how much the loan was.

The Court: Suppose he made it illegally. The Commonwealth would want to inquire into it.

Mr. Plack: As to usury?

The Court: I don't. I just say why can't—

Mr. Plack: No such charge as that has been made anywhere.

The Court: We don't make any charges. You are petitioner here and asking for the assertion of the right of a certain amount of money. Why can't the Commonwealth inquire into the amount of money you say you are entitled to?

Mr. Plack: Of course it can, if Your Honor please.

The Court: The objection is overruled.

Mr. Plack: I would like to note an exception to that, because if there is any such allegation as that, I am not prepared to contest it at this time.

The Court: It is not an allegation. As I understand it, it is an interrogation now

Mr. Bullock: That is all.

By Mr. Bullock:

Q. Can you tell me what the principal amount was, Mr. Lawler?

A. No. I figured the loan 15 months and I couldn't page 31 { tell you right off hand; I didn't know they wanted me to give those figures.

*Frank P. Lawler.*

Mr. Bullock: I shall proceed with other matters. I would like to have permission to recall Mr. Lawler with the idea of getting the principal and every different item that goes to make up the \$706.88.

By Mr. Bullock:

Q. The note was payable when, Mr. Lawler?

A. It was payable one month, approximately one month from the date.

Q. What does the note recite as to when it was payable?

A. I would have to see the note. I don't recall the date.

Mr. Plack: If Your Honor please, the note speaks for itself. It is a demand note.

Mr. Bullock: I haven't gotten it yet.

Mr. Plack: I have showed it to you.

Mr. Bullock: If you want to introduce it in evidence, I will not pursue it.

By Mr. Bullock:

Q. It was payable on demand, was it not?

A. In other words, I made an installment loan, made the note and I also made a demand note and secured the installment loan made with the demand note.

Q. Had the Bank of Commerce made demand for page 32 } the payment of the note?

A. Yes.

Q. In what manner?

A. I called Mr. Wray on the telephone and made demand on him.

Q. What did he say to you?

A. Say he could not pay it.

Q. Sir?

A. Said he could not pay it.

Q. What was the conversation between you and Mr. Wray regarding your demand?

Mr. Glasser: If Your Honor please I don't believe that is relevant, the conversation that he might have had with Mr. Wray regarding the payment of the note, as far as the Bank of Commerce is concerned. I don't see how that could be pertinent to the issue.

The Court: Pertinent to the issue raised by the petitioner, the Bank, wouldn't it? You are appearing for Mr. Wray?

Mr. Glasser: Yes.

*Frank P. Lawler.*

The Court: Isn't it pertinent between the Commonwealth and the Bank as to the status?

Mr. Glasser: As to conversation between the Bank and Mr. Wray?

The Court: Yes.

page 33 } Mr. Glasser: I understand from Mr. Bullock that he is asking Mr. Lawler what the conversation was that he had with Mr. Wray.

The Court: The objection is overruled.

Mr. Glasser: I note an exception.

By Mr. Bullock:

Q. When did you call him, Mr. Lawler?

A. I think I called him Saturday.

Q. Sir?

A. Last Saturday, I believe, and asked him to pay it on a Monday. The note was past due at that time.

Q. It was already past due?

A. The first payment was past due.

Q. And did the Bank then have knowledge that the car had been seized?

A. Yes.

Q. You called him on Saturday and told him to pay it on Monday?

A. Yes.

Q. Will you tell us what he said to you, everything he said?

A. Well, as near as I can recollect, I said "We are calling on you for payment of the note," and he said he could not pay the note in full but he could make one payment. I said I could not accept that, I wanted payment in full. That is

page 34 } about the extent of the conversation, just if you owed—

Q. Did he ask you why you were making demand?

A. Let's see. I believe he did

Q. What did you tell him?

A. I told him that I was following instructions from my main office to call on him for payment.

Q. Did you give him any reason as to why you wanted him to pay it?

A. No.

Q. Did you let him know that you knew the car was seized?

A. Yes.

Q. Did you discuss the seizure of the car?

A. Well, in a general sort of way I mean—I don't know just what—

Q. What was the general conversation about the seizure of the car?



*Frank P. Lawler.*

A. He said something to the effect that he wanted us to wait and not to seize the car.

Q. Sir?

A. I said my recollection of it, he wanted us to wait and not seize the car; said he did not think it would be an advantage to us to do that. I told him I was following instructions to do this,

as I was—

page 35 } Q. Would not be to whose advantage?

A. To our advantage.

Q. He told you 't would not be to your advantage?

A. That is my recollection. Now, I wasn't—my recollection is sort of hazy.

Q. What ensued there after the words were used that he indicated to you it would not be to your advantage to proceed then?

A. Well, he said, "If you have to take the car, you just have to come get it because I can't pay the note in full."

Q. He said "Come take the car"?

A. Yes, would have to take—

Q. Did the Bank take the car?

A. No.

Q. Why not?

A. I don't know how to answer that, why not. Mr. Plack here—

Q. That was before Mr. Plack was in it, was it?

A. No.

Q. Sir?

A. No.

Q. Can you tell us why you did not pursue Mr. Wray's suggestion to come take the car?

A. I think Mr. Plack will probably answer that page 26 } better than me. I talked to Mr. Plack about that.

Q. Can you—

A. No, I can't answer that.

Q. Do you have any reason why you did not?

A. I would not seize the car until the—unless the main office instructs me to seize the car.

Q. Did the main office instruct you to grant the loan, sir?

A. No.

Q. You did it of your own initiative?

A. Sure.

Q. Wouldn't you have authority to do whatever is necessary in order to satisfy the loan?

A. Yes, but I always discuss those matters with the main office before I do anything like that. I don't take that much authority to do that without asking advice.

*Frank P. Lawler.*

Q. You granted the loan without anybody from the main office—

A. That is true. I can do that. When it comes to some legal entanglement, I don't want to—

Q. What legal entanglement would Mr. Wray give you that existed?

A. I don't know how to answer that question. In other words, I don't do anything like this, taking a car; I never repossess a car to my recollection since I have been in the bank, page 37 } without the advice and consent of the main office.

Q. Who applied for the loan when the application was made?

A. Mr. Wray.

Q. And who conferred with him regarding the loan?

A. I did.

Q. Where did he tell you that he lived?

A. I think he said Somme Avenue, I believe it is.

Q. Sir?

A. Here it is here, 2643 Somme Avenue.

Q. What did he give you as his occupation?

A. Said he was operating a garage.

Q. Do you have a formal application that an applicant for a loan signs?

A. Yes, I have a retail—

Q. Does he not answer certain questions?

A. Yes.

Q. What did you do prior to granting the loan in the way of looking up Mr. Wray's status with respect to violation of the Alcoholic Beverages Act?

A. I did not do anything in that respect but Mr. Wray was introduced to me by a customer who had been dealing with us about five years; brought him in there and introduced him to me and said that—in fact, Mr. Sherlock, who was our customer, already had a loan in the bank on this truck and he page 38 } wanted to dispose of it and he brought in Mr. Wray with him and introduced him to me, said he wanted Mr. Wray—Mr. Wray was going to take the truck over from him.

Q. Who did you say was the customer who introduced him?

A. Mr. George Sherlock (spelling it).

Q. What does he do?

A. He is a furniture salesman down at—I think, right now I think he is down at the Sterling Furniture Store on Granby Street. Sterling Furniture Store on Granby Street; I think that is where he is at the present time.

Q. As a matter of fact, Mr. Wray bought the car from George R. Sherlock, didn't he?

*Frank P. Lawler.*

A. Well, in a sense. Yes, he assumed the loan.

The Court: Not in a sense; either he did or he did not.

By Mr. Bullock:

Q. Don't you know that?

A. In other words, he came in and—Mr. Sherlock, the money he received from this paid off the balance on the old note. Then he signed a new note for the amount of the loan.

By the Court:

Q. Where did you get your certificate of title?

A. Oh, Mr. Sherlock came in and transferred that over to him, subject to the lien.

page 39 } Q. Then did he or did he not sell the car to Mr. Wray?

A. Well, I guess he did, yes.

Q. What guess is there about it?

A. I mean, I had not thought about it in that sense.

Q. What?

A. I had not thought about it in that sense, but that is what actually happened.

By Mr. Bullock:

Q. It was a three-cornered conversation: the seller, the buyer and you as the lender, wasn't it?

A. That is right.

Q. And it was perfectly understandable between all three of you as to what was happening, wasn't it?

A. That is right.

Q. Now, I ask you again in order that we may have the record clear, what did you do to ascertain Mr. Wray's status as a violator of the Virginia Alcoholic Beverage Control Act?

A. I did not do anything in that regard.

Mr. Plack: I object to that question, if Your Honor please. There is no obligation on the part of the lienor unless the matter has been called to his attention by general reputation.

