L. A. V
J. F. H
L. H. K J. B. S

Commonwealth

Jury }

	H. F. Life alias Hal Life	
1	Samuel C. Brown	21
2	L. O. Armentrout	8
3	J. B. Heatwole	4
4	Jacob P. Wenger	4
5	A. P. Ballentine	8½
6	B. F. Lemovile	23
7	John W. Flick	8
8	S. C. Long	9
9	C. M. Frame	7
10	Wm W. Steine	
11	Frank R. Rho	
12	Daniel Cady	

6 + 6

4/20/09

No. 1.

The Court instructs the jury that the law presumes the accused to be innocent until he is proven guilty beyond all reasonable doubt and if there is upon the monds of the jury any reasonable doubt of the guilt of the accused, the law makes it their duty to acquit him. His guilt is not to be inferred because the facts proven may be consistent with his guilt, but they must be inconsistent with his innocense. Mere suspicion or probability of his guilt, however strong, is not sufficient to convict nor is it sufficient, if the greater weight or preponderence of evidence supports the charge in the indictment, but to warrant his conviction, his guilt must be proven so clearly that there is no reasonable theory consistent with the evidence upon which he can be innocent.

No. ____.

The Court instructs the jury that the law presumes the accused to be innocent until an is proven guilty beyond all reasonable doubt and it then is upon the minds of the jury the evidence upon which he can be innocent.

Reasonable doubt is the guilt of the accused, the law makes it their duty to acquit him. His guilt is not to be inferred but must be established to be consistent with his innocence. Here evidence of probability of his guilt, however strong, is not sufficient to convict nor is it sufficient, if the Greater weight of Preponderance of evidence consider the charge in the indictment but to warrant his conviction, his guilt must be proven so clearly that there is no reasonable theory consistent with the evidence upon which he can be innocent.

No. 2.

The Court instructs the Jury that in order to convict the prisoner at the bar the burden is upon the Commonwealth to show beyond all reasonable doubt the following facts: First, That upon the trial of Reuben, Laton and Kemper Hensley on indictment for felony in the Circuit Court of Rockingham County, on the 17th of October, 1908, the prisoner H. F. Life did wilfully and knowingly falsely swear as charged in the indictment;

secondly, That his testimony was to a material fact in that case. And if on a careful consideration of all of the evidence the Jury entertain any reasonable doubt as to whether the evidence given by said Life was material, they shall find said Life not guilty.

If the Jury believe from the evidence that the testimony given by said Life in the case aforesaid was true, or that he gave such testimony under an honest belief that the statement was true, then the Jury shall find the prisoner not guilty.

The court instructs the jury that it ought to convict the Kaiser-
er if the jury find the prisoner at Hoar Commonwealth of whom people
all testimony upon the following facts: First, that upon the
fifth of March, Lafon and Kemper Hendrix on indictment for treason
in the circuit court of Rockingham county, on the 17th of October,
1808, the prisoner H. W. Fitz did willfully and knowingly levy
war against the indictment:

That in the circuit court of Rockingham county, Virginia, on the
second day of May, 1808, the prisoner was in a measure legally
assembled, and it on a certain consideration of all of the evidence
case. And it on a certain consideration to be of whether the evidence
that the jury entertain the reasonable doubt as to whether the evidence
given by said Fitz was material, then they shall find said Fitz not guilty.

It the jury believe from the evidence that the prisoner Eyre
had said Fitz in the case aforesaid, saw Fitz, or that he Eyre saw
Fitz, then saw the prisoner, that the assembled multitude under
treasonable design on honest people, then the jury shall find the prisoner not guilty.

No. 3.

The Court instructs the Jury that to ~~xxxxx~~ authorize a conviction of perjury there must be two witnesses testifying to the falsity of the statement alleged to be perjured, or to facts showing the falsity of such statement, or the same must be established by one witness and corroborating circumstances of such a character as clearly to turn the scale and overcome the oath of the accused and the legal presumption of his innocence. This requirement, however, of two witnesses, or of one witness and corroborating circumstances, applies only to proof of the falsity of the testimony given by the accused alleged to be perjured. As to all other facts material or necessary to be proven to establish the guilt of the accused, one witness is sufficient if believed by the Jury.

No. 2.

The Court instructs the jury that if they believe a conviction of perjury there must be two witnesses testifying to the statements alleged to be perjured, or to insufficiency of the statement alleged to be false and that the jury must be satisfied by one witness and corroborating circumstances of such a character as clearly to find the accused guilty to the exclusion of the hypothesis of his innocence. This requirement, and the legal presumption of his innocence, are to be considered by the jury, however, to two witnesses, or to one witness and corroborating circumstances, applies only to proof of the statements to be false, and not to the falsity of the statement alleged to be perjured. As to all other facts given by the accused alleged to be perjured, it is enough if the jury believe from the evidence of witnesses or one witness, beyond a reasonable doubt.

No. 4.

The Court instructs the Jury that in so far as witnesses have been permitted in this case to tell what was testified to on the trial of the Henseleys, the same (except as to the testimony of Life on that trial) was admitted and is to be considered by the Jury only upon the question of whether or not the testimony of Life on that trial was of a material character, and is not to be considered by this Jury upon the question of whether the testimony of Life on that trial was in fact true or false, unless the witnesses were sworn in this case and gave the testimony over again on this trial. The testimony given by Life himself on the Hensley trial is, of course, to be considered by the Jury upon the question of whether the testimony charged in the indictment to be perjured testimony was in fact true or false.

The court instructs the jury that it is not as witnesses have been permitted in this case to tell what was testified to on the trial to the Henderson, the same (except as to the testimony of Lile on that trial) was admitted and it has been considered by the court in the instructions to be heretofore given in this case and gave the testimony over again on this trial.

The testimony given by Lile himself on the Henderson trial is, of course, to be considered by the jury upon the direction to whether the testimony charged in the indictment to be herein testimony was in fact true or false.

No. 5.

The Court instructs the Jury that if they believe from the evidence that the prisoner testified in the case of the Commonwealth against Layton, Reuben and Kemper Hensley in whole or in part as alleged in the indictment, then in determining whether such testimony or any portion of such testimony was material to the issues in said case, the Court tells the Jury that if such testimony or any portion thereof was either directly pertinent to the issue or point in question in that case, or tended to induce the Jury to give readier ~~xxxxxxxx~~ credence to the substantial part of the evidence, or tended to give weight and force to other material circumstances, or to give additional credit to the testimony of the accused himself as a witness in that case with respect to a material matter, or to the testimony of some other witness in the case with respect to a material matter, then such testimony of H. F. Life was material. And the Court further instructs the Jury that the degree of materiality is of no importance for, if the said testimony of the accused tended to prove any of the material matters in the said case of the Commonwealth against Reuben, Kemper and Layton Hensley, it is enough.

The Court instructs the jury that it they believe from the evidence that the witness testified in the case of the Commonwealth against Lewton, Kemper and Kemper Hensley in words or in part as alleged in the indictment, then in determining where such testimony was material to the issues in the case, the Court feels the jury that it such testimony or any portion of such testimony was material to the issues in this case, or tended to influence the jury to give a different verdict in that case, or tended to influence the mxxxxxxxx testimony of the witness, the Commonwealth against Kemper, Kemper and Lewton Hensley, it is enough.

To give additional weight of the testimony to the accused Hensley to give weight and force of other material circumstances, as a witness in that case with respect of a material matter, or to give additional credit of the testimony of some other witness in the case with respect of a material matter, then such testimony, H. T. Lile was material.

And the Court instructs the jury that the degree to material-ity it is of no importance to the jury of the accused to the case also of the material matter to which the testimony was material to the issues in this case, the Court feels the jury that it such testimony or any portion of such testimony was material to the issues in this case, or tended to influence the jury to give a different verdict xxxxxxxx testimony of the witness, the Commonwealth against Kemper, Kemper and Lewton Hensley, it is enough.

No. 2.

No. 6.

The Court instructs the Jury that in proof of guilt by circumstantial evidence it is not essential that the facts and circumstances established should produce on the minds of the jury absolute and demonstrative certainty, but it is sufficient if such facts and circumstances produce a moral certainty on the minds of the jury of the commission by the accused of the offense charged, to the exclusion of a reasonable doubt.

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No. 7.

The Court instructs the jury as a matter of law that they are not to go beyond the evidence to hunt up doubts, nor are they to entertain such doubts as are merely chimerical or conjectural. A reasonable doubt must be based upon the evidence, or on the absence of evidence essential to proof of the guilt of the accused. It must not be an arbitrary doubt without evidence to sustain it. It must be serious and substantial in order to warrant an acquittal. It must be a doubt of a material fact or facts necessary for the jury to believe to find a verdict of conviction and not of immaterial and non-essential circumstances.

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Instruction No. 8.

