

State of Virginia.

Rockingham County, to wit:
In the Circuit Court of the said County:

The jurors of the Commonwealth of Virginia, in and for the body of the County of Rockingham and now attending the said Circuit Court upon their oath present that Lewis Randal, on the 29th day of September 1873, in the said County of Rockingham, in and upon the body of one Elizabeth C. Shoualter, a female white person, did make an assault, and her the said Elizabeth C. Shoualter did then and there beat, wound and abuse, with intent her the said Elizabeth C. Shoualter, then and there feloniously to ravish and carnally know by force and against her will, against the peace and dignity of the Commonwealth of Virginia.

This indictment is found on the testimony of W^m F. Kyger, W^m D. Maiden and Joseph A. Shipplett, witnesses sworn in Court and sent before the Grand Jury to give evidence,

Commonwealth
vs.

Lewis Randal
Indictment for
attempt to com-
mit rape.

A true Bill,
(L. D. Price)
Foreman.

Jan. 16th 1875 Indictment
found.

Certified to County Court of
Rockingham County

J. H. Shue C. C. C. C.

1875 July Ct. Doctated.

1876 Nov. Ct. arraigned, defendant was
ruled, & trial fixed for the Tuesday, the 29th Court
Dec. cont'd. Jan. cont'd. Feb. cont'd.
March jury verdict of guilty.

We the Jury find the Defendant, Lewis Randal, guilty in
manner of rape as charged in the within indictment
and ascertain the term of his confinement in the
Penitentiary at this space and six months.

L. D. Price
Foreman,

We the Jury find the prisoner
Lewis Randal guilty
and fix his imprisonment in the Penitentiary
at two years and six months

L. D. Price Foreman

To the Honorable Mark Bird Judge of the
18th Judicial Circuit of Virginia.

The petition of Lewis Randal respectfully represents that he is in the custody of D. M. Ralston Sheriff & ex officio Jailor of Rockingham County; that at the Spring term of the County Court of Rockingham County he was convicted of a felony and sentenced to two and a half years ^{confinement} in the penitentiary, that from this judgment he applied to the ^{Judge of} Circuit Court of Rockingham County for a Writ of Error which was awarded, and upon the hearing of said Writ of Error, the Judgment aforesaid was reversed and a new trial awarded your petitioner, upon the ground that the indictment was fatally defective, being only good as an indictment for an assault and battery, and because the facts certified did not establish a felony. Your petitioner represents that he is accordingly held in rigorous and onerous confinement in the Jail of the County aforesaid, upon a charge of having committed a misdemeanor, and this he alleges is illegal; for he is advised that there are certain wise and humane laws in relation to bail, to which your petitioner is entitled, and which are extended even to cases of felony. Your petitioner further

represents that he has been remanded to the County Court for trial; but at what time your petitioner will be enabled to get a speedy trial it is almost impossible to say, since the docket of said Court is ~~so~~ overloaded with important felony cases which will have precedence, and will occupy almost all of the time of said Court for some time to come.

Your petitioner ~~therefore~~ therefore insists that under the circumstances of his case his confinement is grievous and illegal, and that he is entitled to bail, and prays that your Honor will award to him the most gracious writ of Habeas Corpus to the Sheriff aforesaid directed, requiring him to bring before you the body of your petitioner with the cause of his detention, so that the same may be inquired into and relief afforded your petitioner.

Virginia, Rockingham County, & wit:

This day personally appeared before me Lewis Randal and made oath that he is now detained in the custody of D. H. Halston Sheriff of Rockingham County, and that the facts set forth above are true to the best of his knowledge and information.

and belief -
Given under my hand this 11th day of June
1877,
R. D. Kegan Leon Clay

Ex parte
Lewis Randol
Petition for writ
of Habeas Corpus,

Berlin
Straizer

In vacation.
To the Clerk of the
Circuit Court of Rock-
ingham County.
You will issue a
writ of Habeas Corpus,
to the Sheriff of Rock-
ingham County directed,
in accordance with
the prayer of the within
petition, and make the
said writ returnable before
me at the Courthouse, on
the 12th day of June 1877
at 9 o'clock A.M.

Mark Bird
Judge of 18th Ind. C. Dist. of Va.

The Commonwealth of Virginia

To ~~Wm.~~ Rolston Sheriff of Rockingham County, and a, such
Jailer of said County, Greeting

The Command you, that the body of Lewis Randol, detained
by you, and under your Custody, as it is said, together with
the day and cause of his being taken and detained, by what
soever name, he may be called, you have to remove by

9 O'clock A. M. before the Judge of our Circuit Court
of Rockingham County, at the Court House thereof, to be
submitted to, and receive all and singular those things
which shall then and there be considered of him in
this behalf. And have then and there this writ,

Witness Joseph H. Shue Clerk of our said Court at
the Court House thereof, the 11th day of June 1877
And in the 10th year of the Commonwealth