(The objection was overruled, to which counsel for the lienor accepted.)

page 40 } By Mr. Bullock:

Q. How did he sign the name?

A. William—

Q. How did he spell the name Wray?

*Frank P. Lawler.*

A. Wray. (Spelling it)

Q. Did you have occasion to verify anything he said with respect to that in the City Directory.

A. No.

Q. Did you ever look in the City Directory to see if he may have spelled it in a different way?

A. No.

Mr. Plack: I object to those questions as being absolutely irrelevant.

The Court: The objection is overruled.

By Mr. Bullock:

Q. The loan was made at what branch of the National Bank of Commerce?

A. Church Street Office.

Q. And are you the manager of that branch, sir?

A. Yes.

Q. Who is Mr. Carroll M. Holland?

A. That is one of the tellers, paying tellers, in the bank, in our office, the Church Street office.

Q. What connection does he have with this loan?

A. Well, he certified—

page 41 } Mr. Plack: I object to that. The petition recites on its face that Mr. Holland is the trustee of the bank—which he has a perfect right to be—and the note recites it and it is countersigned.

Mr. Bullock: Those papers have not been introduced in evidence, Your Honor.

The Court: The objection is overruled.

By Mr. Bullock:

Q. And his occupation was that of a teller, you say, of the National Bank of Commerce?

A. Paying and—

Q. What branch, sir?

A. At the branch I am with, Church Street office.

Q. Then Mr. Holland is under you, is he not?

A. (The witness nodded.)

Q. That is, you are his superior?

A. Yes

Q. Is it customary for the bank to make subordinate employees trustees in deeds of trust?

*Frank P. Lawler.*

Mr. Plack: I object to that.

The Court: The objection is overruled.

A. I have always done that since I have been down there. I have not heard any objection raised to it.

By Mr. Bullock:

Q. Don't you ordinarily and routinely make officers page 42 } of the bank trustees in deeds of trust?

A. Not that I know of.

Q. I should like to come back, then, again to this: If you were manager and in complete control of that branch and had complete control of making this loan without getting authority from anyone else—

A. I don't have complete control. I have a supervisor, Mr. Mangum, who is the vice-president, who supervises that branch in a general way.

Q. Did you exercise complete control and your own discretion in granting this loan?

A. Yes.

Q. Well, then, why did you not exercise the same complete discretion in recovering the car when it was tendered to you by Mr. Wray?

Mr. Plack: If Your Honor please, there has been no evidence whatever that this car was tendered to the bank by Mr. Wray or anyone else. To the contrary, if Your Honor please, this automobile when Mr. Lawler made demand upon Mr. Wray, as I understand it, Mr. Wray said he could not deliver this car to the bank because it had been bonded out for appearance in this court.

The Court: That isn't what I heard him say. He said Mr. Wray invited him to take the car because he could not pay the loan.

page 43 } Mr. Plack: If Your Honor please, only after this proceeding was—

The Court: The objection is overruled. This is all in the form of testimony on cross examination. I think it is all pertinent.

(At this point, counsel for the lienor noted an exception to the Court's ruling.)

By Mr. Bullock:

Q. Did Mr. Holland participate in the granting of the loan, other than becoming formal trustee at your direction?

A. No.

*Frank P. Lawler.*

Q. Did he have any knowledge of the loan having been granted?

A. Yes.

Q. Sir?

A. Sure. I asked him to act as trustee on a note. I showed him the note.

Q. I mean so far as the details of discussion are concerned.

A. No.

Mr. Bullock: That is all of this witness, Your Honor, subject to my right to inquire when he gets the figures as to what that \$706 consists of.

page 44 } RE-DIRECT EXAMINATION.

By Mr. Plack:

Q. Mr. Lawler, you did call Mr. Wray on Saturday last?

A. Yes.

Q. About this automobile, did you not?

A. Yes.

Q. Acting upon whose advice or instruction did you call Mr. Wray?

A. Well, I acted really upon your advice.

Q. And at the time you talked to Mr. Wray, did you ask him for payment of the money or the return of the automobile?

A. I told him I was making demand on him for payment of the note in full.

Q. What, if anything, was said about returning the car to the bank?

A. He said if we wanted the car, he could not pay it, we would have to come get the car if we wanted it but he could not pay the loan, could not make that complete payment.

Q. And pursuant to that, did the bank immediately thereafter issue a warrant in detinue for the return of that automobile?

A. Unless it was through you. I mean, I would not—

Q. Well, you know that a warrant in detinue has page 45 } been issued, don't you?

A. Yes.

Q. Well, say so, Mr. Lawler. And the warrant in detinue is returnable tomorrow morning; you know that for a fact?

A. (The witness nodded.)

Q. With respect to Mr. Holland as trustee, is this the only note that Mr. Holland is trustee under?

A. Yes.

Q. How does that happen?

A. Well, Mr. Wales, who is the note teller down there, usually acts as the trustee on these notes but he was not there at the time;

*Frank P. Lawler.*

on a vacation, I believe, and Mr. Holland—I selected him because he was the only man in the bank. All the others were young ladies in there. So I picked Mr. Holland.

Q. Had you ever seen Mr. Wray before?

A. No.

Q. Did you know anything about him at all?

A. No.

Q. And you did make an investigation through the Retail Credit Association?

A. Through the Credit.

Q. Do you have that investigation there?

A. Yes.

page 46 } Q. What does it show?

A. You want me to read it off to you?

By Mr. Bullock:

Q. Did you do that before you granted the loan?

A. Yes.

Mr. Plack: Oh, yes.

A. (Continuing) You want me to read it off as it is, down the line?

By Mr. Plack:

Q. Yes

A. Talking about the amount of the loan, \$650 is the loan. Application for 15 months. William T. Wray, 2643 Somme Avenue, and lived there one year. Previous address, 2624 Bapaume Avenue; eight years he lived there. Present business address 116 West 25th Street; been there about six months. Crown Service Station—said employed by Crown Service Station; occupation, formerly Yellow Cab Company; amount of income, approximately \$400 a month. And then I marked the notation on it, on this report from the Retail, right below there, "No legals against him, no judgments."

Q. No legals and no judgments.

A. Business references, I had Shulman and Company and Hofheimer's and Mutual Savings and Loan; and apparently was satisfactory. I mean, that is what they told me. And at the bottom of the application here it says he owns a  
page 47 } home at 2643 Somme Avenue with an equity in the  
home of \$4,000. That is all there is on the application except his wife's name on the lower right-hand corner, which I filled in myself.



*Frank P. Lawler.*

Q. Now, Mr. Lawler, in your 33 years' service with the Bank of Commerce, have you ever knowingly made a loan on an automobile to a bootlegger?

Mr. Bullock: I object.

The Court: Sustained.

By Mr. Plack:

Q. If you had known that Mr. Wray was connected with the sale or hauling of whiskey, if such is the fact, would you have made the loan?

Mr. Glasser: I object to that. Would you mind reading that question back.

(The last question was read by the reporter.)

Mr. Glasser: No objection. I withdraw my objection.

A. No.

By the Court:

Q. Why didn't you pick up the telephone and call the Police Department then?

A. Why did I call them?

Q. Why didn't you pick up the telephone and call the Police Department and see something about it?

A. Your Honor, I had never done that before since I have been down there.

page 48 } The Court: All right.

By Mr. Plack:

Q. In all the years since you have been making loans, you never called the Police Department for the Bank of Commerce?

A. No.

Q. To find out if a man has a record?

A. No, I have not.

Mr. Plack: It is our position that he does not have to do it, if Your Honor please.

The Court: All right.

Mr. Plack: If Your Honor please, I would like to introduce this contract and title certificate and ask that I be permitted to withdraw it.

The Court: I can't hear you.

Mr. Plack: I would like to introduce this title and the contract and note, with permission to withdraw it after it has gone into the record.

*Frank P. Lawler.*

The Court: It is all right. Is there any objection to the withdrawing of the papers, or do you want to leave copies of them?

Mr. Bullock: It does not make any difference to me, sir.

Mr. Plack: I will be glad to introduce these later, if Your Honor please.

page 49 } RE-CROSS EXAMINATION.

By Mr. Bullock:

Q. I notice that you said that the Mutual Savings and Loan Company was one of the references that Mr. Wray gave you?

A. Yes.

Q. Did you inquire of them about Mr. Wray?

A. No, I did not. I checked the record through the Retail.

Q. Sir?

A. I checked the record directly through the Retail Credit. I did not check these individually.

Q. You did not avail yourself of the suggestions of reference by Mr. Wray, then, did you?

Mr. Plack: I object to that. The Bank does not have to; no loan company has to contact all references.

The Court: You don't seem to draw the distinction between cross examination and legal right. The objection is overruled.