The Court instructs the jury that, in arriving at a verdict in this case, they are the sole judges of the facts and of the credibility of the witnesses and of the weight to be given to the evidence or any part of it. When witnesses testify opposite to each other, the jury is not bound to regard the weight of the evidence as evenly balanced, but they have a right in determining the weight to be given to the testimony of various witnesses, to take into consideration their interest in the result of the case, if they have any, their relationship to the parties involved, their feeling or bias, if any is shown, their appearance and demeanor on the witness-stand, their apparent candor and fairness, their apparent intelligence, the reasonableness or unreasonableness of their statements, their means of information and all the surrounding circumstances appearing on the trial, and to give or deny credit to the testimony of any witness as, under the circumstances, they may deem proper or to such extent as they think proper.

ark

The Court instructs the jury that in Virginia it is perjury if any person to whom an oath is ~~alwfully~~ lawfully administered on any occasion wilfully swear falsely on such occasion, touching any material matter or thing.

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The Court instructs the jury as a matterof law that if they believe from the evidence that in the trial of Layton, Reuben and Kemper Hensley, in the Circuit Court of Rockingham County, Virginia, on the 17th day of October, 1908, the prisoner Hal Life was called in the progress of said trial and that an oath was then administered to him as a witness to testify in said cause, by the said Court, or by its Clerk or Deputy Clerk, and that the said Hal Life thereupon testified in said cause at said time, in said Court, then there need be no further proof upon the part of the Commonwealth to show that, at the time said Hal Life testified, he did so under oath lawfully administered and in the trial of a falonycase in and by a Court then having jurisdiction to try said case.

No. 11.

The Court instructs the Jury that if they believe from

No. 11.

The Court instructs the Jury that if they believe from the ~~xxx~~ evidence that on the 17th day of October, 1908, the prisoner, Life, appeared in the Circuit Court of Rockingham County as a witness on behalf of the defense in the case of the Commonwealth vs. Reuben, Kemper and Layton Hensley, then on trial under an indictment charging them with entering the barn of Sarah M. VanPelt, on the night of the 22nd of September 1908, with intent to commit larceny therein, and that to the prisoner there was administered by said Court, or by its Clerk or Deputy Clerk, an oath that he would speak the truth in his testimony in the said case, and that the said prisoner, in the said Court, on the 17th day of October, 1908, after taking oath as aforesaid to truthfully testify as a witness in the said case, wilfully swore falsely that on the night of the 22nd of September 1908 he was at a house about three-quarters of a mile east of McGaheysville and about 150 yards northeast of the railroad crossing east of McGaheysville until shortly after twelve o'clock on that night, and that he then left the said house and came by way of the Bloomer Springs road to the Rockingham turnpike, and that, when within 25 or 30 yards of the said turnpike he heard a wagon coming east on said turnpike and saw three men in said wagon and that said wagon was drawn by two horses and had on it a wagon body, and that he then and there recognized one of the three men by his voice as Reuben Hensley and that he, the said Hal. Life, then returned to the residence of E. L. Lambert at the hour of half past twelve or one o'clock on that night; and if the Jury further believe that the said testimony of the said prisoner was material to the issues upon the trial of the said case of the Commonwealth v. Reuben, Kemper and Layton Hensley, or that any portion of said testimony was wilfully false and material to the issues of the said case of the Commonwealth v. Reuben, Kemper and Layton Hensley, then the

The Court instructs the Jury that if they believe from the ~~xxx~~ evidence that on the 17th day of October, 1908, the prisoner, Lite, appeared in the Circuit Court of Rockingham County as a witness on behalf of the defense in the case of the Commonwealth vs. Reuben, Kemper and Layton Henaley, then on trial under an indictment charging them with entering the barn of Sarah M. Varpelt, on the night of the 22nd of September 1908, with intent to commit larceny therein, and that to the prisoner there was administered by said Court, or by its Clerk or Deputy Clerk, an oath that he would speak the truth in his testimony in the said case, and that the said prisoner, in the said Court, on the 17th day of October, 1908, after taking oath as aforesaid to truthfully testify as a witness in the said case, wilfully swore falsely that on the night of the 22nd of September 1908 he was at a house about three-quarters of a mile east of Mossyville and about 150 yards northeast of the railroad crossing east of Mossyville until shortly after twelve o'clock on that night, and that he then left the said house and came by way of the Bloomer Springs road to the Rockingham turnpike, and that, when within 25 or 30 yards of the said turnpike he heard a wagon coming east on said turnpike and saw three men in said wagon and that said wagon was drawn by two horses and had on it a wagon body, and that he then and there recognized one of the three men by his voice as Reuben Henaley and that he, the said Wal. Lite, then returned to the residence of K. L. Lambert at the hour of half past twelve or one o'clock on that night; and if the Jury further believe that the said testimony of the said prisoner was material to the issues upon the trial of the said case of the Commonwealth v. Reuben, Kemper and Layton Henaley, or that any portion of said testimony was false and material to the issues of the said case of the Commonwealth v. Reuben, Kemper and Layton Henaley, then the said prisoner is guilty of perjury.

said prisoner is guilty of perjury and punishable under the law of Virginia by confinement in the penitentiary not less than two nor more than ten years.

each Petioner is guilty of perjury and punishable under the law
of Alberta by confinement in the Penitentiary not less than two
nor more than ten years.

Can. Life
Instructions Given

auto	10.00
clerk	2.00
printing	12.17
Engraving	4.27
Rent	99.40
Jany	164.70
	$292.94

D. Hay Jany

J. F. Forster	$15.00
H. M. Leitch	15.00
J. T. Chapman	13.20
Jamie "	15.00
Claude Eng	13.20
E. R. Thorley	12.60
A. J. Jones	12.60
D. M. Fuller	14.40
J. H. Gale	11.40
L. B. Herman	14.40
J. W. Tate	11.40
A. E. Andes	13.80
	162.00

No 5 — Refused

The Court instructs the Jury that the trial of the three Hensleys for felony in October, 1908, shall be given no consideration by them in determining the guilt or innocence of the accused in this trial as that case has been ~~determined~~ ended; and the only fact that the Jury have to determine in the case now is as to whether the accused, H. F. Life, is guilty of perjury as charged in said indictment.

Objected to. How could jury decide as to Life's guilt ~~without~~ - giving some consideration to the issues &c in Hensley case

The Court instructs the jury that in so far as witnesses have been permitted in this case to tell what was testified to on the trial of Layton, Reuben or Kemper Hensley (except as to the testimony of the accused Life on that trial), the same is to be considered by this jury only upon the question of whether or not the testimony of Life at that trial was of a material character, ~~and the testimony given upon the Hensley trial~~ and is not to be considered by this jury upon the question of whether ~~such~~ the testimony of Life on that trial was ~~truth or perjury~~ in fact true or false unless the witnesses were sworn in this case and gave the testimony over again on this trial.

The Court instructs the jury that the trial of the three Henslaye for felony in October, 1908, shall be given no consideration by them in determining the guilt or innocence of the accused in this trial as that case has been ~~determined~~; and the only fact that the jury have to determine in the case now is as to whether the accused, H. F. Lile, is guilty of perjury as charged in said indictment.

Refused

No 6

The Court instructs the Jury that although they may believe from the evidence that the prisoner made contradictory, evasive or even untrue statements, when not under oath, as to seeing or hearing the wagon referred to in the evidence, or as to his whereabouts on the night of the 22nd of September, 1908, such facts alone do not constitute perjury, but the crime of perjury must be proven as ~~defined~~ set out in the other instructions.

Objected to

No 8 Refused

The Court instructs the Jury that the ~~xxxxx~~ burden is upon the Commonwealth to prove beyond every reasonable doubt, and to the exclusion of every reasonable hypothesis consistent with the innocence of the accused, that H. F. Life committed the crime of perjury charged in the indictment.

Objected to. Already fully covered

No. 9 Refused nothing in which those words

The Court instructs the Jury that perjury under the law consists in wilful false swearing, and that the word "wilful" as used in the statute means not merely voluntarily but with a bad purpose signifying an evil intent without justifiable excuse, and the Jury are futher instructed that they cannot find the prisoner guilty unless they believe that in testifying as charged in the indictment he not only knew at the time he made the statements that they were false but also that he testified with a bad purpose.

Words underscored should be omitted

Refused

No. 10.

The Court instructs the jury that the law contemplates in this case a concurrence of twelve minds in the conclusion of the guilt before a conviction can be had, and if any individual member of the jury, after having duly considered all of the evidence in this case and after consultation with his fellow jurors, shall entertain a reasonable doubt as to the guilt of the accused, it is his duty not to surrender his own convictions, because the balance of the jury entertain different convictions with reference to the guilt or innocence of the accused.

Objected to

Inclusion in
Pace's report
on exhibits

No. 21.

Mr. Pace's opinion that the jury should not be influenced by the conclusion that the accused is a person of good character, because the evidence of the truth of the defendant's contention with reference to the guilt or innocence of the accused.