J. H. Shue cccccc

Received June 12th 1877 by bringing Lewis
Randal before the Judge of the
Circuit Court of Rockingham County
Randal is detained in my custody for the purpose of
the charge of felony

Ex parte } Unit of
 } Names
Lewis Randal } Corpus
Berlin
Strayer

June 12th 1877

Admitted to Bail
in the sum of \$5000

June 12th 1877 at
O'clock

The Commonwealth of Virginia,

TO THE SHERIFF OF ROCKINGHAM COUNTY, GREETING:

We command you, that from all further proceedings on *a judgment of the County Court of Rockingham rendered on the 29th day of March 1877, in which The Commonwealth of Virginia was Plaintiff and Lewis Randol was defendant,*

you altogether supersede, which *Judgment* before the Judge of our Circuit Court of Rockingham County, at the Court-House thereof, for cause of error in the same to be corrected, on the petition of the said *Lewis Randol*

we have caused to come. We also command you that you give notice to the said *Commonwealth of Virginia*

that *It* be before the Judge of our said Circuit Court, at the Court-House aforesaid, on the first day of *May* term *1877* next, then and there to have a rehearing of the whole matter in the *Judgment* aforesaid contained. And have then there this writ.
Witness, *J. H. Shure* **L. W. GAMBILL**, Clerk of our said Circuit Court, at the Court-House, this *25* day of *April* 1877, and in the *101* year of the Commonwealth.

J. H. Shure Clerk

I acknowledge legal Service of documents
Suffered
Jesse Paul
Counselor at Law
for Rockingham Co.

Lewis Randol

v } Sum
on
} Suffered

The Commonwealth
vs

unt for paid,

1st day of May term
1877

Commonwealth vs Lewis Randall.

The prisoner was convicted of an attempt to commit a rape, under the 10th Sec of Ch 195 of the Acts of 1873.

The indictment charges, "that Lewis Randall on the 29th day of September 1873, in the said County of Rockingham, in and upon one Elizabeth E. Shewalter a female white person, did make an assault, and her the said Elizabeth E. Shewalter did then and there beat, wound and abuse, with intent her the said Elizabeth E. Shewalter, then and there feloniously to ravish and carnally know by force ^{against her will,} and against the peace and dignity of the Commonwealth of Virginia".

This indictment is fatally defective as an indictment for a felony -

The offence for which the accused was intended to be prosecuted was "an attempt to commit a rape, ~~and~~ ^{which} is made a felony by the Statute.

Now it has been decided over and over again that in an indictment for a felony, the word "feloniously" is indispensably necessary - It is deemed so important, that the omission of it is an error even after verdict for which the judgment may be mistone. And any thing which is good cause for mistone a judgment is a good cause for reversing it.

Randall vs Comthk 24. Grall 644-646

The indictment in the present case, fails to charge that the attempt to commit the crime of rape, was made "feloniously," and

and is therefore, under the numerous authorities,
& cases referred to, in the case of Randall vs
the Commonwealth, fatally defective as an
indictment for a felony.

It is however substantially good as an indictment
for an assault & battery, & for this reason
the indictment ^{was probably} ~~was~~ ^{is} overruled.

& the judge
must be deemed
the verdict

The verdict of the jury, finding the prisoner
guilty of a felony, upon an indictment charging
simply an assault & battery, is erroneous, & that
~~must be used~~ ^{a new trial granted}, the case remanded to the
County Court, for ^{a new} further trial.

Mark Dink
(11)

I have not deemed it necessary to examine
& decide the other questions presented by the record,
for the reason that the error, for which the judgment
of the County Court is reversed, is sufficient; but
I am inclined to think that upon the facts
established, the accused might not be convicted
of a felony.

M. Dink

Randall

vs
the
Commonwealth

Prisoner

To the Honorable Mark Bird, Judge of the Circuit
Court of Rockingham County:

The petition of Lewis Randab respectfully
represents that at the March term of the
County Court of said County he was found
guilty of an attempt to commit rape, and
sentenced by the Court in accordance with the
verdict of the jury to two years and six months
in the penitentiary, by which judgment of the
Court he is aggrieved.

The history of the case ^{as is presented by} (which was fully appear
by reference to a copy of the record filed here
with) is as follows: On the day of September
1873 it being Saturday your petitioner being
acquainted with the prosecutrix, and knowing
that she had previously been unchaste by
reason of being the mother of an illegitimate
child, and by reason of other facts (which he
was not permitted to prove and to ^{the excluding of} which
he excepted as appears from the record) went to
the house of her brother-in-law where she
lived, and found her alone; that he knocked
at the door and she came and opened it,
invited him in and gave him a chair, he
first sat down, and then arose and laid
his hands gently upon her shoulders, when
she started to leave him, and he caught
her and attempted to lay her upon a bed