A. I mean, when these applications are made out this way and they gave me three references; when I called the Retail, I tell them that he has given me these three particular references and name the people whom he referred me to; and they checked these references in addition to other references around town; but they always dealt—

page 50 } By Mr. Bullock:

Q. You dealt with a central station like the Retail—

A. That is right.

Q. And did not go to the individuals?

A. That is right.

Q. Did you inquire of him as to how he earned \$400 a month?

A. No.

Q. You took his bare word for that?

A. Yes. He told me, my understanding—I think he told me—he owned this Crown Service Station. I did not have it down here as owner but I am pretty sure at the time he did say he owned and operated the Crown Service Station.

Q. Did he tell you where the Crown Service Station was?

A. I did not put the address—business address 116 West 25th Street; I imagine that is where it is operating.

*William T. Wray.*

Q. That would be the corner of 25th and Omohundro, wouldn't it?

A. I don't know.

Q. When you called the Retail Merchants Association, you were only looking for his capacity to pay, were you not?

A. That is right.

Mr. Bullock: That is all, sir.

page 51 } WILLIAM T. WRAY,  
owner, having been first duly sworn, testified as follows:

Examined by Mr. Glasser:

Q. Please state your full name, age and residence.

A. My name is William T. Wray, 2643 Somme Avenue.

Q. And your age?

A. 36

Q. How long have you been living at 2643 Somme Avenue?

A. Approximately a year.

Q. You own that home, do you?

A. I am buying it.

Q. Where did you live prior to the address 2643 Somme Avenue?

A. I lived at 2624 Bapaume.

Q. That is in the City of Norfolk?

A. Yes, sir, that is four blocks east of Somme.

Q. How long did you live there?

A. About seven years.

Q. Did you, on or about November 7, 1949, purchase a Chevrolet Sedan Delivery Truck which is involved in this proceeding?

A. Yes, I did.

Q. In whose name did you purchase it?

A. In my own name, William T. Wray.

Q. Do you have a lien on that vehicle?

page 52 } A. Yes, sir.

Q. To whom is that payable?

A. I believe it is the Church Street branch, National Bank of Commerce.

Q. Is the amount \$706.88 still due and owing by you on the vehicle?

A. Yes, sir.

Q. On November 25, 1949, when this vehicle was seized, where you in the City of Norfolk?

A. No, sir.

Q. Where were you, Mr. Wray?

*William T. Wray.*

A. I was spending the holidays with my mother and father in Norristown, Pennsylvania.

Q. When did you leave the city to go to Norristown?

A. I left the day before Thanksgiving.

Q. Would that be November 23?

A. November 23. I believe it was on a Wednesday.

Q. And when did you return?

A. I believe it was Tuesday of the next week. I believe it was the 29th. I came back one day before the end of the month.

Q. November 29. Now, before you went to Norristown, Pennsylvania, what, if anything, did you do with your Chevrolet sedan delivery?

A: Well, I just had purchased the sedan in November page 53 } ber. And the heater was not working properly and it needed tuning up. So before I went away, I took the truck to the garage to have some work done on it.

Q. To what garage did you take your truck?

A. I took it to the Crown Service Station 116 West 25th Street.

Q. Who operates the Crown Service Station?

A. Now it is operated by—well, the front part is operated by Frank Bonner.

Q. Did Frank Bonner operate that service station at that time, on November 23?

A. Yes.

Q. Now, where were the keys to this vehicle?

A. I had to leave the keys with it, because I was going to have work done on the motor so the mechanic could start it.

Q. Did you authorize Frank Bonner or any other person to use that truck in your absence?

A. No more than to just merely do the necessary mechanical things that had to be done to it.

The Court: Speak a little plainer, I can't understand you.

A. (Continuing) I did not authorize anyone more than the mechanical work they would have to do on the truck.

page 54 } By Mr. Glasser:

Q. Did you advise them when you were going to return to pick up the truck?

A. Yes. I told him I would try to get it in the next week, Monday or Tuesday.

Q. That was after you returned from Norristown, I believe?

A. That is right.

Q. Now, when you returned to the City of Norfolk on November 29, what did you find in reference to your vehicle?

*William T. Wray.*

A. Well, I did not know it until the next day, because I got into town at nighttime, and the next morning I found it out.

Q. And what did you find out?

A. I found out that the truck had been seized by Mr. Estes for being overloaded with whiskey.

Q. What, if anything, did you then do?

A. Called down the garage, tried to find where it was. No one knew where the truck was being stored. So I called Mr. Bullock's office.

Q. Mr. Bullock is the Commonwealth's Attorney?

A. Yes, sir.

Q. The gentleman who is prosecuting this case?

A. Yes, sir.

Q. And what conversation did you have with Mr. Bullock?

A. I did not talk to Mr. Bullock. I believe Mr. page 55 { Bullock was out at the time but the man advised me that I would have to get in touch with the City Sergeant and he would tell me about the appraisal and things of that kind.

Q. And did you communicate with the City Sergeant?

A. Yes, I called the City Sergeant and he said that there was a certain lapse of days before he could make an appraisal I believe is the way he explained it to me, and that he would have to get information first from Mr. Bullock before he could make an appraisal on the truck.

Q. Do you recall whom you spoke with in the City Sergeant's office?

A. I spoke to Mr. Butler.

Q. He is a Deputy City Sergeant, is he not?

A. I believe so. I never met the gentleman.

Q. Now, did you later speak to Mr. Bullock regarding the vehicle?

Q. No. I never had any conversation with Mr. Bullock that I remember.

A. Did you speak with him relative to the release of the vehicle?

A. Yes. I did not speak to Mr. Bullock personally but I went to the Clerk of the Court over there, Mr. White, and I asked him about how I would go about bonding the truck out.

Q. And then it was bonded out, I believe?

A. He got a form or something from the City page 56 { Sergeant and said that the Judge would have to set the amount of the bond on it. He brought me over here and I sat outside while he talked to Mr. Bullock and the Judge.

Q. And do you recall how much the vehicle was appraised at by the City Sergeant?

A. \$800.

*William T. Wray.*

Q. Do you recall how much refund you were required to post?

A. \$1,000.

Q. Do you recall why you were required to post \$1,000 bond instead of \$800 bond?

A. Mr. Bullock said that the truck was worth more than that and that if—he would set it at \$1,000 unless he had a court or some kind of proceedings to say whether it should be \$800 or \$1,000, but that he would let it go if the bond was furnished for \$1,000.

Q. He would not release the vehicle to you upon a bond of \$800, would he?

A. No.

Q. And \$800 is what the City Sergeant had appraised it at?

A. Yes, sir.

Q. After you returned on November 29, you learned page 57 } what had happened to your truck, is that correct?

A. That is right.

Q. Did you learn who was driving that vehicle at the time that it was seized?

A. Yes, I did.

Q. Who was driving the vehicle at the time it was seized?

A. Samuel Cason.

Q. Did you give Samuel Cason any authority to use your vehicle in your absence?

A. No, sir.

Q. Did you know that he would use it?

A. No. I did not know that he would use it.

Q. Did you know at any time that that vehicle would be used by him or any other person for illegal purposes?

A. No.

Q. The title to this vehicle, I believe it was testified to, was registered in your name at the Division of Motor Vehicles in Richmond on or about November 14, 1949, is that correct?

A. I believe that is about the right time.

Q. Was the use of this vehicle by Samuel Cason or the three other men involved in the alleged transportation, with your consent or connivance?

A. No.

Mr. Glasser: That is all.

page 58 }

CROSS EXAMINATION.

By Mr. Bullock:

Q. How much did you give for the car?

A. Sir?

*William T. Wray.*

Q. How much did you give for the car?

A. I gave \$100.

Q. How much was the total sales price?

A. Total sales price was \$840—some I believe.

Q. And you borrowed \$706 on it from the Bank of Commerce?

A. That is right.

Q. It was secondhand when you bought it?

A. It was secondhand when I bought it.

Q. Then you only had equity of \$100 or so in it, is that right?

A. That is all.

Q. Did the Bank interrogate you as to any other assets that you had, in lending you \$706 on an eight-hundred-dollar car?

A. Well, the lien was already on the truck. I just assumed the lien that Mr. Sherlock—he was unable to make the payments and I just took his payments over.

Q. How long have you know Mr. Sherlock?

A. I have known him off and on I guess for probably a year.

Q. Did you know Mr. Lawler, a representative of page 59 { the Bank of Commerce, before this particular day?

A. No.

Q. Did Mr. Sherlock introduce you to him?

A. Yes, he did.

Q. Did Mr. Lawler inquire of Mr. Sherlock about you?

A. I really don't know.

Q. You were present, weren't you?

A. Well, he didn't do it while I was there

Q. Did he inquire in your presence as to your character?

A. I believe that—no, he did not inquire.

Q. Did he inquire of Mr. Sherlock as to your capacity to pay?

A. No.

Q. Did he inquire of Mr. Sherlock as to the soundness of your credit?

A. No.

Q. Did he inquire of Mr. Sherlock as to your tendency to violate the Beverage Act?

A. No.

Q. Did Mr. Sherlock or you volunteer to tell him?

A. Volunteer to tell—don't understand your question.

Q. —anything concerning your character, capacity to pay, or your credit standing or your habits with respect to page 60 { violating the Beverage Act?