Alfred R.

Mod. & given

No 7

The Court instructs the Jury that before the prisoner at the bar can be convicted the burden is upon the Commonwealth to show beyond every reasonable doubt, and to the exclusion of every reasonable hypothesis consistent with his innocence, the following facts:

First. That upon the trial of Layton, Reuben and Kemper Hensley on indictment for felony in the Circuit Court of Rockingham County, on the 17th of October, 1908, the prisoner H. F. Life did wilfully and knowingly, falsely swear, as charged in the indictment;

Secondly. That his testimony was to a material fact in that case, and if on a careful consideration of all of the evidence the jury entertain any reasonable doubt as to whether the evidence given by said Life was material they shall find said Life not guilty; and

~~Thirdly,~~ That the testimony above referred to as given by the prisoner H. F. Life in the trial aforesaid, as alleged in the indictment, was false. ~~And~~ If the Jury believe from the evidence that the testimony given by said Life in the case aforesaid was true, or that he gave such testimony under an honest ~~xxxxxxx~~ belief that the statement was true, then the Jury shall find the prisoner "Not guilty."

No evidence on which to found reference to honest-belief -

Refused

Objected to

Sufficiently covered as for as approached by others - no evid. which applicable

The Court instructs the jury that after the Commonwealth has shown, through its evidence, that the accused wilfully swore falsely ~~established a prima facie case of perjury~~, the bruden of proof then rests upon the defendant, the prisoner, to show that the falsity of his testimony was occasioned by surprise, inadvertence or mistake and did not proceed from a corrupt motive on his part, if he proved exculpatory or any of these grounds.

Refused

No. 12.

The court instructs the jury that the law presumes every person charged with crime to be innocent until his guilt is established by the commonwealth beyond all reasonable doubt, and this presumption of innocence goes with the accused throughout the entire case and applies at every stage thereof, and if after having heard all the evidence in this case, the jury have a reasonable doubt of the guilt of the accused upon the whole case, it is their duty to give the prisoner the benefit of such doubt and to acquit him.

Covered by first-

Refused

No 3

The Court instructs the jury that a known motive for a course of action is always a powerful argument in favor of such action and the absence of any motive for its commission on the part of the person accused of a crime is strong evidence of his innocence, and this is particularly true in cases where the evidence is not positive and direct.

Hannon v. State, 70 Wisconsin 448

Objected to - But - if given should be qualified i.e. that it is not essential for Commonwealth to prove a motive - 2d after Commonwealth makes out - prima facie case, burden as to above is on accused -

See Cyc Vol 30 p. 1448

one written by Court in lieu

No 4 Refused
carries too much

The Court further instructs the Jury that to authorize a conviction of the accused in this case the burden is on the Commonwealth to prove beyond every reasonable doubt and to the exclusion of every reasonable hypothesis consistent with his innocence by two witnesses that the accused wilfully swore falsely to a material fact, or by one witness with such strong corroborative circumstances of such a character as to clearly turn the scale and ~~over-come~~ overcome the oath of the accused and the legal presumption of his innocence.

Swartz Case, 27 Gratt. 1027

Objected to.

See Wharton's Crim. Evidence § 387

3d. Greenleaf § 198

30 Cyc. p. 1452-1459

p. 1448

The Court instructs the jury that in order to justify a conviction of perjury there must be two witnesses, testifying that the accused wilfully swore falsely or testifying to facts that show he swore falsely, or the same must be established by one witness and corroborating circumstances of such a character as clearly to turn the scale and overcome the oath of the accused & the legal presumption of his innocence

The Court further instructs the Jury that to authorize a conviction of the accused in this case the burden is on the Commonwealth to prove beyond every reasonable doubt and to the exclusion of every reasonable hypothesis consistent with his innocence by two witnesses that the accused wilfully swore falsely to a material fact, or by one witness with such strong corroborative circumstances of such a character as to clearly turn the scale and ~~overcome~~ the oath of the accused and the legal presumption of his innocence.

Swartz Case, 87 Grat. 1027

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SATURDAY MORNING, Oct. 17, 1908.

HAL. LIFE, sworn, examined for the defendants by Mr. Stephenson:

Q You are Mr. Hal. Life? A Yes, sir.

Q Mr. Life, where do you live, sir? A My home is two miles east of McGaheysville.

Q Mr. Life, do you know the defendants here, Layton, Reuben and Kemper Hensley? A Yes, sir.

Q How long have you known them? A I have known the Hensley boys, I may say, all of my life.

Q Mr. Life, do you recall when they say this barn was broken open of Mr. VanPelt's? A Do I recollect? if I understand aright.

Q You recall hearing about it, do you? A Yes, sir.

Q You remember the night of the 22nd of September? A Yes, sir.

Q Will you please tell the jury whether or not you saw or recognized these three boys here, Reuben, Layton and Kemper Hensley, going through McGageysville that night, or near there? A Yes, sir. Well, gentlemen, I saw the boys as they came through McGaheysville. I am confident it was the boys. I recognized Mr. Reuben Hensley's voice. There is a road that leads off from McGaheysville, it turns off from the pike going towards the Bloomer Springs. I was in this road. The distance was about 25 ~~feet~~ yards across there, I suppose, not more than 50 ~~feet~~ yards at the furtherest across to the pike. They were coming down the pike and I was coming across this road to my boarding place. It wasn't later than half-past twelve. I heard Reuben talking and recognized his voice. I never said anything and they never said anything. I didn't see him and I don't think they saw me.

SATURDAY MORNING, OCT. 17, 1908.

HAL. LIKE, SWORN, examined for the defendants by MR. Afebnerson:

Q Don ste Mr. Hal. Like? A Yes, sir.

Q Mr. Like, where do you live, sir? A My home is two miles east of McCaprevville.

Q Mr. Like, do you know the defendants here, Pelton, Kemper and Kemper Hensley? A Yes, sir.

Q How long have you known them? A I have known the Hensley boys, I was six, all of my life.

Q Mr. Like, do you recall when they six this path was broken open of Mr. Ashbelf's? A Do I recollect it? I rudget-afraid sright.

Q Did you hear talking about it, do you? A Yes, sir.

Q You remember the night of the 8th of September?

A Yes, sir.

Q Will you please tell the Jury whether or not you saw or recognized these three boys here, Kemper, Pelton and Kemper Hensley, going through McCapreyvville that night, or near there? A Yes, sir. Well, gentlemen, I was the boys as they came through McCapreyvville. I am confident it was the boys. I recognized Mr. Kemper Hensley's voice. There is a road that leads off from McCapreyvville. It turns off from the pike going towards the Broomet springs. I was in this road. The distance was about 25 feet across there, I suppose, not more than 20 feet after the turnpiked across to the pike. They were coming down the pike and I was coming across this road to my posting place. If memory serves me, I left them half-past twelve. I heard Kemper talking and recognized his voice. I never said anything and they never said anything. I didn't see him and I don't think they saw me.

Q Can you saw how many men were in the wagon? A Yes, sir. I could distinguish three men in the wagon. They were driving a two horse team, with a body on the wagon, and it sounded to me like it was an empty wagon. I wouldn't suppose it to be a loaded wagon, because it was running like an empty body.

Q You recognized Reuben Hensley's voice? A Yes,sir.

Q Have you any doubt of that fact? A None in the world.

Q That was half past twelve o'clock? A Not later than half-past twelve o'clock.

Q You were going where? A To my boarding place.

Q Where was that? A At E. L. Lambert's. I was doing some painting up there at his house.

Q That was the night of the 22nd of September? A Yes, sir.

CROSS-EXAMINATION BY MR. CONRAD.

XQ What is your occupation? A At that time I was a painter. I was raised on a farm.

XQ What is your occupation? A Well, I guess I may say I am practically a laboring man.

XQ What are you in fact? You say, "practically, what are you in fact? A In fact I am a laboring man.

XQ At what do you labor? A Just whatever I can pick up.

XQ How long have you been at McGaheysville? A At this time?

XQ Yes, sir. A I have been home, I guess, about two months, now.

XQ How long had you been away? A I had been away four months.

XQ Where had you been? A Been to Cleveland,Ohio.

Q Can you see how many men were in the wagon? A Yes, sir. I could distinguish three men in the wagon. They were driving a two horse team, with a body on the wagon, and if assumed to be like it was an empty wagon. I would'n't suppose it to be a loaded wagon, because it was running like an empty body.

Q Did you recognize Hermen Hensley's voice? A Yes, sir.

Q Have you any doubt of that fact? A None in the world.

Q When was that? A At E. L. Lampert's. I was going from Lampert's-house twelve o'clock.

Q Was it half past twelve o'clock? A Not later than half-past twelve o'clock.

Q You were going where? A To my posting place.

Q Where was that? A At E. L. Lampert's. I was going home bringing up three men in his house.

Q Did you see any other men in the wagon? A Yes, sir.