she putting her foot upon the side of the bed
and pushing back, saying that she would
scream if he did not quit, and at the same
time pulling away from him, she being as
she confesses (Record p 12) a weak woman
and unable to have prevented his putting her
upon the bed if he had have determined to
have done so: That she then ran into the yard
and he followed her, and again caught her
and pulled her down into the door beside
him, when she bit him gently on the hand
so as to "leave the print but not bring the
blood," at which she again left him and
ran in the house and locked the two doors.
That she made no outcry during all this
time; that he did not threaten to offer her
violence of any kind; that the house in
which she lived, ^{is situated upon a road &} is not more than 300 or
400 yards from one neighbor, and within
sight of the magistratus house; that she
made no complaint to her sister or any one,
though ~~at~~^{her} sister and brother-in-law re-
turned home Saturday evening, until Sunday
night or Monday morning. And your petition
further represents that during the course of
the trial he demurred to the indictment
which ^{demurrer} was overruled; that he offered to prove
criminal intercourse of the prosecutrix with

other men, and that she had agreed and was willing to drop the prosecution for money; that the Court refused to admit the evidence; that he moved the Court to award a new trial; and also to arrest judgment; but these motions were also overruled. Your petitioner therefore assigns the following errors

1. The Court erred in overruling the demurrer to the indictment
2. The Court erred in refusing to admit proof of the criminal intercourse of the prosecutrix with other men
3. The Court erred in refusing to admit proof of the prosecutrix being willing to compromise for money
4. The Court erred in overruling the motion for a new trial
5. The Court erred in overruling the motion in arrest of judgment.

As to the first error it is submitted that the indictment is defective

1. Because it omits to allege the age of the prosecutrix; and this your petitioner is advised is a radical defect, since the law prescribes chastity in an indictment for an attempt to commit an offence, the criminality must be as fully and particularly set forth as if it were an indictment for the actual commission of the offence, and every in the

an indictment for rape itself it would be necessary to allege the age of the prosecutrix V.C. cap. 187 s 18.

2 Because it omits to allege that there was any "attempt", only alleging an assault with intent but no where using the statutory word "attempt", thereby omitting the requirement of "using the very words of the Stat. 6 Stat p. 678.

3. Because it omits to allege any "act done towards the commission of the offence", other than a mere assault and battery. Clark Case 6 Gr.

4. Because it charges a felony when in fact under the law an attempt to commit rape is only a misdemeanor. Your petitioner is advised that where there are two punishments for an offence by Statute, the Statute being construed strictly, the lesser punishment must be inflicted; And by reference to the Stat. for rape V.C. cap 187 s 18 it will be perceived that there are two punishments 1st death in the discretion of the jury, and 2nd confinement in the penitentiary, and by reference to the Stat on Attempts ^{V.C. p 1218. s 10} it will be perceived, that where an offence is punishable with death the attempting that offence is punishable by penitentiary ^{1 to 5 years} confinement; except in case of attempting rape when the punishment is 1 to 18 years in the penitentiary. In the next clause it is stated

that where the punishment for the actual offense is penitentiary confinement, the attempt is punishable with confinement in jail thereby constituting it a misdemeanor. And your petitioner respectfully represents that the Statute is susceptible of two constructions; for what right has any one to presume that a jury in its discretion would have said that the offense charged in your petition was committed, it was deserving of the death penalty, &c.

As to the 3rd error assigned your petitioner submits that it was quite material for him to contradict the prosecuting in her statement which she made (Record 13) that he had endeavored to compound the offense; but that she had refused money at all times, from which the jury might infer your petitioner's guilt.

And as to the 4th error of the Court in refusing a new trial, your petitioner alleges that he is greatly aggrieved; for never at any time did he have any idea of having connection with the prosecuting by force and against her will, and the facts certified fail to prove anything other than an attempt to have improper connection with her, and ~~between~~ between the two offenses, he is advised, that there is a marked and recognized distinction 2 Wh & Law § 1156.

* (5) The indictment should also allege that the "facts" to which it is referred are "ascertained from committing".
(Christman's Case 23 Ky 44)

And as to the amount of force requisite to com-
plete this offense your petitioner is further advised
that he must have used such force as to
indicate "that he intended to accomplish his
purpose at all events notwithstanding any
resistance on her part. Roscoe Cr. Ev. § 866." ["]
whereas by her own confession (p. 13 Record)
she shows that she was too weak to have re-
sisted, and that he could have accomplished
his purpose had he have so desired by
force, and that it was only owing to the dis-
inclination of your petitioner that the offense
was not committed; for there was nothing
during the whole time to have prevented him,
she not even making an ^(24 Crab 651) ~~act~~-cry to attract
the neighbors or any one who might have
been traveling the road in front of the house.
And your petitioner maintains that the incon-
sistencies in the conduct of the prosecutrix
show conclusively that the prosecution on her
part was an afterthought, and that her testi-
mony is false; for though having an op-
portunity to complain from the time her sister
returned ^{on Saturday evening} ~~on Sunday night~~ ^{on Monday morning}
^{from Saturday evening to Monday morning} ~~on Sunday night~~ ^{on Monday morning}
yet during all that time, she failed to
avail herself of the opportunity, and made
her complaint, and it is in consonance with
all human experience, that she should have

Done so if her story be true" Boggs Case 10
Ira. 729. And by reference to p 13 Record it will
be seen that she is further inconsistent; for
she states that as soon as she saw your pe-
titioner "she suspected he was coming for some
thing bad" and yet let him in and gave him a
chair, and explained her suspicions by of
your petitioner's bad intentions by the fact
that she had heard that he had caught her
cousin 3 weeks after that.