A. I merely made out the customary credit form.

Q. To get back to the price of the car, actually how much money did you give Mr. Sherlock for it?

A. Mr. Sherlock actually got about \$125.



*William T. Wray.*

Q. \$125; and then the 706 was the difference in value of the car, is that right?

A. It was the difference, what was owed on the truck That included interest, I believe, and life insurance.

Q. Now, you were unable to get the car bailed on the appraisalment that the City Sergeant had made, were you?

A. I was unable to, yes, sir.

Q. And do you know for what reason objection was taken? What was objected to about the appraisalment?

A. No, I don't know the reason.

Q. Well, wasn't the amount of the appraisalment—

A. What was objected to? The amount?

Q. Yes.

A. Oh, I heard you say that the truck was worth more than that and that you would not let it go unless it was for \$1,000.

Q. Did you not, through Mr. White, the Deputy Clerk of this court—and you sitting in that box there heard me  
page 61 } in the Judge's office tell Mr. White that I would not accept that appraisalment and you agreed to the suggestion that I made in court, without a formal hearing, that it should be considered \$1,000 instead of \$800, didn't you?

A. I did not know what there was anything with the court. I heard the Judge say that he was not sure whether the City Sergeant's word was final on that. I did not know that it would make any difference whether it was \$800 or \$1,000. I understood when the bond was posted that the bond was to be posted for the fact that the truck would be here on this morning in the same shape that it was taken from the garage, the same kind of bond; but there seems to be a difference.

Q. You found out differently, didn't you?

A. Yes, sir.

Q. When did you find out differently?

A. About two or three days ago, when—

Q. You tried to turn the truck back to the police authorities and get you bond cancelled, didn't you?

A. No. I did not try to turn it back. I asked Mr. White was it possible.

Q. What was your purpose in making that inquiry, then?

A. Beg pardon?

Q. What was your purpose in making that inquiry of Mr. White?

page 62 } A. Well, the way Mr. White said, that they were no longer interested in the truck and that they were interested in the bond.

Q. Well, the Bank of Commerce had made demand on you at that time, hadn't it?

A. That is right.

*William T. Wray.*

Q. And you then were afraid that you were going to be responsible on your bond and lose your truck, too, to the Bank of Commerce?

A. That is right.

Q. The Bank of Commerce had or did sue you about the same time you were in the Clerk's office inquiring about it, didn't they?

A. No. I don't know when—

Q. You have been sued in detinue by the Bank of Commerce?

A. That is right.

Q. And where is the truck now?

A. The truck is at 25th Street, the Crown Service Station.

Q. Have you offered to turn it over to the Bank of Commerce?

A. No, I have not offered to turn it back to them.

Q. Do you deny what Mr. Lawler said when he made demand on you to pay it, that he said you said you could  
page 63 } come and get the truck?

A. No, I think Mr. Lawler misunderstood me on the telephone.

Q. What did you tell him?

A. I told Mr. Lawler when he called me, he told me that they wanted the full amount of the money that day, I told him that I was unable to pay that amount of money but I could make him a payment, that I was terribly sorry that it had happened but it was a surprise to me as much as him; and that I was away at the time and was ignorant of the fact what had happened to the truck and I had just got back and had not had time, I thought it was kind of pushing me a little to foreclose before they heard my side of the story.

So he said his advisement was from the attorney and that he was just merely serving notice on me. I told him then that if it was within his power and it was right that I had the truck bonded, I didn't know whether it was lawful or not to take and give the truck to him but if he found that out and wanted the truck, I would turn the truck back over to him.

Q. And you are still willing to give it to him right now, aren't you?

A. No, sir. I don't want to give the truck to him.

Q. Sir?

page 64 } A. Don't want to give the truck away.

Q. Don't you recognize the right of the Bank of Commerce to have it under their contract?

A. Do I recognize their right to have it?

Q. Yes, sir.

A. Oh, yes, sir, I recognize their right.

Q. There is no question about that in your mind, is there?

*William T. Wray.*

A. There is question that if I—if he makes a demand on it, that I will have to give him his truck.

Q. And that truck is located where right now?

A. 116 West 25th Street.

Q. And that is on the northeast corner of 25th and Omohundro, is it not?

A. That is right.

Q. And it is called the Crown Service Station, is it not?

A. That is right.

Q. And who owns the Crown Service Station?

A. I own the Crown Service Station. I don't own the ground but I am buying the building.

Q. Who is running the business?

A. You mean who is running the business now? Samuel Cason.

Q. Did you formerly operate at the southwest corner page 65 } of Olney Road and Boush Street?

A. I did; the Mobile Gas Station.

Q. How long were you there?

A. I was there I believe about five or six months.

Q. Did you give Mr. Lawler the information that your income was \$400 a month?

A. I don't know whether I said \$400. I might have said around \$400 a month.

Q. Well, around \$400?

A. Yes.

Q. From what source do you earn \$400 a month?

A. I had a gas station in front and I had a repair shop and upholstery shop in the rear of my garage, do a lot of repair work at the time.

Q. Are your total receipts at that station even as much as \$400 a month?

Mr. Glasser: I object to the question; irrelevant and not pertinent to the issue before the Court.

The Court: The objection is overruled. He is on cross examination.

Mr. Glasser: Exception.

By Mr. Bullock:

Q. Answer.

A. Did not hear the question.

Mr. Bullock: Read it.

(The last question was read by the reporter.)

*William T. Wray.*

page 66 } A. Yes, they are.

By Mr. Bullock:

Q. How much?

A. How much are the total receipts?

Q. How much were your total receipts for November?

A. I don't know that.

Mr. Glasser: I still object to the line of questioning.

The Court: It will have to stay within reasonable bounds. I think so far it is all right.

Mr. Glasser: I understand you are overruling my objection.

The Court: I overruled the objection.

Mr. Glasser: Exception.

By Mr. Bullock:

Q. What were your total receipts for November?

A. I don't know what they are; the bookkeeper has the books now.

Q. You have some idea. A month? So recent as that?

A. I don't know because the boys turn in the different jobs, the mechanic and the upholsterer.

Q. Who is the bookkeeper?

A. Beg pardon?

Q. Who is the bookkeeper?

A. Who is my bookkeeper? Frank Dallas.

Q. Is he white or colored?

page 67 } A. Beg pardon?

Q. White or colored?

A. White.

Q. Does he do anything else besides your bookkeeping?

A. No.

Q. How many accounts do you have on your books that require the services of a bookkeeper?

A. Mr. Glasser: I still make the same objection.

The Court: I still think he is within his rights. I overrule it.

Mr. Glasser: Exception.

A. I don't understand what you mean, Mr. Bullock.

By Mr. Bullock:

Q. How many accounts do you have on your books that require the services of a full-time bookkeeper?

A. Oh, I don't have a full-time; he does not work for me full time, he just fixes my books in the evening.

*William T. Wray.*

Q. I asked you what else he did.

A. Oh, you mean his occupation. He is a bookkeeper. I did not know whether you meant that he worked for me. He is a bookkeeper.

Q. I did not ask you that.

A. That is right. I misunderstood the question.

Q. You said you did not know whether he is or not?

A. That is right.

page 68 } Q. Does he do no other work?

A. He does not do no other work for me, keep the books part time. My books don't require my keeping—

Q. When does he keep them?

A. He keeps them at night. He was due in Monday to pick up the papers.

Q. Who is Mr. Samuel C. Cason?

A. Well, Samuel C. Cason is the man that I lease my building to now since the first of November.

Q. Well, did he ever work for you?

A. No, he never worked for me.

Q. How long have you known him?

A. I have known him—oh, I guess I have known him almost a year.

Q. What is his occupation?

A. His occupation, he is a mechanic's helper and he does upholstery work.

Q. Is that the only thing that you know he does?

A. That is the only thing I know he does.

Q. Did he ever work for you at the other service station I inquired about on Olney Road?

A. No, he never worked for me there.

Q. What did he do there when he was there?

A. When he was at the other service station? Oh, he was friendly with me and came in there but as for working,  
page 69 } he never worked for me.