CROSS-EXAMINATION BY MR. CONRAD.

Q What was the night of the 22nd of September? A Yes, sir.

Q What is your occupation? A At that time I was a farmer. I was retired on a farm.

Q What is your occupation? A Well, I guess I was a practicality a laboring man.

Q What are you in fact? You say, "practically, what are you in fact? A In fact I am a laboring man.

Q At what do you labor? A Just whatever I can pick up.

Q How long have you been at McCamey'sville? A At this time.

Q How long did you reside in Washington? A I was living about two miles from Lampert's.

Q Where was that? A At E. L. Lampert's. I was going home bringing up three men in his house.

Q You were going where? A To my posting place.

Q Did you see how many men were in the wagon? A Yes, sir. I could distinguish three men in the wagon. They were driving a two horse team, with a body on the wagon, and if assumed to be like it was an empty wagon. I would'n't suppose it to be a loaded wagon, because it was running like an empty body.

Q Have you any doubt of that fact? A None in the world.

Q Was that was the night of the 22nd of September? A Yes, sir.

XQ How long were you here before you went to Cleveland, Ohio? A How long was I here?

XQ Yes, sir. A The best part of my life, I suppose. I was raised down there two miles east of McGaheysville.

XQ How long was it before you left for Cleveland, Ohio, that you had been there, before you had been away somewheres else? A Before I had been away somewhere else?

XQ Yes, sir. A I don't know. I guess I had been around home about 5 or 6 months, perhaps, before I went to Cleveland,

XQ Where had you been before that? A Where had I been?

XQ Yes. A I was down in Maryland, railroading on the B. & O.

XQ Where had you been before that? A Well, I just can't remember that. Around home, I suppose. I was around home the best part of the time.

XQ Now, the fact is, you have been for the last ten years or more away from down there as much as you have been there, havn't you? A Oh, no. I have been around home for the last five years more than I have been away.

XQ You have been away just as much as you have been at home, hav'n't you? A I didn't say that. I said I had been around home more than I had been away.

XQ During the last five years you staid some in Maryland, and awhile in Cleveland, Ohio, and awhile at McGaheysville, and whereelse have you been? A I can't just recall. I have been around a good bit in my time. I generally go from one place to another whenever it suits me. I have been at home more than I have been away.

XQ Have the places at which you have lived in the last

XQ How long were you here before you went to Cleveland, Ohio? A How long was I here?

XQ Yes, sir. A The best part of my life, I suppose. I was raised down there two miles east of McGahayville.

XQ How long was it before you left for Cleveland, Ohio, that you had been there, before you had been away somewhere else? A Before I had been away somewhere else?

XQ Yes, sir. A I don't know. I guess I had been around home about 5 or 6 months, perhaps, before I went to Cleveland.

XQ Where had you been before that? A Where had I been?

XQ Yes. A I was down in Maryland, railroading on the B. & O.

XQ Where had you been before that? A Well, I just can't remember that. Around home, I suppose. I was around home the best part of the time.

XQ Now, the fact is, you have been for the last ten years or more away from down there as much as you have been there, haven't you? A Oh, no. I have been around home for the last five years more than I have been away.

XQ You have been away just as much as you have been at home, haven't you? A I didn't say that. I said I had been around home more than I had been away.

XQ During the last five years you stayed some in Maryland, and while in Cleveland, Ohio, and while at McGahayville, and wherever else have you been? A I can't just recall. I have been around a good bit in my time. I generally go from one place to another whenever it suits me. I have been at home more than I have been away.

XQ Have the places at which you have lived in the last

five years been so numerous that you cannot tell where you have been? A I guess not. I hav'n't had that much money that I could travel so numerously, but I have been around a good bit over the country.

XQ At what different places have you lived in the last five years? A I have lived in the last five years in Baltimore; I have lived in Cleveland, Ohio; I have lived in Bedford, Ohio, and I guess that is about all the places, -- Brunswick, Maryland.

XQ About three of those places commence with "B", which is the beginning of the alphabet. Run down the alphabet and see if you can't give us the names of some more places? A That is about as far as I can go.

XQ You stop when you get that far down the alphabet?

MR. HARRIS: Do you think that is proper?

MR. CONRAD: I don't think it is, but I didn't think Mr. Harris would object.

MR. HARRIS: We hav'n't time for pleasantry.

XQ How much of your time in the last five years have you been away? A I can't say positively. I have lived there at home more than I have been away.

XQ If you don't know how much time you have been away how do you know how long you have been at home in that time? A I know how much time I have been away.

XQ What occasion have you had to be with Kemper Hensley in the last five years? A They are neighbors.

XQ How close? A Mile.

XQ Where do you live? A East of McGaheysville.

XQ Do you live on the Rockingham turnpike, or where? A I live on the turnpike.

XQ Two miles east of McGaheysville? A Yes, sir.

XQ What day of the week was Tuesday? A Tuesday.

XQ That was very fortunate for you, but unfortunate for me.

XQ Where had you been the day before? A I had been painting.

XQ Where? A McGaheysville.

XQ At what place? A E. L. Lambert's.

XQ What had you been doing the day before that? A I guess I was taking my leisure. It was Sunday the day before that.

XQ You were taking your leisure the day before? A Yes, sir.

XQ The fact is that is your usual occupation, taking your leisure, isn't it? A I don't know that that's a question you can place before me as proper cross-examination to give me.

MR. HARRIS: Never mind, we will take care of that.

XQ What was it that suggested to you to volunteer the statement awhile ago that the wagon that passed by there sounded like an empty wagon? A What made me make the statement?

XQ What suggested to you to volunteer the statement? A I don't know that anything suggested that remark. I made the statement because I thought perhaps that was the question you wanted to get at.

XQ Why did you mention that it was an empty wagon? A Simply because it sounded that way.

XQ Where did you say you were going? I understood you to say that you were coming over on the main street of McGaheysville? A I said I was going to the Rockingham Turnpike from the Bloomer Spring road.

XQ Does the Bloomer Spring road come into the Turnpike from the North or from the South? A From the West.

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XQ Does the Bloomer Spring road come into the Turnpike from the North or from the South? A From the West.

XQ The Bloomer Spring road passes the Chesapeake & Western depot? A No, sir. From Dr. Yancey's it turns to the left towards the Bloomer Spring.

XQ The roads fork there, the Rockingham pike going on and the Bloomer Spring road turning off to the left, diagonally? A Yes, sir.

XQ Where had you been? A I don't know that I care to tell that.

XQ I don't like to inquire any further than necessary, but I find it necessary? A I decline to tell where I had been.

XQ I insist on knowing where you had been? A I was with a lady friend, allow me to state.

MR. STEPHENSON: Have you objections to telling for reasons personal to yourself?

WITNESS: Yes, sir.

MR. STEPHENSON: You have no right to ask the witness any question that may reflect upon himmpersonally, which is not connected with this case in any way, shape or form. It may tend to disgrace him.

MR. CONRAD: The witness has not stated any such thing as that.

MR. STEPHENSON: I make the statement.

MR. CONRAD: But the witness has not made that statement.

MR. HARRIS: Let the Court pass on that question.

THE COURT: I will allow him to answer. (Exception for accused.)

XQ Do you say that the answer to that question will tend to disgrace you? A I guess you are right.

XQ The answer to that question would tend to disgrace you?

Mr. CONRAD: (To the Court) A privilege of that character, if the Court please, is not one that the witness can arbitrarily determine for himself, any more than he can arbitrarily determine for himself that the answer would incriminate him. If the Court sees that the ex-

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Western depot? A No, sir. From Dr. Yancey's it turns to the left towards the Bloomer Spring.

XQ The road took there, the rockingham pike going on and the Bloomer Spring road turning off to the left, diagonally? A Yes, sir.

XQ Where had you been? A I don't know that I came to feel that.

XQ I don't like to indulge our thoughts than necessary, but I find it necessary; A I decline to tell where I had been.

XQ I insist on knowing where you had been? A I was with a lady friend, allow me to state.

MR. STEPHENSON: Have you objections to telling for reasons detained to courtesy?

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cuse is not a bona fide one, the Court will require him to answer.

THE WITNESS: Not of me, understand.

MR. CONRAD: The witness says it will not tend to incriminate him.

THE COURT: I will exclude the question. I don't care to bring other people's names in here.

WITNESS: I thank you very much, your Honor.

MR. CONRAD: I have the right to make this cross-examination for the purpose of being able to summon any witness that may be necessary to rebut or contradict this witness. If I am not permitted to know where he has been, or who he has seen, that cuts off the possibility of rebutting him.

THE COURT: I think the witness can state where he had been without stating with whom he was in company.

MR. HARRIS: He said he had been down the Bloomer Spring road and was coming up to the public road.

THE COURT: He need not state with whom he was, but where he was. He can state where he was without giving the name of the person he was with.

MR. HARRIS: Can you state where you were without naming the person?

