#1093

DEC 1932

COMMONWEALTH

V.) Misdr. Appeal

V. L. KENNEDY Jan 17

6 mo + 200.00

Suspend 1st day April
of Term 1933

Elz Myers

Burrows
vs
Reynolds

Geo. C Howell
E. A Ringgold
Chas. A. Burtner

Sheriff Cost
seven Witnes $3.50

We the Jury find the defendant
V. L. Kennedy guilty as charged
and adjudged a fine of $200.00
and to serve 6 mo. on the State
Road,

Commonwealth

v. On an appeal from a decision of the Mayor of the City of Harrisonburg

V. L. Kennedy

This day came again the attorney for the Commonwealth, and the defendant, V. L. Kennedy, came in obedience to his recognizance, and the jury impanelled and sworn for the trial of this case came pursuant to adjournment; and having received instruction of the Court, the jurors were sent out of Court to consider their verdict, and after some time they came again into Court and returned the following verdict: "We, the jury, find the defendant, V. L. Kennedy, guilty as charged ~~and judge fine of $200.00 and to serve 6 months on the State Road~~ in the warrant and fix his punishment at six months in jail and a fine of $200.00, G.C. Dowell, foreman." Whereupon, the accused, etc.

.....

And thereupon, it is considered by the Court that the Commonwealth recover against the said V. L. Kennedy two hundred dollars, the fine aforesaid, and the costs incident to this prosecution, and that the said V. L. Kennedy be held to hard labor on the State Convict Road Force for the term of six months, the term fixed by the jury, and thereafter until his fine and costs be paid, or, until he is discharged pursuant to the statute for such cases made and provided; however, on motion of the defendant, by counsel, execution of this sentence is suspended until the first day of the April Term of this Court, being April 17, 1933, in order that said defendant may apply to the Supreme Court of Appeals for a writ of error to the judgment of this Court; and thereupon, on motion of the defendant he is admitted to bail in the penalty of Five Hundred Dollars, for his appearance before this Court on the first day of the April Term, and the said V. L. Kennedy, with Elizabeth Myers as surety, who justified to her sufficiency, were each duly recognized in the sum of Five Hundred for the personal appearance of the said V. L. Kennedy before this Court on the first day of the April Term thereof, to do and receive

as the Court may then and there direct and not to depart thence without leave of Court, and be bound under this recognizance until this charge is finally disposed of, or is declared void by order of a competent court.

Defendant's order
Corporation Commission
Entered May 23, 1924.

Whereupon the accused by his attorney, moved the Court to set aside the verdict on the following grounds: -

(1) Because the verdict of the jury is contrary to the law and the evidence.

(2) Because the verdict of the jury is without evidence to support it.

(3) Because of the admission of certain evidence tendered on behalf of the Commonwealth and received over the objection of the accused, exceptions being duly taken thereto, the reasons being assigned for said exceptions.

(4) Because of error in a certain instruction given by the court at the instance of the Commonwealth, which instruction was objected to by the accused, and duly excepted to by the accused, for reasons assigned.

(5) Because the verdict of the jury imposed an excessive fine and inflicted a cruel and unusual punishment contrary to Section 9 of the Constitution of Virginia, which motion the Court over-ruled, to which action the accused by counsel, excepted.

Information given by the court as the instance of the Commonwealth, which instruction was objected to by the accused, but duly excepted to by the accused, for reasons assigned.

(4) Because of error in a certain instruction given by the court to the jury which is contrary to the law and the evidence.

(5) Because the verdict of the jury is without evidence to support it.

(6) Because of the admission of certain evidence tendered on behalf of the Commonwealth and received over the objection of the accused. exceptions being duly taken thereto, the reasons being assigned for said exceptions.

(7) Because of the refusal of the instruction asked by the accused, for reasons assigned, for reasons assigned.

(8) Because the verdict of the jury imposes an excessive fine and inflicts a cruel and unusual punishment contrary to section 9 of the constitution of Virginia, which motion the court over-ruled, to which action the accused by counsel excepted.

Motion the accused by counsel excepted.

Moved the court to set aside the verdict on the following grounds: -

(1) Because the verdict of the jury is contrary to the law and the evidence.

(2) Because the verdict of the jury is without evidence to support it.

(3) Because of the admission of certain evidence tendered on behalf of the Commonwealth and received over the objection of the accused. exceptions being duly taken thereto, the reasons being assigned for said exceptions.