Q. What was he doing at that time?

A. Where was he working at the time?

Q. No, what was he doing at that time?

A. I don't understand the question, Mr. Bullock.

Q. You said he was friendly with you when he came in there. I said, what was he doing at that time?

A. He was a customer of mine.

Q. He was selling liquor, wasn't it?

A. Selling whiskey? Not as far as I know.

Q. Who went bail for this particular truck?

A. Jack Cason.

Q. Who else?

*William T. Wray.*

A. I don't know. I believe it was Jack and Louise Cason.

Q. Who is she?

A. Mr. Cason's wife.

Q. What is their connection with Samuel C. Cason?

A. I believe they are half brothers—or brothers.

Q. You know that, don't you, Mr. Wray?

A. No, I don't know it to be a fact.

Q. You are friendly with them, aren't you?

A. If I don't know what their relation is, I know they are brothers or half brothers.

Q. You are friendly enough for him to go on a page 70 } thousand-dollar bond for you, aren't you?

A. He did not go on the bond for me.

Q. He signed it, didn't he?

A. Yes, but being the truck was lost, Samuel Cason, the man I leased to, he said he would get somebody to go the bond for me because he figured it was his responsibility for losing my truck.

Q. When you operated a few weeks ago the service station on the southwest corner of Boush Street and Olney Road, did you not ask Sergeant Phelps how much ice it would take to cool that place off to keep the vice squad off of you?

Mr. Glasser: I object to that. It is irrelevant.

The Court: The objection is overruled.

Mr. Glasser: I note an exception.

Mr. Bullock: Read the question.

(The last question was read by the reporter.)

A. It is not been a few weeks ago that I was on Boush and Olney Road. I haven't been there for five, I believe it is about five months, and at the time I did have a conversation with Mr. Phelps but I don't recall, it has been almost a year since I talked to Mr. Phelps. It was in February or March.

By Mr. Bullock:

Q. Let's see if it was. Didn't he make a raid on page 71 } the apartment right across from this service station the same time, and also on the service station men that were operating from your station?

Mr. Glasser: I object to that. It is irrelevant.

The Court: Overruled.

Mr. Glasser: Exception.

*William T. Wray.*

A. I know that he raided my place.

By Mr. Bullock:

Q. He got liquor out of there, didn't he?

A. No. One time; when I was operating the place he did not get whiskey out of there.

Q. Now, coming back, didn't you tell him on one of those occasions, ask him on one of those occasions how much ice it would take to cool it off to keep the vice squad away from there?

A. I don't remember.

Q. Do you deny it?

A. I don't deny it but I don't remember saying it to him.

Q. What makes it that you can't unequivocally deny it or say yes? It is right important, isn't it?

A. Beg pardon?

Q. Don't you have any recollection of it?

A. No. I talk to a lot of people. At the time it's been—

Q. Phelps?

page 72 } A. Sergeant Phelps; I have talked to Mr. Phelps on several occasions. As for saying that particular thing, I don't remember whether I said it or not.

Q. What did you mean, in the event that you had said it?

A. I would not know what it would mean.

Q. Sir?

A. I don't know. If I had said it, I don't know what—

Q. You must not have said it, is that right?

A. Well, I must not have said it. I don't know what it could have meant by it.

Q. I expect to prove by Sergeant Phelps that you did say that. Do you want to change your mind?

A. No. I don't remember saying it.

Mr. Glasser: The line of questioning is improper and I again wish to make objection to it.

The Court: Objection overruled.

Mr. Glasser: Exception.

By Mr. Bullock:

Q. My last question was, did you want to change your mine?

A. No. I don't remember saying it to Sergeant Phelps.

Q. You are there on the same corner now as the truck operated from on November 25—the day of the seizure; 23rd, page 73 } what ever day it was?

A. I am on that corner now?

Q. Yes.

A. No. I have nothing to do with the place any more.



*William T. Wray.*

Q. When did you dispose of it?

A. The first of November.

Q. And to whom did you dispose of it?

A. Samuel C. Cason.

Q. He is the same Samuel C. Cason operating the car on the day in question, is he not?

A. That is right.

Q. Who is James E. Woodyard?

A. James E. Woodyard is the boy that works for Mr. Cason.

Q. Sir?

A. He works for Mr. Cason.

Q. Is he a Yellow Cab driver?

A. I believe he was a Yellow Cab driver prior to working in a garage.

Q. He is a well-known bootlegger, isn't he?

A. I couldn't say.

Q. Do you mean that?

A. That is right. I don't know whether he has been bootlegging or not.

Q. How long have you known him?

page 74 } A. Mr. Woodyard. I have known him about nine, ten months.

Q. Who is Mr. Frank J. Bonner, another one of the occupants of the car?

A. Frank J. Bonner leases and has license for the front of the service station that has to do with the gas and oil.

Q. And that is the same station we are just inquiring—

A. That is right.

Q. And he is one of the men, the four that were arrested in the truck?

A. That is right.

Q. Who is David Joynes?

A. David Joynes is a colored boy that works for Mr. Cason.

Q. Where does he work?

A. He helps Mr. Cason in the back, on upholstery work.

Q. How long have you know David?

A. I have known him probably six months.

Q. Has he ever worked for you?

A. He worked for me prior to that, at Boush and Olney Road.

Q. Did Bonner ever work for you?

A. No, Frank Bonner never worked for me.

Q. Bonner used to be down there at Olney Road and  
page 75 } Boush, didn't he?

A. Olney Road and Boush; no, he never worked for me at Olney Road and Boush.

Q. Did he hang around there?

*William T. Wray.*

A. I would not say "hang around there;" he works for a man and we serviced his automobiles.

Q. Where did he work at that time?

A. I believe he worked for a man by the name of Lee next door to the radio shop.

The Court: Bring me the old dockets. Go ahead.

By Mr. Bullock:

Q. Woodyard, Bonner and Joynes and Cason all are at the same corner that you were at that time?

A. That is right.

Q. I understood you to say that you were out of town on the day that this truck was seized, is that right?

A. Yes, sir.

Q. Were you in town on the night of the 17th of November?

A. On the 17th of November?

Q. Yes, sir.

A. I was in town, yes, sir.

Q. Who was operating the truck that night?

A. Who was operating the truck?

Q. Yes, sir.

page 76 { A. On the night of the 17th? I don't know who was operating it.

Q. Was it in your custody?

A. No. I store the truck at that garage over there. It has always been kept there.

Q. I am talking about the night of the 17th of November. This is exactly a week before Thanksgiving, which was the 24th of November.

A. The week before Thanksgiving, I don't know who was operating.

Q. Did you have the truck in your custody that night?

A. No. I left it at the garage, drove the car home.

Q. Do you admit or deny that a driver of that truck delivered a pint of whiskey at Birtcherd's Dairy in response to a call?

A. I don't know whether they took one down there or not.

Q. Who would have had the truck that night?

A. I left it at the garage.

Q. In whose custody?

A. The custody of Frank Bonner.

Q. You left the truck in the custody of Frank Bonner the night of the 17th?

A. That is right.

*F. Phelps.*

Q. You said Cason did not have authority to use page 77 } your truck on that occasion?

A. That is right.

Q. Do you have a warrant charging him with the illegal use of it?

A. No, I have not.

Q. Do you expect to?

A. No, I do not.

RE-DIRECT EXAMINATION.

By Mr. Glasser:

Q. Why do you not expect to?

A. Because the truck is not damaged in any way, and it is no fault of mine that he is using the truck. He was not authorized to use it. And I don't—feel that he has got enough trouble without me getting a warrant for him besides that.

Q. The truck has not been damaged, has it?

A. No, the truck is not damaged at all.

Mr. Glasser: That is our case.

page 78 } SERGEANT F. PHELPS,  
called as a witness on behalf of the Commonwealth,  
and having been first duly sworn, testified as follows:

Examined by Mr. Bullock:

Q. Sergeant, what is your name?

A. F. Phelps.

Q. Your occupation?

A. Sergeant, Norfolk Police Department.

Q. Do you know Mr. William T. Wray, the claimant of this automobile?

A. I know Mr. William T. Wray, yes, sir; this gentleman sitting here (indicating).

Q. How long have you known him?

A. Approximately about nine months.

Q. Do you know his general reputation as a violator of the Virginia Alcoholic Beverage Control Act?

Mr. Glasser: If Your Honor please, I object to that question as being improper and not proper evidence in this case.

The Court: Objection overruled.

Mr. Glasser: Exception.

*F. Phelps.*

By Mr. Bullock:

Q. Do you know it?

A. I do.

Q. What is it?

page 79 } A. A man that traffics in whiskey, sells whiskey.

Q. Do you know Mr. Samuel C. Cason?

A. I do.

Q. How long have you known him?

A. I say two and a half, three years, maybe more.

Q. Do you know his reputation as a violator of the Virginia Alcoholic Beverage Control Act?

A. I do.

Q. What is it?

Mr. Glasser: If Your Honor please, the same line of objection is raised to all of this, which I understand you are overruling and to which exception is noted.