MR. CONRAD: I am examining this witness.

THE COURT: I think the question should be asked by the Commonwealth, as to where the witness was.

XQ Where were you? A Where was I?

XQ Where had you been? A I can't tell you where I was that night. I can only tell you this.

XQ Where did you come from? A Not more than three-quarters of a mile. I decline to tell you where I was that night because I don't care to bring a lady into the case. Not that it will be any thing on my part of the question -- her part.

XQ Do you mean that to tell where you were would tend to disgrace the lady? A No, sir; no, sir. I don't say it would be any reflection on the young lady at all. I don't care for her to get in court. Another thing, I don't care to tell where I was.

CLERK OF THE COURT: Will the witness please stand up.

THE WITNESS: Yes, sir.

MR. CONRAD: The witness says it will not tend to incriminate him.

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MR. CONRAD: Where were you? A Where was I?

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Q. Do you mean that to tell where you were would tend to disgrace the lady? Is it on account of her? A No, sir; no, sir. I don't see why it would be right. I don't see that it would be any detriment to anybody but myself. I don't see why I should be asked to give it. Another thing, I don't see of tell where I was.

THE COURT: He need not state with whom he was, but where he was. He can state where he was without giving the name of the person he was with.

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THE COURT: I think the witness can state where he was without giving the name of the person he was with.

MR. HARRIS: He also had been down the Broomer Street road and was coming up to the public road.

THE COURT: I will exclude the question. I don't see that it is of any material importance.

MR. CONRAD: The witness says it will not tend to incriminate him.

THE WITNESS: Not to me, understand.

MR. CONRAD: I have the right to make this cross-examination for the purpose of testing the witness's memory, you know, sir, of the witness's memory to determine to what extent of credibility to testimony he has been, and to what extent of the possibility to testimony that one's life is not a good life one, the Court will repeat this to answer.

Furthermore, I wont unless I have to.

THE COURT: I think the witness should be required to tell where he was. It don't reflect on the young lady in any way, and I see no reason why he should not state where he was.

XQ If you were so anxious to give this protection you speak of to this lady why didn't you keep your mouth shut and not say anything about what you knew? (Objection; sustained.)

XQ To whom did you first tell the fact that you had seen these boys passing along that road? A If I had been taking such an active part in the trial I would have been here at first.

XQ Who did you first tell about this matter? A Told Mr. Sandridge and my brother.

XQ When? A Since the trial has been going on. A few days before it was going on. I didn't know I was taking any part in the trial, understand, at all.

XQ Now, which was it?

MR. STEPHENSON: Which was what?

XQ Was it before or since the trial has been going on; which answer is correct? A Well, I will say this. Since Mr. Sandridge and my brother were summoned, I told them.

XQ Where had you been? A When I told them this?

XQ Where did you come from when you came from over towards the Blue Ridge? A I decline to answer.

THE COURT: Answer the question. The question has to be answered.

MR. STEPHENSON: The Judge says you have to state it -- the place. You need not tell the name of any party, but you must name the house.

A I was three-quarters of a mile from McGaheysville, east.

The Court: I think the witness stated that the only objection he had was that he didn't want to name the person -- he didn't

want to mention her name in the court room. I think he ought to answer this question.

MR. STEPHENSON: You will have to state it.

WITNESS: I cannot do that.

XQ Where did you come from when you came down the Bloomer Spring road? A I came three-quarters of a mile --

XQ Where did you come from? A I had come from the first --- 150 yards east of the first railroad crossing northeast of McGaheysville. That is as near as I can tell you.

XQ Is there a house at that point? A Yes, sir.

XQ Whose house is it? A I can't tell you. That is all I am going to tell you about that.

XQ Whose house is that? A I decline to answer, Mr. Conrad.

MR. CONRAD: I will leave it to the Court.

MR. STEPHENSON: He has located the house, and that can be located by a half-dozen people. You can ascertain what house it is in five minutes.

THE COURT: I don't see why the witness cannot answer.

MR. STEPHENSON: You will have to give the name of the house.

WITNESS: I can't do it, gentlemen.

MR. STEPHENSON: You will have to tell it or be in contempt of court. The Court directs you and you will have to do it.

THE COURT: Witness, you will proceed with your answer.

MR. STEPHENSON: You will subject yourself to fine and imprisonment.

THE COURT: I will have to send you to jail if you don't answer. The ruling of the Court is that the Commonwealth has the right to know where you came from on that night,--

WITNESS: I have told them as good, without telling them the name. --

THE COURT: (Continuing) -- in order to identify the place you were, so the Commonwealth can trace your movements that night.

MR. COMRAD: I will leave it to the court.

Q. Where is that house is that hotel? A. Yes, sir.

Q. Is there a house at that hotel? A. I can't tell you. That is all I know. I can't tell you. That is as near as I can tell you.

Q. Where did you come from? A. I had come from the first --- 120 yards east to the first railroad crossing northeast to Washington.

Q. Where did you come from when you came down the Bloomer Spring Road? A. I came further-up-the-track to a mile --

MR. STEPHENSON: You will have to state it.

WITNESS: I cannot do that.

Q. Where did you come from when you came down the Bloomer road to mention that name in the court room. I think he ought to answer that question.

THE COURT: (Continuing) -- In order to identify the place you were, so the Commonwealth can trace your movements that night.

WITNESS: I have told them as good, without telling the name. --

THE COURT: Witness, you will proceed with your answer.

MR. STEPHENSON: You will argument contrary to the time and limitation.

THE COURT: I will have to send you to jail if you don't answer. The training of the court is that the Commonwealth has the right to know where you came from on that night.--

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Q. Where did you come from? A. I had come from the first --- 120 yards east to the first railroad crossing northeast to Washington.

Q. Is there a house at that point? A. Yes, sir.

Q. Where is that house? A. I can't tell you. That is all I know.

Q. Whose house is that? A. I can't tell you. That is as near as I can tell you.

MR. COMRAD: I will leave it to the court.

MR. HARRIS: Will your Honor permit us to confer with the witness on that point?

THE COURT: I will permit Counsel to confer with the witness on that point.

MEMO: Counsel and witness retire to another room. After returning, Counsel and Mr. Conrad confer at the Judge's Bench. Thereafter

THE COURT: The witness having put Counsel and the Attorney for the Commonwealth in possession of the place and name of the person, this given the Commonwealth the opportunity to make investigation, and it is not necessary for the witness to state the place in public.

XQ What time of the night did you leave? A What time of the night did I leave this house?

XQ That place? A Well, about fifteen minutes after twelve.

XQ What time had you gone there? A What time had I gone there?

XQ Yes, sir. A Well, now, I guess it was after I had my supper and dressed. Must have been about, I suppose half-past seven or eight o'clock, when I got there. Not having a watch and not caring much what time it was, I never inquired.

XQ How far did you have to travel to get to the Rockingham turnpike from that house? A Well, about a little over a quarter of a mile, I guess, something like that.

XQ You were alone coming down that road, I understand you? A Yes, sir.

XQ You were alone when you saw this team? A Yes, sir.

XQ You say you looked at your watch? A No, sir.

XQ Your idea of time was approximate. You approximate or estimate the question of the time? A Well, I know it was after 12 o'clock, because they were all going to bed or about in bed except the party and myself.

MR. HARRIS: Will your honor permit me to confer with the witness on that point?

THE COURT: I will permit counsel to confer with the witness on that point.

MEMO: Counsel and witness retire to another room. After refreshing, counsel and Mr. Ingersoll confer at the judge's bench. Ingersoll

THE COURT: The witness having been counsel and the Affordavy for the commonwealth in possession of the place and name of the person, which gives the commonwealth the opportunity of making investigation, and it is not necessary for the witness to state the place in empire.

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QX Yes, sir. A Well, now I guess it was after I had my supper and dressed. What have been about, I suppose half-past seven or eight o'clock, when I got there. Not having a watch and not certain much what time it was, I never inquired.

QX Now isn't this your name of street of 19 of the hockingham street from that house? A Well, about a little over a quarter a little, I guess, something like that.

QX You were alone coming down that road, I understand your?

A Yes, sir.

QX You were alone when you was this side road? A Yes, sir.

QX You were alone when you was walking down? A No, sir.

QX You see you looked at your watch? A No, sir.

QX Your table of time was approximate. You approximate of estimate the direction of the time? A Well, I know it was after seven o'clock, because that was the hour of bed to go about it bed except the party and Ingersoll.

XQ You say it was after twelve o'clock; as to how much after twelve it was when you got to the Rockingham turnpike, I say, is a matter of estimate on your part purely? A Yes, sir.

XQ When had you last had any occasion to observe the time of night? A At 12 o'clock, and when I got home, too, I heard the clock strike.

XQ What did it strike? A It struck half-past or one, I don't know which, because the clock struck every half hour,-- to the best of my knowledge it does, and it either struck one or half-past twelve.