(4) Because of error in a certain instruction given by the court as the instance of the Commonwealth, which instruction was objected to by the accused, but duly excepted to by the accused, for reasons assigned.

(5) Because the verdict of the jury imposes an excessive fine and inflicts a cruel and unusual punishment contrary to section 9 of the constitution of Virginia, which motion the court over-ruled, to which action the accused by counsel excepted.

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon Charles Huffman, E. Warren Denton, Robert Morrison, L. M. Dickerson, Joe Miller, Stanley Riggott, H. L. Layman, E. A. Zigler, Walter Morrison, Policeman Smith, O. P. Strawn & Edward Griddle & R. S. Dunger & Thomas Smith & Lawrence Davis & Alard Kennedy

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at ~~10~~ 9:30 *o'clock, a. m., on the* 17th *day of* Jan. 19 33 *to testify and the truth to say in* ***behalf of the Defendant*** *in the prosecution of the Commonwealth, plaintiff, against* V. L. Kennedy

who stands charged with and indicted for a ~~*felony*~~ *misdemeanor.*

And this they *shall not omit under the penalty of £100. And have then and there this Writ.*

Witness, J. ROBERT SWITZER, *Clerk of our said Court, at the Court House, the* 19th *day of* Jan. 19 33 *and in the* 157th *year of the Commonwealth.*

J. Robert Switzer, *Clerk.*

News-Record, Harrisonburg, Va.

Executed Jan, 14th 1933 by delivering a true copy of the within summon to Chas Huffman, E. Warren Denton, Robert Morrison, L.M. Dickerson, Joe Miller, Walter D. Morrison, W.B. Smith, E.A. Zigler, Stanley Figgett, H.L. Layman, O.P. Strawn, Edward Friddle, R, S, Dwyer, Thomas Smith, Lauernce Davis, and Claud Kennady, each in person.

D.F. Newman Deputy for C.R. Fawley, S.R.C.

D.L. Kennedy

vs

Same

Jan. 17

1933

In the Name of the Commonwealth of Virginia:

To the Sheriff of Rockingham County, Greeting:

You are hereby commanded to summon Joe Liskey, Clarence Leake, E. H. Pittington, C. R. Van Pelt, John Logan, Harold Harpine, & Saylor Neff

to appear before the Judge of the Circuit Court of Rockingham County, at the Court House thereof, at ~~10~~ 9:30 *o'clock, a. m., on the* 17th *day of* Jan. 19 33, *to testify and the truth to say in behalf of the Commonwealth against* W. L. Kennedy

who stands charged with and indicted for a ~~*felony*~~ *misdemeanor.*

And this they *shall not omit under penalty of* £100. *And have then and there this Writ.*

Witness, J. ROBERT SWITZER, *Clerk of our said Court, at the Court House, the* 9th *day of* Jan. 19 33 *and in the* 157th *year of the Commonwealth.*

J. Robert Switzer, Clerk

P & L. PRESS, HARRISONBURG, VA

Executed Jan 14-1933 by delivering a true copy of the within summon to Joe Liskey Claud Lake E.P. Pittington C.R. Vanpelt John Logan Harold Harpine Gaylor Neff each in person.

L.P. Newman deputy for
C.R. Pauly S.R.C.

Com.

V.L. Kennedy

Jan. 17 1933

Commonwealth of Virginia

GOVERNOR'S OFFICE

RICHMOND

May 12,1933.

Mr. E. Dulaney Ott, Harrisonburg, Va.
Judge H. W. Bertram, Harrisonburg, Va.
Hon. D. W. Earman, Commonwealth's Attorney, Harrisonburg, Va.
Hon. John R. Saunders, Attorney General, Richmond, Va.
Sheriff Chas R. Fawley, Harrisonburg, Va.
V. L. Kennedy, Harrisonburg, Va.

Dear Sirs:

I have before me the application for the commutation of the sentence of V. L. Kennedy, convicted in January 1933 in the Rockingham Circuit Court of the possession of ardent spirits and sentenced to six months in jail, $200.00 fine and costs.

A petition has been filed with me, signed by many citizens and officials of Rockingham County, asking that executive clemency be extended this man. The trial judge and Commonwealth's attorney recommend that this man's jail sentence be commuted to thirty days, which recommendation is concurred in by the Attorney General.