The Court: Yes.

By Mr. Bullock:

Q. What is it?

A. His reputation is, a man that sells whiskey.

Q. Did you have a conversation with Mr. W. T. Wray at the corner of Boush and Olney Road as to the cooling off of that place?

A. Not at the corner of Olney Road and Boush Street, but at the corner of 13th Street and Omohundro Avenue.

Mr. Glasser: If Your Honor please, I am raising the same objection to this line of questioning. That was brought  
page 80 } out on direct examination. This is rebuttal testimony and is certainly not admissible.

The Court: If you do not connect it up with the statements that were made pursuant to interrogation of Mr. Wray, I will strike it out.

By Mr. Bullock:

Q. Were you talking about any particular location? I am not talking about where you were at the time.

A. I was talking to him at the corner of 13th and Omohundro Avenue.

Q. About what?

A. In reference to a place he was operating at the corner of Boush and Olney Road.

Q. What did he say to you with respect to the vice squad staying off of it?

*F. Phelps.*

A. I got a call just as I was leaving home. In fact I was out of the door and was called back to the phone, and a man's voice said he wanted to see me.

Mr. Glasser: I object, if Your Honor please.

By Mr. Bullock:

Q. Don't say that, Sergeant. I don't care anything about any other, collateral matter. What did he say with respect to what vice squad *off him*?

A. Upon arriving at 13th—

Mr. Glasser: If Your Honor please, the same objection. It is a leading question, to which I would like to object; page 81 { asking what did he say in connection with keeping the heat off a place.

The Court: Well—

Mr. Bullock: I promised Mr. Wray I would contradict him, Your Honor, about it.

Mr. Glasser: It is still leading.

Mr. Bullock: I can ask him the specific question I asked Mr. Wray, in order to be specific.

Mr. Glasser: I would like to have a ruling.

The Court: Rephrase the question.

By Mr. Bullock:

Q. Sergeant, did he make any inquiry of you as to how to keep the vice squad off of the place; and, if so, what did he say?

Mr. Glasser: The same objection.

The Court: Objection overruled.

Mr. Glasser: Exception.

A. The night in question, when I met him he asked me, said "Sergeant, I would like to know how much ice it will take to cool off Olney Road and Boush Street." I said "My friend, there is not enough ice in Norfolk to cool that corner off. It is hot." Just like that.

Q. What did he say?

A. He said "I tell you what I am going to do, then. I have got eight more pints of whiskey down there and going to sell them. Here is my hand to God, I am through." I page 82 { said "I am going to try to catch you before you sell that eight. I am telling you, man to man, I am going to catch you. If I catch you with a Negro, I am going to try

*F. Phelps.*

to catch you. That place is hot." At that, he got out, went away.

### CROSS EXAMINATION.

By Mr. Glasser:

Q. When was this conversation, Sergeant?

A. Sir?

Q. When was this conversation that you had with Wray?

A. Well, I will tell you, the only way I can give you a definite date on it would be records; and three days after this conversation I had some more information. Upon the information, I raided his filling station and his apartment and found a large quantity of whiskey there and the records will show what date it was.

Q. Was he convicted?

A. Sir?

Q. Was he—

A. No. 'I convicted his partner at that time.

Q. I asked you whether or not he was convicted or was ever convicted of violating the beverage act?

A. I answered your question. I did not convict him, did not convict his partner.

Q. Who was his partner?

A. The man who just went into business the day before.

Q. How do you know he was his partner?

page 83 } A. Because it came out in statement and also his statement, this man gave him a Buick automobile as collateral for his down payment in the filling station.

Q. Do you recall when this conversation took place? Was it 1949, 1948 or when was it in relation to this particular—

A. Oh, no, it was the first part of this year we are living into right now. Sometime maybe in April or May but, as I said before, to be exact and definite, the records over there is the best identification that I know of. They are over there.

Q. You know of no conviction he has ever had of violating the ABC Act?

A. Not to my knowledge.

Q. Now, how did this question come up about this ice business and cooling off business?

A. Because I was around there so much that I was near about there as much as he was—stopping cabs and grabbing people coming off the lot, frisking them and frisking the cars; got a man there one night with whiskey and the man that brought the whiskey out got away from me.

Q. That was Olney Road?

*F. Phelps.*

A. His place got so hot, as you call it, we stationed a uniformed man in the front door. That is the reason why  
page 84 } he wanted to see me, I reckon.

Q. Did you ever arrest the man?

A. I arrested there, yes, sir.

Q. Did you ever convict him there?

A. I have answered that. No, sir, I did not but I arrested them there.

The Court: A man named Jesse B. Massa connected with—

The Witness: That is the man, Your Honor, that went to the City Farm, who was a partner who gave the Buick automobile as collateral, as the down payment going in his business with him.

By Mr. Plack:

Q. Sergeant, you have testified that you knew Mr. Wray I believe for about nine months?

A. Something like that, yes, sir.

Q. You testified that he had a general reputation in the community for violating the ABC laws?

A. That is right.

Q. What police officers have you spoken with concerning Mr. Wray's reputation?

A. Who?

Q. What police officers have you spoken with?

A. I would not say offhand any particular police officer, but the general public, and then having the place  
page 85 } under observation and seeing with my own eyes, that alone gave him a reputation. People going in there empty-handed and coming out with whiskey.

Q. Now, you say that you have not spoken to any police officers about Mr. Wray? Have you spoken to any private citizens about him; and if so, whom?

Mr. Glasser: I object to that line of questioning again, saying that it is all irrelevant and the testimony of this police officer is not rebuttal testimony and is improper.

The Court: This is cross examination.

Mr. Glasser: I mean I want to object to the whole testimony of Sergeant Phelps.

The Court: Object to the whole testimony?

Mr. Glasser: That is not in itself rebuttal. I mean I have no objection to any rebuttal testimony. Any new testimony that he is giving as to the reputation of Mr. Wray is objectionable.

*F. Phelps.*

The Court: Is there a conflict now between you and Mr. Plack?

Mr. Glasser: No. I want it so that there will be no waiver.

The Court: All right.

By Mr. Plack:

Q. Will you answer the question, please.

page 86 } A. Now, what is your question again?

Q. I said, have you spoken to any members of the general public; that is, businessmen or bankers or attorneys about Mr. Wray?

The Court: Or judges.

By Mr. Plack:

Q. Or judges; yes, sir. That is right.

A. I think I have testified in open court once or twice as to his reputation as I am testifying here today.

Q. I understand that.

A. And as far as the police officer, I have discussed it numbers of times with Captain Merritt, who was the commanding officer of the squad.

Q. What you are trying to say is, isn't it, Sergeant, that the man has a reputation in police circles as a violator and that is all you are trying to say, isn't that true?

A. Yes; and I can say another thing truthfully as to anonymous complaints.

By the Court:

Q. Anonymous complaints?

A. Yes, sir.

Mr. Plack: I object to that.

The Court: What did you say?

Mr. Plack: Anonymous complaints would have no bearing whatever, I should think.

page 87 } The Court: I can't hear you.

Mr. Plack: Anonymous complaints, he said; testifying as to anonymous complaints now.

The Court: As I understand it, you are interrogating him as to whether he knows what he is talking about when he says this man has a reputation as a violator of the Alcoholic Beverage Control Act, is that right?

Mr. Plack: Yes, sir.



*F. Phelps.*

The Court: Anonymous complaints would be a pertinent part of the source of information that a man had such a reputation. It would not be admissible to prove the truth of the statement but it would be admissible to show the source of the information the officer had when he said this man had a reputation for violating the prohibition laws.

By the Court:

Q. You testified in that Jesse B. Massa case?

A. Sir?

Q. Did you testify in that Jesse B. Massa case?

A. Yes, sir, I did.

By Mr. Plack:

Q. What was the nature of those anonymous complaints, Sergeant Phelps?

A. Well, we had complaints in different form and order. Some wanted to know why that man was getting by page 88 { selling whiskey like he was, on the corner. Others wanted to know why we did not break it up, why wouldn't we close the place up and they went so far as to call the station, said if we did not close it up they were going to the City Manager about it. That is the time we stationed a policeman in full uniform at the door; inside, right at the door.

Q. When were these complaints made, Sergeant Phelps?

A. Pretty near every night.

Q. In what period of time, sir?

A. Sir?

Q. In what period of time?

A. I would say during April, May, June and I think the first part of June.

Q. How many complaints would you say there were, Sergeant?

A. Well, to tell you truthfully, I could not say. They were so many of them that I could not tell you how many there was.