XQ It might have been half-past one? A Couldn't have been that late.

XQ If you told by one stroke of the clock, and it struck one every half hour it might have been half past one? A I said to the best of my knowledge it was half past twelve o'clock.

XQ Well, if you were going by the one stroke of the clock it could have been half past one, couldn't it? A I don't think I was out at that time.

XQ Time was passing rapidly, I suppose? A No, sir, not especially.

XQ You weren't coming in particularly ahead of time? A Well, I knew I had to do a day's work the next day and I would like to get in about half a night's sleep, I knew that.

XQ And this Mr. Reuben Hensley, what did he say? A What did he say?

XQ Yes, sir. A Well, they were talking something about seeding

XQ What did Reuben Hensley say? A He said something about a drill, something about seeding. I don't know what he said or had reference to, only in reference to seeding and drilling. Something about a drill. He was talking about seeding business. I didn't

take any special account of it.

XQ Where had you last seen him before that? A Where had I last seen him?

XQ Yes, sir. A I had seen Reuben a couple of weeks before that, I suppose. I just don't know.

XQ When have you seen him since? A I hav'n't seen him since last night. When I came to Harrisonburg I seem him when he came out of the court house.

XQ You get the daily papers; you see the Harrisonburg daily papers? A I hav'n't had a chance to read the daily papers since the trial has been going on.

XQ You have heard of the case and heard it discussed down in your end of the County? A Yes, sir, of course it is talked about.

QX And you say your brother was up here as a witness in this case? He had been home? A No, sir, I don't say he has been home.

XQ He has not been home? A Since he has been in Harrisonburg?

XQ Yes, sir. A No, sir, not since then.

XQ Hasn't he been home since this trial began? A Yes, sir, but he has not been on home since he has been on the trial.

XQ How did you happen to talk to Mr. Sandridge in reference to this trial? A Mr. Sandridge is a very close neighbor there and had been working with my father and my brothers. My father and Mr. Sandridge have been logging a mill, and I perhaps see him when I am home every day -- come in contact with him every day.

XQ You didn't work at the saw mill? A No, sir.

XQ How did you happen to talk to him and tell him about coming out to the road? A How did I happen to talk to him?

XQ Yes, sir. A I heard the other evidence -- had heard them speak of the boys, that they didn't get home until 4 o'clock, and I said, They didn't? There was ~~something~~ somebody mistaken some

make any special account of it.

Q. Where had you seen him before that? A. Where had I seen him before that?

Q. Have you seen him since? A. Yes, sir.

Q. Haven't he been home since that first began? A. Yes, sir.

Q. He has not been home? A. Since he has been in Hartford? Since he has been home? A. No, sir. I don't see he has been home.

Q. And you say you've never seen him before as a witness in this case? A. No, sir, not since then.

Q. Yes, sir. A. Yes, sir.

Q. Where had you seen him before that? A. Where had I seen him before that, I suppose.

Q. Have you seen him since? A. I don't know.

Q. When have you seen him since? A. I've seen him when he came out of the court house.

Q. Yes, sir. A. I had seen him a couple of weeks before that, I suppose. I don't know.

Q. You refer the death penalty: you see the Hartford death penalty? A. I don't know the death penalty since the first has been going on.

Q. You have heard of the case and heard it discussed down in Hartford? A. Yes, sir, of course it is talked about.

Q. Do you know the defendant? A. Yes, sir.

Q. Where had you seen him before that? A. Where had I seen him before that, I suppose.

Q. Have you been home since the first began on the first.

Q. Has he been home since he has been on home since he has been home since the first began? A. Yes, sir.

Q. Yes, sir. A. No, sir, not since then.

Q. Yes, sir. A. Yes, sir.

Q. Do you know the defendant? A. Yes, sir. Of course it is talked about down in Hartford. A. I've heard the other evidence -- had heard them -- and I know, sir, I've had the opportunity of hearing some of the evidence. A. I've heard the other evidence -- and heard them -- and I know, sir, I've had the opportunity of hearing some of the evidence.

Q. Have you been home since the first began on the first? A. I've been home since the first began.

Q. Haven't he been home since the first began? A. Yes, sir.

Q. He has not been home? A. Since he has been in Hartford? Since he has been home. A. No, sir. I don't see he has been home.

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where because I saw them coming through McGaheysville not later than half-past twelve or one o'clock.

XQ You had heard what had been proven up here, or the testimony that had been given? A I hadn't heard anything about what was being proven.

XQ You said you heard that they didn't get home until 4 o'clock? A I didn't hear that it had been proven that at all.

XQ Did they have a lantern with them on the wagon? A No, sir, I didn't see any lantern.

XQ You say they didn't have any lantern at all? A I didn't see any.

XQ If there had been a lantern on that wagon; if they had had a lantern when they went through McGaheysville you would have seen it? A Well, I guess I would, unless it would have been down in the wagon bed or somewhere I couldn't have seen.

XQ Did you speak to these boys? A No, sir.

XQ You know them well and are intimate friends? A Yes, sir -- They are not intimate friends, no. I know the men well.

XQ How often have you seen Reuben Hensley in the last year? A I can't say that I have seen Reuben Hensley so often, because he has been working and I have been working. I don't often get down that way, and I can't say that I have seen Reuben so often.

XQ About how many times have you seen him in the last year? A I can't say.

XQ Have you seen him a half-dozen times? A Oh, yes, I guess I have seen him a half-dozen times.

XQ How often have you seen him in the last two months? A I hav'n't seen Reuben Hensley but once.

XQ How often have you seen him in the last six months? A I hav'n't seen him but once.

Q. Have you seen him a half-dozen times? A. Oh, yes, I guess I have seen him a half-dozen times.

Q. How often have you seen him in the last two months? A. I didn't see him but once.

Q. How often have you seen him in the last six months? A. I didn't see Kelpen Henatey but once.

Q. Did you ever see him a half-dozen times? A. No, sir.

Q. You know Glen Mett and the Infinite Criterion? A. Yes, sir — They are not Infinite Criterion, no. I know the men Mett.

Q. How often have you seen Kelpen Henatey in the last year?

A. I don't see that I have seen Kelpen Henatey so often, because he has been working and I have been working. I don't often get down to Glen Mett and I don't see that I have seen Kelpen so often.

Q. About how many times have you seen him in the last year?

A. I don't see.

Q. Have you seen him a half-dozen times? A. Oh, yes, I guess I have seen him a half-dozen times.

Q. How often have you seen him in the last two months? A. I didn't see him but once.

Q. How often have you seen Kelpen Henatey but once.

A. I didn't see Kelpen Henatey but once.

Q. Did you ever see him at your house? A. No, sir.

Q. Did you ever see him in the grounds? A. No, sir.

Q. You know Glen Mett and the Infinite Criterion? A. Yes, sir — They are because I see them coming through necessarily not later than half-past twelve to one o'clock.

Q. You have never met that been proven up here, or the testimony that had been given? A. I didn't hear about anything being proven.

Q. You said you heard that they didn't get home until 4 o'clock?

A. I didn't hear that at all.

Q. Do you see this map of this region? A. No, sir.

Q. Do you see this map in the lower right hand corner? A. I didn't see this map.

A. I didn't see this map but once.

XQ How often have you seen him in the six months before that?
A I can't account for that time.

XQ The wagon was rattling and making considerable noise?
A I can't say that it was making any more noise than ordinarily, than any other road wagon would have made.

XQ And he was talking at an ordinary tone of voice and the wagon was making an ordinary amount of noise? A Yes, sir.

XQ And you were how far off? A Well, I don't suppose at that distance it was any more than 25 or 30 yards across the corner of that place where the roads came together. I was on one road and they on the other. They were passing on one road and I was passing down the other.

XQ The Bloomer Spring road forks off like that and the Rockingham turnpike goes down like that? (Indicating.) A Yes, sir.

XQ You were coming towards McGaheysville, you say? A Yes, sir.

XQ And they were going towards Elkton? A Yes, sir.

XQ And you saw them right across this place (indicating.)?
A Across a little garden.

XQ Across this little lot? A Yes, sir.

XQ They were in this road and you were in this road? A Yes.

XQ And there is a house somewhere along in here, aint there?
A Yes, sir.

XQ You were 25 or 30 yards across this little lot or garden, that had fruit trees, and so on, in it? A Yes, sir.

XQ And that lot has a paling fence on one side; an open sort of paling fence on both sides, hasn't it? A No, sir.

XQ Well, it has paling fence on one side, and what kind of fence is on the other? A I don't suppose, if you looked at it pretty good there is not much fence along the other side. This garden has a paling fence around it. The garden sets in the corner and the house next, and there two lots right there together.

Q. Now often have you seen him in the six months before that?

A. I can't account for that time.

Q. The witness saw traffic and making considerable noise; was making this noise when he saw the horse and trap?

A. I can't say that it was making this more noise than ordinarily, when other people would have made.

Q. Did he see that it was a vehicle of some or other kind and the horse was making an ordinary amount of noise? A. Yes, sir.