As to the expressions claimed to have been
used by your petitioner, they are none of
them inconsistent with his position and
claim, that he only intended to have an
"improper connexion" with the prosecutrix;
from which he detected when he found her
more unyielding than he had expected.

As to the 5th error assigned in overruling the
motion in arrest of judgment, the errors
enumerated ~~with~~ in connexion with the
demurrer are referred to.

Now therefore in view of the manifest
errors shown, your petitioner prays that
your honor will award a Writ of Error to
the Judgment of the County Court aforesaid; that
the same may be reversed and that a
new trial be awarded him &c.

Lewis Randall
By Counsel

Common.
vs Petition for
Writ of Error
Lewis Randal

^{clerk of the}
To the Circuit Court of
Rockingham County

Execution is
awarded to the judgment
complained of, in the within
petition, and said work
is to operate as a supersedeas
to said judgment.

April 18. 1897.
Mark Bird
Judge of said judicial
Court of Va.

I Henry W. Ottaway an Attorney practicing
in the Circuit of Rockingham, hereby
certify that in my opinion, that it is
juster that the decision of the County Court
of said County should be reversed, in the case
of Com^{rs} vs Lewis Randal Henry W. Ottaway

Virginia.

Pleas before the County Court of Rockingham County, at the Court House thereof, on the 29th day of March 1877.

Commonwealth of Virginia, Indictment
@ Lewis Randol, for attempt to
commit Rape.

Be it remembered, that the Grand Jurors impaneled and sworn in the Circuit Court of Rockingham County, at the Term thereof, commencing on the 16th day of January 1873, in and for the body of said County, and attending said Court, found an indictment against the Defendant, Lewis Randol, for attempt to commit Rape, which with the endorsement thereon by the Foreman, is as follows, viz:

State of Virginia.

Rockingham County, to wit:
In the Circuit Court of the said County,

The Jurors of the Commonwealth of Virginia, in and for the body of the County of Rockingham, and now attending the said Circuit Court, upon their oath present that Lewis Randol, on the 29th day of September 1873, in the said County of Rockingham, in and upon the body of one Elizabeth E. Showalter, a female white person, did make an assault, and her the said Elizabeth E. Showalter did then and there beat, wound and abuse, with intent her the said

(2) Elizabeth E. Showalter, then and there feloniously to ravish and carnally know by force, and against her will, against the peace and dignity of the Commonwealth of Virginia, This Indictment is found on the testimony of Wm. F. Kyger, Wm. S. Maiden and Joseph A. Shifflett, witnesses sworn in court, and sent before the Grand Jury to give evidence, (Endorsement.)

Commonwealth vs Lewis Randol. Indictment for attempt to commit Rape. Atue Bice, D. W. Effinger, Foreman.

(This Indictment was certified by the clerk of the Circuit Court to the County Court of Rockingham County as follows:)

Jan'y. 16th. 1875 - Indictment found.

Certified to County Court of Rockingham County, J. M. Shue, C. C. C. R. C.

(This Indictment was docketed in County Court of Rockingham County at July Term, 1875. Reck. J. P. Logan, Clerk.)

On the 28th day of October 1876, An alias capias was issued against Lewis Randol, which with the endorsements thereon is as follows, viz: The Commonwealth of Virginia,

To the Sheriff of Rockingham County, Greeting: We command you, as you have heretofore been commanded, that you take Lewis Randol, if he be found within your County, and him safely keep,

(3)

so that you have his body before the County Court of Rockingham County, at the Court House, on the first day of the next term to answer us of a certain felony, whereof he stands indicted. And have then there this writ, Writ. sup. J. P. Logan, Clerk of our said Court at the Court House, the 28th day of October 1876, and in the 101st year of the Commonwealth.

J. P. Logan, Clerk

(Endorsements:)

Executed the 28th day of October 1876, by arresting the said Lewis Randol & delivering him into the custody of the Jailor of Rockingham County

J. H. Kelly, U. P. J. A.

The within named Lewis Randol having been brought before me, a Justice for Rockingham Co. by the Sheriff of said Co. on the 2^d day of Nov. 1876, for examination, owing to the absence of witnesses for the Commonwealth the hearing of the case is adjourned to the 8th day of Nov. 1876, the same to be heard at Long's School House, Rockingham Co.

J. P. Byrd, J. P.

The examination was had pursuant to adjournment and the prisoner was remanded to the County Jail, to await trial upon indictment found and certified to the County Court of Rockingham Co. Given under our hands this 8th day of Nov. 1876.