Q. Now, you have said that—

A. You have asked for the truth.

Q. —about closing up the place on the corner.

A. Sir?

Q. You said the complaints were about closing the place up on the corner, didn't you?

A. The place that was being operated by this man page 89 { right here, Wray.

Q. Did they call Mr. Wray's name?

By the Court:

Q. On Boush Street and Olney Road?

*F. Phelps.*

A. Boush Street and Olney Road, yes, sir.

By Mr. Plack:

Q. Did they call Mr. Wray's name?

A. They called him Bill. That is what he was known around there by the name of Bill.

Q. And that was referring to the place on Boush Street and Olney Road, is that right?

A. That is right.

Q. Well, now, he has moved from there, hasn't he?

A. That is right; in the same business at 25th and Omohundro Avenue.

The Court: My docket shows Jesse Massa appeared on this docket in April, 1949.

The Witness: That is right.

The Court: Continued, May, 1949, and disposed of in June, 1949.

The Witness: That is right. He was arrested in an apartment upstairs in the rear of this filling station.

The Court: You need not bring in all the details of Massa's case.

page 90 { Mr. Glasser: If Your Honor please, I want again to renew my motion to strike his testimony.

The Court: The motion is overruled.

By Mr. Glasser:

Q. Officer Phelps, you said now that Mr. Wray is engaged in the same business at 25th and Omohundro?

A. That is right.

Q. Did you ever arrest him there?

A. Arrest him?

Q. Yes.

A. Arrested his employees there.

Q. I asked you did you ever arrest him there?

A. No. If you want me to be frank, if the Court will permit me—

Q. Just answer the question.

A. I have never arrested him, no.

Mr. Glasser: That is all.

Mr. Bullock: That is all, Your Honor.

Mr. Glasser: That is our case.

Mr. Plack: If Your Honor please, on behalf of the lienor, I would like to contend that it is entitled to possession of the car under this proceeding.

The Court: Let me ask you this: Do you contend page 91 } that the Court has the car in its authority?

Mr. Plack: Do you want me to argue?

The Court: I say, Do you contend that the Court has the car under its authority?

Mr. Plack: If Your Honor please, the contention that I make is that until final judgment is rendered in this case, the Court does have the car under its authority.

The Court: Is it your contention that I have the power to order this car surrendered to any particular person? Lienor, claimant, owner or what not? That is your position?

Mr. Plack: Yes, and that under that provision, I think the car should be returned to the City Sergeant and should be sold and from the first proceeds of the sale the lien of the Bank should be paid off.

My contention is based on the theory of the Myown Development Corporation case—which is a recent case—and on the authority of *One International Harvester Truck v. Commonwealth*, both of which cases involved a lienor who had not made an investigation of the criminal courts or the police record or the police departments in the communities in which the borrower was residing and operating; and each of which cases holds clearly that in the absence of anything to put them on notice, such lienor is not required to make such an examination, page 92 } either from the police records or from the police department.

In the Myown Development Corporation case, the testimony from one of the officers—

The Court: I don't want to cut you off, but how do you get around this Section 38-a which after the bond is given provides for judgment against the obligors on the bond? Now, where do you come in under that?

Mr. Plack: If Your Honor please, that was the point that we raised at the outset and I attempted to answer it at that time.

The Court: And upon giving of the bond, the property shall be delivered to the owner or lienor. They were the two people given the right to make the bond and recover possession of the car.

Mr. Plack: Here is the section, of Your Honor please. Under that section, if the owner or the lienor desires to give a bond and reclaim possession of the car, they may do so. But one of the conditions of the bond as set forth in the statute is that the car must await the final determination of the Court.

The Court: Show me that now.

Mr. Plack: Section "e" provides:

"If the owner or lienor of the seized property shall desire to obtain possession thereof before the hearing on the information filed against the same, such property shall be appraised by the clerk of the court where such information is filed."

And then it says,

"The sheriff of the county or the sergeant of the city in which the trial court is located shall promptly inspect and appraise said property, under oath, at its fair cash value, and forthwith make return thereof in writing to the clerk's office of the court in which the proceedings are pending, upon the return of which the said owner or lienor may give a bond payable to the Commonwealth of Virginia, in a penalty in the amount equal to the appraised value of the vehicle plus the court costs which may accrue, with security to be approved by the clerk, and conditioned for the performance of the final judgment of the court, on the trial of said information, \* \* \*"

Now, the position that I take—

The Court: Go on; and the further condition is that "if upon the hearing, \* \* \* the judgment be that said property \* \* \* be forfeited, judgment may thereupon be entered against the obligors on said bond for the penalty thereof, without"—

Mr. Plack: "if \* \* \* judgment of the court be that said property, or any part thereof, or such interest and equity as the owner or lienor may have therein, be forfeited, \* \* \*" I take the position, if Your Honor please, that this statute gives the lienor its forum—and this court is the forum to decide the validity of this lien. That having brought us into court upon the lien, the fact that the man gives a bond—the lienor hasn't given the bond, it is the owner who has given the bond. Then the statute goes on further to say what the rights of the lienor would be in respect to the final judgment.

In other words, the primary condition of the bond, if Your Honor please, I say, is that the final judgment of the court must be a complete judgment. That is to say, it must dispose of the rights of the owner and the rights of the lienor as well.

Now, the case has never been before the courts in Virginia, if Your Honor please, on the complete point. I mean, there has been no decision on the point. But in 1941, if Your Honor please, from this same court—no, it was Corporation Court No. 2—the Commonwealth at that time took exactly the same view that I take today on the case, where a bond was given by the

owner and the car was forfeited. But at the trial of the case it was developed that the owner of the car had sold the car. So that, of course, the Commonwealth was then relegated only to the right it would have against the bond. At that time, Judge Gcode issued a ruling against the owner of the car for contempt for having disposed of the car.

The Court: What is the name of that case?

Mr. Plack: The Cason case.

The Court: What is the first name?

Mr. Plack: Samuel Cason.

The Court: Samuel C. Cason?

Mr. Plack: Sir, I don't know. It was a case around page 95 } here.

The Court: I have a vague recollection of it, and Judge Gcode had to dismiss his own rule.

Mr. Plack: He certainly did, Your Honor. But the reason he dismissed his rule, as the Court of Appeals very clearly pointed out, was because the Commonwealth had not filed its information within the ten days that the statute then required it to be filed under. I just pointed that out, the Court's decision under it.

The Court: I remember the case.

Mr. Plack: Here is the additional point that I make. Here is the court we are in under the statute, the only court at this time until this case is decided that has jurisdiction over the *res* in this case. Now, suppose that car would be picked up tonight, before I can get a judgment in Civil Court. Our right would not be protected. And this bond to the Commonwealth is, I believe, if Your Honor please, given to protect the rights of all parties who come in in this proceeding.

The Court: Where is the authority for that statement?

Mr. Plack: The section itself, if Your Honor please. That is the only authority I have been able to find.

The Court: Is that your idea of inherent justice page 96 } without statutory enactment? Is that your idea of what it would be—inherent justice but not necessarily statutory enactment?

Mr. Plack: I think under the Code, when it provides for a final judgment and then goes on to say what that final judgment shall be, if Your Honor please, and here is what the Code says about that. There is no question about the lien being good at this time. We are not concerned about that particular right at the moment.

“If any such claimant be a lienor”—

This is after the bond has been given and everything, if Your Honor please—

" . . . and if it shall appear to the satisfaction of the court that the owner of the conveyance or vehicle has perfected his title to the conveyance or vehicle if it be a motor vehicle, prior to its seizure or within ten days from the date that the same was acquired, and that such lienor was ignorant of the fact that such conveyance or vehicle was being used for illegal purposes, when it was so seized, that such illegal use was without such lienor's connivance or consent, express or implied, and that he held a *bona fide* lien on said property and had perfected the same in the manner prescribed by law, prior to such seizure (if such conveyance or vehicle be an automobile, the memorandum of lien on the certificate of title issued by the Director of Motor Vehicles on said automobile shall make any other recordation of same unnecessary) the Court shall"—

Now, this is the final order, if Your Honor please—

" . . . the Court shall by an order entered of record establish said lien, upon satisfactory proof of the amount thereof; and if, in the same proceeding, it shall be determined that the owner of said seized property was himself in possession of the same, at the time it was seized, and that such illegal  
page 97 | use was with his knowledge or consent, the forfeiture hereinbefore in this section declared, shall become final as to any and all interest and equity which the said owner, or any other person so illegally using the same, may have in such seized property, which forfeiture shall be entered of record. In the last mentioned event, if the lien established is equal or more"—

Which is the case here—

" . . . than the value of the conveyance or vehicle, such conveyance or vehicle shall be delivered to the lienor, and the costs of the proceedings shall be paid by the Commonwealth as now provided by law; if the lien is less'—

The Court: Do you want to answer me a question? How am I going to give you the car?

Mr. Plack: If Your Honor please, it is the position of the Commonwealth, as I understand it—

The Court: You say abandon. How could I as the judge of this court award this car to you? What sort of order could I enter?