Q. And was you walking at the time? A. No, sir.

Q. Well, if was passing fence on one side, did anyone kind of to passing fence on both sides, mean, if it? A. No, sir.

Q. And that lot was a passing fence on one side: an open soft that had trifle fresh, and so on, in it? A. Yes, sir.

Q. You were 25 or 20 yards across that little lot to Eastgen,

A. Yes, sir.

Q. And there is a house somewhere along in here, that there?

A. Across a little Eastgen.

Q. Across that little lot? A. Yes, sir.

Q. They were in that road and you were in that road?

Q. And you saw them right across that place (indicating.)?

A. Across a little lot? A. Yes, sir.

Q. And they were going towards Elkton? A. Yes, sir.

Q. You were coming towards Middlesville, you say? A. Yes, man turning back down like that? (indicating.) A. Yes, sir.

Q. The Bloomer spring road forks off like that and the horses passing down the other.

Q. And they on the other. They were passing on one road and I saw that 25 or 20 yards across the corner, it was six more than 25 or 20 yards that distance it was my opinion of that place where the roads came together. I saw on one road and they no the other.

Q. And you were from 1st 6th?

A. Well, I don't suppose so.

Q. How often have you seen him in the six months before that?

A. I can't account for that time.

Q. The wagon was trotting and making considerable noise?

A. I can't say that it was making six more noise than ordinarily, that other road wagon would have made.

Q. And he was talking at an ordinary tone of voice and the wagon was making an ordinary amount of noise? A. Yes, sir.

Q. And was you walking? A. No, sir.

XQ At a point about how far from where the Bloomer Spring road comes into the Rockingham turnpike, at ~~xxxxxpoinx~~ a point how far out that road were you when you say you saw this wagon and heard these men talking? A Well, I guess, to the best of my knowledge, it wasn't over 30 yards. Of course I can't say positive. I never measured it myself and had no occasion to.

XQ You say it was 25 or 30 yards across from where you were in this road to where the wagon was in the road where they were? A To the best of my knowledge, yes, sir.

Witness dismissed.

Xq. At a point about how far from where the Bloomer Spring road comes into the Rockingham turnpike, at ~~xxxxxpoint~~ a point how far out that road were you when you say you saw this wagon and heard these men talking? A Well, I guess, to the best of my knowledge, it wasn't over 30 yards. Of course I can't say positive. I never measured it myself and had no occasion to.

Xq You say it was 25 or 30 yards across from where you were in this road to where the wagon was in the road where they were? A To the best of my knowledge, yes, sir.

Witness dismissed.

Instruction under the Commonwealth's objected to by Keyes attorney 9

The Court instructs the jury that if they believe from the evidence that the prisoner testified in the case of the Commonwealth against Layton, Reuben and Kemper Hensley in whole or in part as alleged in the indictment, then in determining whether such testimony or any portion of such testimony was material to the issues in said case, the Court tells the jury that if such testimony or any portion thereof was either directly pertinent to the issue or point in question in that case, ~~tend~~ ~~to~~ tended to induce the jury to give readier credence to the substantial part of the evidence, or tended to give weight and force to other material circumstances, or to give additional credit to the testimony of the accused ~~witness~~ as a witness in that case himself or to the testimony of some other witness in the case, with respect to a material matter, then such testimony of Hal Life was material. And the Court further instructs the jury that the degree of materiality is of no importance for if said testimony of the accused ~~it~~ tended ~~to~~ to prove any of the material matters in the said case of Commonwealth against Layton, Reuben and Kemper Hensley it ~~was~~ is enough.

Objected to

The Court instructs the jury that if they believe from the evidence that on the 17th day of October, 1908, the prisoner, Hal Life, appeared in the Circuit Court of Rockingham County as a witness on behalf of the defence in the case of the Commonwealth vs. Layton, Reuben and Kemper Hensley, under an indictment charging said Layton, Reuben and Kemper Hensley with entering the barn of Sarah M. Van Pelt on the night of the 22d of September, 1908, with the intent to commit larceny therein, and that to the prisoner there was administered by said Court, or by its Clerk or Deputy Clerk, an oath that he would speak the truth in his testimony in the said case, and that the said prisoner, in the said Court on the said 17th day of October, 1908, after taking an oath as aforesaid, to truthfully testify as a witness in the said case, ~~willfully, falsely testified~~ wilfully swore falsely that on the night of the 22d of September, 1908, he was at a house about three-quarters of a mile east of Mc.Gaheysville and about one hundred and fifty yards north-east of the Railroad crossing east of Mc.Gaheysville until shortly after twelve o'clock on that night, and that he then left the said house and came by way of ~~Taylor~~ the Bloomer Springs Road to the Rockingham Turnpike and that, when within twenty-five or thirty yards of the said Turnpike, he heard a wagon coming east on said Turnpike and saw three men in said wagon and said wagon was drawn by two horses and had on it a wagon-body, and that he then and there ~~heard and recognized~~ one of the said three men by his voice as Reuben Hensley, ~~by means of his voice~~ and that he, the said Hal Life, then returned to the residence of E. L. Lambert, at the hour of half-past twelve or one o'clock on that night; and if the jury further believe that the said testimony of the said prisoner was material to the issues upon the trial of the said cause of Commonwealth against Layton, Reuben and Kemper Hensley, or that any portion of said testimony was false and material to the issues of the said cause of Commonwealth against Layton, Reuben and Kemper Hensley, then the said prisoner ~~was~~ is guilty of perjury and

The Court instructs the jury that if they believe from the evidence that on the 17th day of October, 1908, the prisoner, Hal Lite, appeared in the Circuit Court of Rockingham County as a witness on behalf of the defence in the case of the Commonwealth vs. Layton, Reuben and Kemper Henaley, under an indictment charging said Layton, Reuben and Kemper Henaley with entering the barn of Sarah M. Van Pelt on the night of the 22d of September, 1908, with the intent to commit larceny therein, and that to the prisoner there was administered by said Court, or its Clerk or Deputy Clerk, an oath that he would speak the truth in his testimony in the said case, and that the said prisoner, in the said Court on the said 17th day of October, 1908, after taking oath as aforesaid, to truthfully testify as a witness in the said case, wilfully, falsely testified that on the night of the 22d of September, 1908, he was at a house about three-quarters of a mile east of Mc.Gaheyville and about one hundred and fifty yards north-east of the Railroad crossing east of Mc.Gaheyville until shortly after twelve o'clock on that night, and that he then left the said house and came by way of Taylor Springs Road to the Rockingham Turnpike and that, when within twenty-five or thirty yards of the said Turnpike, he heard a wagon coming east on said Turnpike and saw three men in said wagon and said wagon was drawn by two horses and had on it a wagon-body, and that the then and there heard and recognized one of the said three men as Reuben Henaley by means of his voice and that the said Hal Lite then returned to the residence of E. L. Lambert, at the hour of half-past twelve or one o'clock on that night; and that the said testimony of the said prisoner was material to the issues upon the trial of the said cause of Commonwealth against Layton, Reuben and Kemper Henaley, or that any portion of said testimonywas false and material to the issues of the said cause of Commonwealth against Layton, Reuben and Kemper Henaley, then the said prisoner was guilty of perjury and

punishable under the law of Virginia by confinement in the penitentiary not less than two nor more than ten years.

Remarkable under the law of Virginia by commitment in the penitentiary not less than two nor more than ten years.

Sign case

Commonwealth } An indictment for a felony
vs
N. F. Lips alias Hal Lips

This day came the prisoner pursuant to his recognizance and the attorney for the Com. came also, and thereupon the prisoner craved oyer of the record of the Court referred to in the said indictment against him and submitted his special demurrer to said indictment on the ground that, while it is alleged in said indictment that J. R. Haas was the judge presiding at the trial of Reuben Hensley and others, in the said indictment referred to, it appears from said record that the Hon. J. W. Harrison was in fact the judge presiding at said trial, whereupon the Commonwealth having ~~joined~~ joined in said special demurrer as well as in the general demurrer of the prisoner to said indictment filed at a former day of the term, and the arguments of counsel having been heard pro & con for and against said demurrers and for and against the motion of the prisoner, submitted at a former day of the term, to quash said indictment, and the Court having

inspection the record aforesaid, referred to in said indictment and of which oyer was craved as aforesaid and had, and having considered said record in connection with said demurrers, it is considered and ordered by the Court that said demurrers ~~be overruled~~ of the prisoner to said indictment against him and his motion to quash said indictment be overruled, and that the trial of the prisoner on said indictment proceed on his plea of not guilty ~~heretofore~~ entered on his arraignment at a former day of this term.

And thereupon &c.

M. F. Lyon

We the Jury do find A. T. Life
guilty of imprisonment, as charged
in the indictment, and have
fixed his punishment in the
State Prison for the term of
three years.