J. P. Byrd, J. P.
B. M. Rice, J. P.

(21)

At a County Court held in and for the County of Rockingham, at the Court House thereof, on the 20th day of November 1876:-
Commonwealth,

② Upon an Indictment for
Lewis Randol. } Attempt to commit a Rape.

The prisoner, Lewis Randol, late of the County of Rockingham, who stands indicted for a felony by him committed, was this day led to the bar of the Court in custody of the Jailor of this County, and being thereof arraigned, pleaded "not guilty" and upon his arraignment, by counsel, demurred to the Indictment, which demurrer was overruled by the Court; and thereupon Wednesday the 29th day of this month was fixed for his trial, and he remanded to Jail,

And, at another day, to wit:-

At a County Court continued and held in and for the County of Rockingham, at the Court House thereof, on the 29th day of November 1876:-
Commonwealth,

② Upon an Indictment for
Lewis Randol. } Attempted Rape,

The prisoner, Lewis Randol, late of the County of Rockingham, was this day again led to the bar of the Court, in custody of the Jailor of this County, and on motion of the Attorney for the Commonwealth, and for reasons appearing to the Court, his trial is continued until the next term of the Court,

(5)

and thereupon the Defendant moved the Court to be admitted to bail, the consideration of which was continued until to-morrow, and the following articles in behalf of the Commonwealth, viz: - Men. D. Maiden, Men. F. Kiger & J. A. Shofflette were recognized each in the sum of \$50.⁰⁰ to be levied of their respective goods and chattels, &c. for the use of the Commonwealth, for their appearance before this Court on to-morrow morning at 10 o'clock, in behalf of the Commonwealth, upon said motion for bail. And at another day to wit: -

At a County Court continued and held in & for the County of Rockingham, at the Court House thereof, on November 30, 1876.
Commonwealth,

(10)

Upon an indictment for Lewis Randol, } Attempted Rape.

Lewis Randol, the prisoner, late of the County of Rockingham, who stands indicted for a felony by him committed, was this day again led to the bar of the Court in custody of the Jailor of this County, and thereupon, by counsel, withdrew his motion for bail, made on yesterday, and the prisoner was remanded to Jail.

(Note by Clerk: - At the Dec. Term 1876 of said Court, the Defendant was admitted to bail for his appearance at the January Term 1877. (his trial being continued) in the sum of \$300.⁰⁰ for himself & same for his surety,

(6)

Reuben A. Scott,

At Jan'y term, 1877, on motion of Atty. for Commonwealth,
his trial is continued until Feby. term 1877, and
heft. renewed his bail for his appearance, in same
sum, for himself & surety, Geo. G. Shayer,

At Feby. term, 1877, on motion of Atty. for Commonwealth,
his trial is continued until March term 1877, and
heft. renewed his bail for his appearance in
same sum, for himself & surety, Geo. G. Shayer,

And the heft. made his appearance at March
Term 1877, and his trial was fixed for the
7th day of said term, March 26, 1877, and again re-
newed his bail in same sum, for himself & his
surety, Geo. G. Shayer, for his appearance on said
7th day of the Term, &c,

J. P. Logan, Clerk.

And, at another day, to-wit:

At a County Court continued and held in and
for the County of Rockingham, at the Court House
thereof, on Monday March 26, 1877.

Commonwealth,

① Upon an indictment for
Lewis Randol. } attempted Rape.

This day Lewis Randol, who stands indicted
for a felony by him committed, appeared in
Court, in discharge of his recognizance entered
into on the second day of this term of the Court,
and thereupon, the following Jurymen were called,
examined by the Court, found to be duly quali-

(7)

fired, and free from exceptions, viz: R. M. Mooney,
A. W. Black, Jos. F. Song, William H. Taylor, J. B. Kratzer,
J. W. Payne, E. S. Sheets, Thomas W. Wells, John Pence,
John W. Sterne & Ran. D. Cushman; and the Court
then directed the Sheriff to summon five
additional Jurymen, from a List furnished
by the Court, and the following named Jurymen
having been summoned, appeared,
and were examined by the Court, found to be
duly qualified and free from exceptions, viz: M. W. Heolmer, W. E. Lemley, J. D. Price, Wm. C. McAlister,
& Solomon E. Rhodes; the panel of sixteen
being thus completed, the prisoner was furnished
a copy thereof, and having struck in therefrom
the names of four of the persons of said panel,
viz: A. W. Black, J. W. Payne, Ran. D. Cushman & Sol-
omon E. Rhodes, the remaining twelve of said
panel, viz: R. M. Mooney, John F. Song, William H.
Taylor, J. B. Kratzer, E. S. Sheets, Thomas W. Wells,
John Pence, John W. Sterne, M. W. Heolmer, W. E. Lemley,
J. D. Price & Wm. C. McAlister, thereby constituting
the Jury, who being thus elected, tried and sworn,
well and truly to try and true deliverance make
between the Commonwealth and the pris-
oner at the bar, and a true verdict render
according to the evidence, and not having time
to fully hear the evidence and argument of counsel,
were adjourned until to-morrow morning at
10 o'clock; and thereupon, they were placed in charge of

(8)

L. M. Rolston, Sheriff of this County & D. W. Bear, his deputy, to whom was administered an oath "That you shall keep this Jury together, and not have any communication with them yourselves, nor permit any other person to have any communication or converse with them touching this trial, and cause them to appear in Court to-morrow morning at 9 o'clock. So keep you God." And thereupon the prisoner was remanded to Jail.