Mr. Plack: If Your Honor please, we are not asking that you award it to us. We are asking that it be returned to the City Sergeant in compliance with the conditions of the bond, to await the final order—final judgment of the Court.

The Court: What is my final judgment?

Mr. Plack: The final judgment of the Court would be, if Your Honor please, that this car has been returned to the Court.

Then the order of the Court recites that the car be sold  
page 98 } by the City Sergeant and from the proceeds of the sale  
the lien of the Bank be paid and the balance, if Your  
Honor please, turned over to the—

The Court: All right.

Mr. Plack: If Your Honor please, the position that I take is that there can be no final judgment without a complete judgment. And the bond is given conditioned upon the final judgment of the Court. That is the main condition. The secondary condition is that if the owner's right is forfeited, his right in the bond is forfeited.

The Court: I don't follow the relevancy of the authority of International Truck.

Mr. Plack: I was just citing that for the purpose of showing to Your Honor that the Bank is not required to investigate the police records of the community before it makes a loan unless there is something to put it on actual notice. The Myown Development case and the International Harvester case both specifically so stated, if Your Honor please. I don't want to take up the time of the court. You are familiar with the decision. I won't urge it.

Mr. Glasser: If Your Honor please, for the purpose of the record the claimant William T. Wray is willing and tenders now the return of the vehicle awaiting the disposition of the case.

Now, in line with what my friend has advised the  
page 99 } Court, in connection with the lien of the bank I want  
to call the Court's attention to Section 2154(64) of the  
Code, which very specifically sets out this:

"Said certificate of title, when issued by the division showing a lien or encumbrance, shall be deemed adequate notice to the Commonwealth, creditors and purchasers that a lien against the motor vehicle exists and the recording of such reservation of title, lien or encumbrance in the county or city wherein the purchaser or debtor resides or elsewhere is not necessary and shall not be required."

Now, it further says here—I am skipping certain portions, Your Honor—that if application for registration or recordation of a lien or encumbrance to be placed upon a motor vehicle be filed in the Office of the Division of Motor Vehicles in the City of Richmond within ten days from the date of such applicant's purchase of said motor vehicle, it shall be as valid as to all persons, whomsoever, including the Commonwealth, as if such registration had been done on the day such lien or encumbrance was acquired.

I submit that to the Court in support of my friend's motion, inasmuch as this is a specific regulation and that the forfeiture section is penal and should be strictly construed.

Now, as for the claimant's contention, we move at this time, if Your Honor please, that the information against page 100 } this vehicle be dismissed, on the ground that we have produced before the Court uncontradicted evidence that the claimant Wray was ignorant of the illegal use of the vehicle at the time that it was seized and, second, that the illegal use was without his connivance or consent.

We submit, if Your Honor please, that that is the testimony of the claimant William T. Wray. There has been no evidence to contradict that testimony, other than the testimony of the Commonwealth which tries to bring in evidence as to Wray's reputation as being a violator of the liquor law. I submit, without admitting—assuming that he was a violator of the liquor law—it still would not be sufficient to confiscate this vehicle unless there was evidence to the effect that the vehicle was being used with his consent for the illegal purpose, that it was with his consent or connivance.

Now, in June of last year the Supreme Court of this state in the case of *Patterson v. Commonwealth*, 187 Virginia 913, had a similar case before it on the rights of claimants—and I wish to read this to the Court at this time—on page 920:

“The statute puts upon the claimant the burden of satisfying the Court that he was ignorant of the illegal use of his car and that such use was without his connivance or con- page 101 } sent, express or implied. But this does not mean that perfect or complete proof of innocence is required. The degree to which the proof ought to satisfy the Court need be reasonable only. Mere possibilities or mere speculation are not to be allowed to overcome uncontradicted evidence of actual facts. A conviction of bad faith on the part of the claimant should be based upon some evidence of his criminal knowledge, consent or connivance to the unlawful use of his vehicle, or upon circumstances from which there may be fairly inferred such knowledge or consent.”

Now, later on in the same decision the Court quotes the case or *Pardue v. Commonwealth*, 183 Virginia 277, and says this, that (reading)

“a prosecution for unlawful possession of intoxicating liquor, under Code, Section 4675(50), we held that where the testimony of the defendant in no wise conflicts with the testimony of the Commonwealth and is not contradicted directly or indirectly, the testimony of the defendant must be accepted as true.”



Now, I again submit, the only evidence that the Commonwealth has produced before the Court here today to try to counteract the testimony of the claimant was the fact that he had a bad reputation while on Olney Road and Boush Street. There is no evidence before the Court that he had knowledge—and I think the crux of the confiscation statute, this 4675 (38), is based on guilty knowledge. Now, the Court might make certain inferences but it must have evidence from which to draw those inferences. I submit that this case of *Patterson v. Commonwealth* is in point; that there has been no contradiction of the claimant's testimony, and that the information page 102 } against the vehicle should be dismissed.

The Court: Judgment for the Commonwealth on the bond. The National Bank of Commerce is relegated to its rights against the car. Draw the appropriate order, Mr. Clerk.

Mr. Glasser: I want at this time to move to set aside the verdict of the court, on the ground that it is contrary to the law and the evidence, and on the ground that the Court erred in failing to grant the motion of the claimant for a trial by jury.

The Court: All your rights will be reserved to you. Note an exception on the order book.

Mr. Plack: I am not joining in that motion.

BERNARD GLASSER  
HERMAN A. SACKS,  
Attorney for *appellant*.

HAMILTON PLACK,  
Attorney for National Bank  
of Commerce of Norfolk.

H. LAWRENCE BULLOCK,  
Commonwealth's Attorney.

page 103 } JUDGE'S CERTIFICATE.

I, R. B. Spindle, Jr., Judge of the Corporation Court of the City of Norfolk, Virginia, do hereby certify that the foregoing is a true and correct transcript of the testimony and proceedings of the case of Commonwealth of Virginia v. 1 Chevrolet Sedan Delivery, Virginia License No. CONV 2-527, Motor No. FAM 76303, tried in said court on the 23rd day of December, 1949, and includes all the testimony offered, the motions and objections of the parties, the rulings of the Court and the exceptions of the parties, and all other proceedings of said trial.

I further certify that said transcript was presented to me for certification and signed within sixty days after the final

order in said cause, and that the Attorneys for the Commonwealth and Lienor had reasonable notice in writing of the time and place at which the same would be tendered for certification.

Given under my hand this 14 day of February, 1950.

R. B. SPINDLE, JR.,  
Judge.

A Copy—Teste:  
R. B. SPINDLE, JR.,  
Judge.

page 104 { CLERK'S CERTIFICATE.

I, W. L. Prieur, Jr., Clerk of the Corporation Court of the City of Norfolk, Virginia, do hereby certify that the foregoing transcript of testimony and other proceedings of the trial of the case of Commonwealth of Virginia *v.* 1 Chevrolet Sedan Delivery, Virginia License No. CONV 2-527, Motor No. FAM 76303, duly certified by the Judge of said court, was filed in my office on the 14th day of February, 1950.

W. L. PRIEUR, JR.,  
Clerk.

page 105 { Virginia:

In the Clerk's Office of the Corporation Court of the City of Norfolk.

I, W. L. Prieur, Jr., Clerk of the Corporation Court of the City of Norfolk, do hereby certify that the foregoing and annexed is a true transcript of the record in the case of Commonwealth *v.* Chevrolet Sedan Delivery, Virginia License No. CONV 2-527, Motor No. FAM 76303, lately pending in the said Court.

I further certify that said copy was not made up and completed until the Attorney for the Commonwealth had had notice of the making of the same, and the intention of the said defendants to take an appeal therein.

Given under my hand this 16th day of February, 1950.

W. L. PRIEUR, JR.,  
Clerk.

Fee for this record \$15.00.

A Copy—Teste:

M. B. WATTS, C. C.

## INDEX TO RECORD

	Page
Writ of Error Awarded . . . . .	1
Record . . . . .	2
Information Furnished by Attorney for the Common- wealth . . . . .	2
Order Dec. 5, 1949,—Notice and Summons . . . . .	3
Order Dec. 9, 1949,—Bond Executed . . . . .	4
Answer of William T. Wray . . . . .	6
Petition and Answer of National Bank of Commerce of Norfolk and Carroll M. Holland, Trustee . . . . .	7
Judgment, December 23, 1949,—Complained of . . . . .	9
Notice of Appeal . . . . .	10
Transcript of Testimony . . . . .	11
Officer J. F. Estes . . . . .	14
Frank P. Lawler . . . . .	17
William T. Wray . . . . .	31
Sergeant F. Phelps . . . . .	45
Argument as to Possession of Car . . . . .	53
Judge's Certificate . . . . .	59
Clerk's Certificate . . . . .	60