

plead 'Not Guilty' and 'Once in jeopardy'

C O U R T O F A P P E A L S .

Adams Express Company, Appellant.

Against // Brief for Appellant.

The Commonwealth of Kentucky, Appellee.

At the term, 1906, of the Floyd Circuit Court an indictment was returned against the Appellant, charging the commission of the offense of unlawfully selling spiritous liquors to E. S. Robinson, without a license, in a local option district, viz. in Civil District No. _____, Floyd County, Kentucky.

A Demurrer to the indictment was filed, which raised the question of the sufficiency of the indictment with respect to all insufficient averments. Among the important considerations are:- Can the defendant under the averment of the indictment be shown to have committed any offense? In other words, can an individual, or a corporation, be indicted for another's doing of an unlawful act? Certainly not, unless the amendment to Sec. 2557 of Kentucky Statute, by Act of the Kentucky Legislature, approved the 11 day of March, 1902, will authorize this to be done; but, it appears to me, that even in that state of case the defendant would have to be indicted with the shipper, or the agent making the delivery; and it was and is an error to indict the Adams Express Company alone.

This demurrer having been ruled adversely to the defendant, thereupon the defendant plead 'Not Guilty', and a jury was empanelled and accepted, but not sworn, the Attorney for the Commonwealth read the indictment and announced defendant's plea, when it was remembered by the Clerk that the jury had not been sworn; thereupon the Attorney for the Commonwealth entered motion that the jury be then sworn, and again called upon the defendant to plead, and it then