And at another day to wit:—

At a County Court continued and held in the County of Rockingham, at the Court House thereof, on Tuesday March 27, 1877.

The Commonwealth,

^(vs)
Lewis Randol.

} Upon an Indictment
for attempted Rape.

This day, the prisoner Lewis Randol, who stands indicted for a felony by him committed, was led to the bar of the Court, in custody of the Jailor of this County, and thereupon came the Jury sworn and impaneled on yesterday for his trial, pursuant to their adjournment, and having fully heard the evidence and argument of counsel, retired to their room to consider their verdict, and after some time returned into Court, and upon their oaths do say, "we, the Jury find the Defendant, Lewis Randol, guilty in manner and form as charged in the within Indictment, and

(9)

3

ascertain the term of his confinement in the Penitentiary at two years and six months," J. D. Price, foreman. And thereupon the jury was discharged, and the prisoner was remanded to Jail.

And, now, at this day, to-wit:-

At a County Court continued and held in and for the County of Rockingham, at the Court House thereof, on Thursday, March 29, 1877.

The Commonwealth,

@
Lewis Randol.

{ Upon an indictment for
an attempt to commit a Rape

This day, Lewis Randol, late of the County of Rockingham, who was, at a former day of this term, convicted of a felony by him committed, was again led to the bar of the Court, in custody of the Jailor of this County, and it being enquired of the prisoner, if anything for himself, he had or knew to say, why the Court should not now proceed to pronounce judgment against him according to law, and nothing being offered, or alleged in delay of judgment, It is considered by the Court that the said Lewis Randol be imprisoned in the public Jail and Penitentiary House of this Commonwealth for the term of two years and six months, (the period by the Jurors in their verdict ascertained) to hard labor. And the Sheriff of this County is ordered as soon as possible, after the adjournment of this Court to remove

(10)

and convey the said Lewis Randol from the jail of this County to the public jail and Penitentiary House of this Commonwealth, therein to be kept imprisoned, and treated in the manner directed by law, for the term aforesaid.

Memo: Upon the trial of this cause, the Defendant, by counsel, excepted to opinions of the Court, first, in excluding certain testimony offered by him during the trial, 2^d in overruling his motion for a new trial and 3^d his motion in arrest of judgment, and tendered his Bills of Exceptions, which he prays may be signed, sealed and enrolled, and made a part of the record, which is accordingly done, and are in the words & figures following, to-wit:—

Commonwealth, }
Lewis Randol. } Upon an indictment for an
 } attempt to commit Rape,

Be it remembered, that upon the trial of this cause, the following facts were proved by the prosecution:—

That, on Saturday the 27th day of September 1873, she was alone at the house of her brother-in-law, Frank Ryger, in the County of Rockingham, that she had locked the doors and had gone up stairs that about 8 o'clock in the evening she heard some one below, trying to get in at one of the doors she went down and opened the door and found

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(11)

it was Lewis Randol, the prisoner; he came in and she gave him a chair; she went to one of the doors and he got up and came to her and put his arm gently on her shoulder; she immediately left him and passed across the room towards another door; he followed her and put his arms around her and pinioned her arms to her side; he forced her to a door leading into an adjoining room, opened the door and pushed her in and tried to put her on the bed at the same time endeavoring to pull up her clothes; she put her feet against the bed and wrenched herself from his embrace, telling him at the same time, if he didn't let her go, she would holler, and ran out of the house into the yard; he followed and caught her and forced her down into the door of the house; that she bit him on the hand, leaving the prints of her teeth, but drawing no blood, when he released his hold and she ran around the house followed by him, until she got to a door, into which she ran and locked herself up in the house; he then left, and she said to him, as he was leaving, "I will make you pay for this," to which he replied, "By Gosh, you can't do it," that when he entered the house he said nothing, and said nothing while he was making the assault; that she