Daniel Early foreman

S. C. 160 3-27-11 1M

Commonwealth of Virginia,

TO ALL TO WHOM THESE PRESENTS SHALL COME--GREETING:

WHEREAS, at a Circuit *Court held in and for the* County *of* Rockingham *in the month of* May*, in the year one thousand nine hundred and* Nine Hal F. Life *was convicted of* Perjury *and was thereupon sentenced to be imprisoned in the* Penitentiary *for the term of* Five Years*, and whereas it appears to the Executive that he is a fit subject for clemency,*

THEREFORE, I, WM. HODGES MANN, Governor of the Commonwealth of Virginia, have, by virtue of authority vested in me, pardoned and do hereby pardon the said Hal F. Life *and do order that he be forthwith discharged from imprisonment, but upon the terms and conditions following, namely:*

That the said Hal F. Life *will conduct himself in the future as a good, law-abiding citizen; and if ever again he be found guilty of a violation of the penal laws of the Commonwealth this pardon shall be null and void.*

Given under my hand and under the lesser seal of the Commonwealth, at Richmond, this Fifteenth *day of* May*, in the year of our Lord one thousand nine hundred and* Eleven*, and in the one hundred and thirty-*fifth *year of the Commonwealth.*

Wm. Hodges Mann

BY THE GOVERNOR:

B. O. James

Secretary of the Commonwealth.

I, Hal F. Life*, hereby accept the above pardon with the conditions therein set forth.*

Hal F. Life

Witness: O. Dombrick, Clerk

Hal Life

Pardon

In the Circuit Court of Rockingham.

Commonwealth

vs. Upon an indictment for Keeping.

H. L. Life.

And the said H. L. Life, by his attorney comes and says:

That there is not any record of the said supposed trial as in the indictment against him mentioned remaining in the said Circuit Court of the County of Rockingham in manner and form as the Commonwealth hath in its said indictment against him alledged; and this the defendant is ready to verify.

Stephen Hammer Harris

In the Circuit Court of Rockingham

Commonwealth

vs } Upon an indictment for Perjury

H. L. Life

Plea of Nul tiel record

Plea tendered & rejected

Apr. 10. 1909

J.N.H.

Haas

Stephenson

Harris

State of Virginia,

County of Rockingham, to-wit:-

The jurors of the Commonwealth of Virginia in and for the body of the County of Rockingham and now attending the said Court at its March term in the year 1909 upon their oaths present, that upon the 17th day of October in the year one thousand nine hundred and eight in the said county, and at the Circuit Court held for said County on the 17th day of October, 1908, at the court house thereof, by T. N. Haas, Judge of the said Court, Reuben Hensley, Layton Hensley and Kemper Hensley were jointly tried on an indictment for a felony , to-wit, for feloniously entering in the night time of the 22nd day of September, 1908, in said County, a certain barn, the property of Mrs. Sarah M. VanPelt, with intent to commit larceny therein, and certain grain, in said barn then and there being, did steal, take and carry away, as more fully appears by the records of said Court; and that upon the trial of the said Layton, Reuben and Kemper Hensley for the felony aforesaid, H. F. Life alias "Hal. Life" appeared in said Court as a witness for and on behalf of the said Layton, Reuben and Kemper Hensley, and was then and there in said County, and in the Court aforesaid, duly sworn by the said Circuit Court then and there sitting upon the trial aforesaid, that the evidence he should give upon the said trial should be the truth, the whole truth and nothing but the truth, the said Circuit Court then and there having authority by law to administer said oath; and that upon the trial of the said Layton Hensley, Reuben Hensley and Kemper Hensley for the felony aforesaid it then and there became material to inquire whether on the said night of the 22nd day of September, 1908, the said Layton Hensley, Reuben Hensley and Kemper Hensley passed the barn of the said Sarah M. VanPelt in going from the town of Harrisonburg eastward to the home of said Layton Hensley, Reuben Hensley and Kemper Hensley and if they did so, at what hour of said night the said Layton Hensley,

Reuben Hensley and Kemper Hensley left the said town of Harrisonburg, Virginia, and whether they travelled by means of a road wagon drawn by two horses,and at what hour, in so travelling, they passed through the town of McGaheysville, situate on the road known as the "Rockingham Turnpike," and between the said barn of Sarah M. VanPelt and the home of said Layton Hensley, Reuben Hensley and Kemper Hensley, and at what hour of the morning of the 23rd day of September, 1908. the said Layton Hensley, Reuben Hensley and Kemper Hensley reached their home east of said town of McGaheysville, and whether the said wagon bed on the said wagon appeared to be loaded upon said trip; and that thereupon the said H. F. Life, alias "Hal. Life ", being so sworn as a witness on said trial in the county aforesaid, in said Court, feloniously, wilfully and corruptly deposed and falsely swore and testified, among other things, that on the night of the 22nd day of September, 1908, he went from his then lodging place at the residence of E. L. Lambert to a certain house about three-quarters of a mile east of McGaheysville and about one hundred and fifty yards east of the first railroad crossing northeast of McGaheysville, on the Bloomer Springs road, and that he remained at the said house until about fifteen minutes after twelve o'clock of that night and started to return to his then lodging place at the residence of the said E. L. Lambert, and in so doing he came towards the said Rockingham Turnpike, and when within about twenty-five or fifty yards of the said pike, he heard a two-horse wagon, with a wagon body on said wagon,-- which wagon body appeared from the sound to be empty,-- in which wagon body were three men, one of whom he recognized by his voice to be said Reuben Hensley, and that said wagon was then going towards the home of the said Reuben, Layton and Kemper Hensley east from McGaheysville; that the hour at which said H. F. Life, alias "Hal. Life," heard said wagon and the voice of said Reuben Hensley was not later than half past twelve o'clock on said night of the 22nd of September, 1908; that when he, the said Life, returned to his said lodging place, at said E. L. Lambert's, he heard the clock strike either

Hanson Henley and Kember Henley left the site of their home in Hattiesburg, Mississippi, by a mule drawn wagon that travelled by night to avoid detection by a band of Klansmen who had vowed to kill the Negro Henleys if they ever came to the little town of Bloomer Springs Road, and that he remained at the site until about twenty minutes after two o'clock on that morning when the Klansmen arrived to terrorize the Negro family by firing a dozen shots into the house and burning the home to the ground. At the time of the Klan attack, the Negro family was holding a funeral service for a little girl who had died the night before, and it is alleged that the Klan had warned the family not to hold the funeral service. The Klan had also warned the family not to bury the child in the Bloomer Springs Road cemetery, but the family had ignored the warning and had buried the child there. The Klan had also warned the family not to bury the child in the Bloomer Springs Road cemetery, but the family had ignored the warning and had buried the child there. The Klan had also warned the family not to bury the child in the Bloomer Springs Road cemetery, but the family had ignored the warning and had buried the child there.

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for the hour of half-past twelve or the hour of one o'clock: Whereas in truth and in fact the said H. F. Life, alias "Hal. Life", did not on said night of the 22nd of September, 1908, go from his then lodging place, at said E. L. Lambert's, to a house on the Bloomer Springs road, about three-quarters of a mile east of McGaheysville, and about one hundred and fifty ~~years~~ yards east of the first railroad crossing northeast of McGaheysville, nor was the said H. F. Life, alias "Hal. Life," at the said house from about eight o'clock on the said night of September 22nd, 1908, until shortly after twelve o'clock of said night, nor did the said Life return from the said house on the Bloomer Springs road to his lodging place at said E. L. Lambert's after twelve o'clock on said night and then and there, to-wit, at said Lambert's, hear the clock strike half past twelve or one o'clock, nor did the said Life hear said wagon in which said Layton Hensley, Reuben Hensley and Kemper Hensley travelled on said night as it passed along the said Rockingham Turnpike within twenty-five or fifty yards of the Bloomer Springs road, nor did he, the said Life, at said time and place hear and recognize the voice of said Reuben Hensley on said wagon: whereby the said H. F. Life, alias "Hal. Life," did then and there upon said trial in the County aforesaid feloniously, wilfully and corruptly swear falsely, and feloniously committed wilful perjury against the peace and dignity of the Commonwealth of Virginia.

Upon the evidence of J. J. Fry, C. W. Wolcast
E. L. Lambert, Saml. Eaton & Pomp McCauley,

_____

witnesses sworn in open court and sent to the grandjury to give evidence.

Commonwealth
vs } Indictment - for a Felony
H. F. Life alias "Hal Life"

A True Bill

C. H. Hatur [illegible]
Foreman

arraigned & plea of Not guilty
& Case set for 10 April 1909.

We the jury find the prisoner H. F. Life alias Hal Life guilty of Perjury in manner and form as charged in the indictment and ascertain his punishment at confinement in the penitentiary for the term of five years

Daniel Early Foreman