(12)

was 24 years of age at the time of the occurrence, and had had previous to that time a child by a young man, who afterwards married her, and who was her husband at the time of trial; that at the time of the birth of the child the young man by whom she was seduced, was not 21 years of age, and his father thought he was too young to marry; that he went west directly after the birth of the child, and stayed about 18 months, when he returned and married her; that on the day of the assault her brother-in-law and sister had both gone away from home, and did not return until late in the evening; that the house was located on a private road which was occasionally travelled by the neighborhood; that the nearest house was about 300 or 400 yards distant; that she did not scream or make any outcry; that her sister returned Saturday evening, but she did not tell her sister or any one else until Sunday evening, assigning as a reason that "she did not know what to do about it;" that the prisoner was a married man and she had never been on intimate terms with him; that upon one occasion before his marriage he attempted to "wait on her" and she "slighted" him. That she never liked him, did not like his face, and that

she regarded him "as a low lived fellow," that at the time of the assault she was weak and she believed the prisoner could have put her on the bed, if he had determined to do so; that when she wrenched herself from his embrace, she told him if he didn't let her go she would holler; that she got the warrant on Monday, and did not apply for it, until then, although the Justice only lived about $\frac{1}{2}$ mile distant; that "she had been studying what to do." She further stated that when she opened the door she suspected that he (the prisoner) was coming for something bad, that he was a low lived fellow, and gave as a reason for her suspicion that he had caught her cousin 3 weeks after that. She stated further, that after the occurrence, the prisoner offered her money several times, but that she always refused it. She stated further that the prisoner did not attempt to strike or beat her or threaten to do so, if she did not yield.

It was further proved by the Justice who issued the warrant, that at the time the assault was made, the prisoner was working for him on his farm; that on the day the assault was made, he (the Justice) attended a Pic Nic about 2 miles distant from Kiger's house; that he saw Mrs. Kiger (sister of ~~xxx~~

prosecution) there, also the prisoner; that immediately after dinner the prisoner disappeared from the grounds and he did not see him again until the following Monday; that the prisoner, in going from the Peck to his own house, in order to go by Kiger's, would have to travel about 2 miles out of his way; On Monday morning a small boy of Mr. Kiger's came to the field where he was working, and brought him a message which took him to Kiger's; the prisoner saw the boy talking to him, and as he (the Justice) was passing over in the direction of Kiger's, he (the prisoner) asked him "where he was going," he replied "Frank Kiger had sent for him to come to his house and he didn't know what he wanted," and thereupon, the prisoner said "It's me he wants," he (the Justice) replied "What in the world is the matter, Lewis," to which the prisoner responded, "I was over there on Saturday, after that girl, Lizzie Showalter"; he (the Justice) went on over to Kiger's, issued the warrant, and on his return, the prisoner had left his team hitched to the harrow, where he had been at work; that he (the Justice) had issued five or six warrants for the arrest of the prisoner and placed them in the hands of officers at various times;

(15)

that the prisoner sold his property soon after the first warrant was issued through some Agent, but that he (the Justice) had seen him frequently in the neighborhood, and at some public occasions since the occurrence, but never attempted to arrest him, as "he did not think it was his duty."

It was further proved by the Constable to whom the first warrant was given, that he went to every point (including the prisoner's house) where he thought the prisoner would likely be, and then around through the country, but did not find the prisoner; that he had the warrant about 2 weeks.

It was further proved by Frank K. Riger the brother-in-law of the prosecutrix, at whose house she lived, that on the day of the occurrence he went to Kezletown, some miles distant, and his wife went to the Picnic, leaving the prosecutrix alone at home; that he heard nothing of the occurrence until Sunday night or Monday morning; that the prisoner had worked at his house about a year previous; that on the evening the warrant was issued, the prisoner came to him and said "Frank, I have done a hell of a trick at your house. I want you to go up and try and make it up for me. My God! I don't know what will become of my wife."

(16)

I would not have done what I did, if I had not been drunk."

It was further proved by a witness with whom the prisoner was working the morning the warrant was issued, that the prisoner said to him "I am gone up" and when the witness asked him, what for? he replied "I was over fooling about that girl."

It was further proved, that the prosecutrix bore an excellent character for chastity in the neighborhood, both before and after the occurrence, with the exception of the birth of the child referred to, and was regarded as a modest, retiring woman.

These being all the facts proved on behalf of the prosecution,

The prisoner offered to prove by witnesses, 1st That the prosecutrix had offered to drop this prosecution for \$200; that she said she could have got \$150. at one time, but she would not take less than \$200. to ~~xxx~~ the introduction of which the Attorney for the Commonwealth objected, and the Court sustained the objection.

2^d - That the prosecutrix had had carnal intercourse with other men, other than the prisoner, to the introduction of which the Attorney for the Commonwealth objected, and the Court sustained the objection.

To which opinion of the Court in sustaining the objections aforesaid, the prisoner by counsel excepted, and tendered this his 1st Bill of Exceptions, which he prayed might be signed, sealed and enrolled by the Court, which is accordingly done.

Chas. J. O'Ferrall, Esq.

Commonwealth, } Upon an Indictment
Lewis Randol. } for an attempt to com-
mit Rape.

Be it further remembered that, after the Jury had rendered their verdict "of guilty" in this cause, the prisoner by counsel, moved the Court to set aside the verdict of the Jury upon the ground that it was contrary to the law and the evidence as set forth in the 1st Bill of Exceptions, (which is made a part of this bill,) but the Court overruled the motion to set aside the verdict and award a new trial, to which opinion of the Court the prisoner excepted, and tendered this his second Bill of Exceptions, which he prayed might be signed, sealed and enrolled by the Court, which is accordingly done.

Chas. J. O'Ferrall, Esq.

And the Court, on the motion of the Defendant, by counsel, doth suspend the execution of the sentence of the Court, for the period of thirty days.

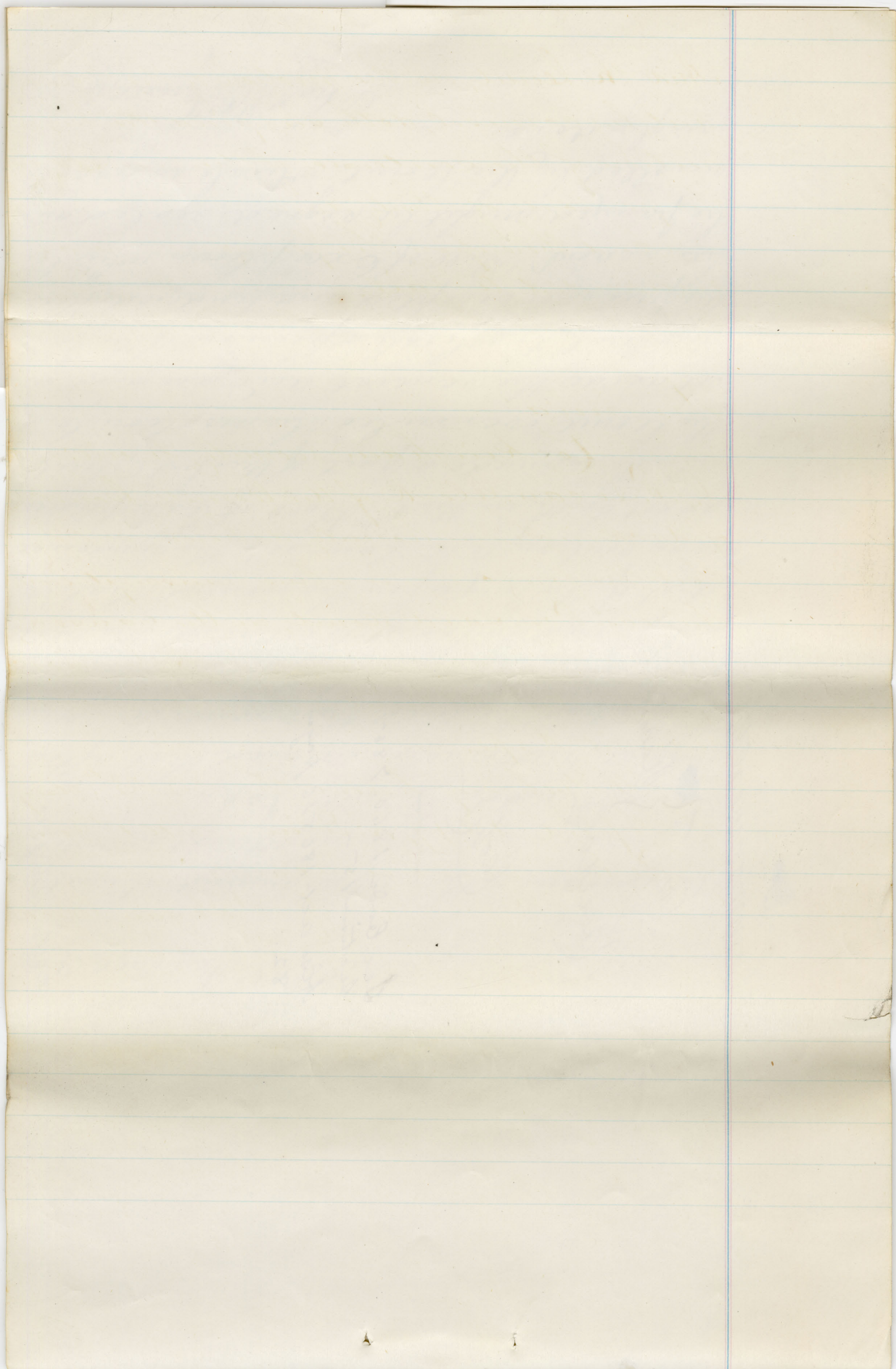
And thereupon, the prisoner was remanded to Jail.

Virginia:—

Rockingham County, to-wit:—
J. P. Logan, Clerk of the County Court
of Rockingham County, do hereby certify,
that the foregoing is a true transcript from
the record of said Court, in the case of
The Commonwealth vs. Lewis Randoe,
upon an indictment for an attempt to
commit Rape.

Witness my hand this the 13th day
of April 1877, and in the 101st year
of the Commonwealth.

J. P. Logan, Clerk.
" " "



Commonwealth,

(10) } Record.
Randol.

copy

See Code 1860. 785-
Section 15-

Also act-1865+6 page
82.

See for record p 500