In view of the recommendations of the trial judge, Commonwealth's attorney and the Attorney General, I am commuting this man's sentence to thirty days in jail, $200.00 fine and costs.

Respectfully yours,

Jno. Garland Pollard,
Governor.

Commonwealth of Virginia

GOVERNOR'S OFFICE

RICHMOND

May 12, 1933.

Mr. H. Delaney Ott, Harrisonburg, Va.
Judge H. W. Burtram, Harrisonburg, Va.
Hon. D. W. Harman, Commonwealth's Attorney, Harrisonburg, Va.
Hon. John R. Saunders, Attorney General, Richmond, Va.
Sheriff Chas H. Yowley, Harrisonburg, Va.
V. L. Kennedy, Harrisonburg, Va.

Dear Sirs:

I have before me the application for the commutation of the sentence of V. L. Kennedy, convicted in January 1933 in the Rockingham Circuit Court of the possession of ardent spirits and sentenced to six months in jail, $500.00 fine and costs.

A petition has been filed with me, signed by many citizens and officials of Rockingham County, asking that executive clemency be extended this man. The trial judge and Commonwealth's attorney recommend that this man's jail sentence be commuted to thirty days, which recommendation is concurred in by the Attorney General.

In view of the recommendations of the trial judge, Commonwealth's attorney and the Attorney General, I am commuting this man's sentence to thirty days in jail, $500.00 fine and costs.

Respectfully yours,

Jno. Garland Pollard,
Governor.

COMMONWEALTH OF VIRGINIA

GOVERNOR'S OFFICE

RICHMOND

RICHMOND
MAY 13
11 30 AM
1933
VA.

Judge H. W. Bertram,

Harrisonburg, Va.

VIRGINIA:

In the Supreme Court of Appeals, held at the Library Building in the City of Richmond on Tuesday *the* 28th *day of* March, 1933.

The petition of V. L. Kennedy for a writ of error and supersedeas to a judgment rendered by the circuit court of Rockingham county on the 18th day of January, 1933, in a prosecution by the Commonwealth against the said petitioner, for a violation of the prohibition law, having been maturely considered and a transcript of the record of the judgment aforesaid seen and inspected, the court being of opinion that the said judgment is plainly right, doth reject said petition, the effect of which is to affirm the judgment of the said circuit court.

A Copy,

Teste: _____ C.C.

Copy certified to lower court.

57/376
3/30/33

Crim
v
Kennedy
18 W 03

Instruction No. 1

The Court instructs the jury that if they believe from the evidence that the basement was occupied or controlled, solely by V. L. Kennedy, and that the ardent spirits found therein was the property of V. L. Kennedy, or that he was interested in the same, or knowingly aided or abetted or participated in its unlawful possession, then they must find him guilty.

Instruction No. 1

The Court instructs the jury that if they believe from the evidence that the premises were occupied or controlled by V. L. Kennedy, and that the agent acting toward therein was the property of V. L. Kennedy, or that he was interested in the same, or acted as agent or participated in its unlawful possession, then they must find him guilty.

Court v Kennedy MSSB

Instruction No. 2

The Court instructs the jury that if they believe from the evidence that the basement in which the moonshine liquor in this case was found was occupied ~~and~~ or controlled by V. L. Kennedy, solely, then the presumption of law is that said liquor was possessed by said Kennedy, but they are further instructed that this presumption may be overcome by satisfactory evidence showing that the location of said liquor in said basement was without the knowledge, connivance or consent of said Kennedy.

Objection is made by the accused to instruction no 2 given on regning of the Commonwealth on the ground that positive, affirmative evidence having been introduced by the accused on the subject of the ownership of the moonshine liquor, and there being no evidence introduced by the Commonwealth to contradict the same, there is no presumption of law against the accused; that this places upon the accused a burden which he should not carry.

HWB - Judge

Instruction No. 2

The Court instructs the jury that if they believe from the evidence that the basement in which the moonshine liquor in this case was found was occupied and controlled by V. L. Kennedy, then the presumption of law is that said liquor was possessed by said Kennedy, but they are further instructed that this presumption may be overcome by satisfactory evidence showing that the location of said liquor in said basement was without the knowledge, connivance or consent of said Kennedy.

Gem
v
Kennedy
Duty

Instruction No. A

The Court instructs the jury that unless they believe beyond every reasnable doubt that the liquor found in the basement under the store of the accused was the property of the accused, ~~they must find the accused not guilty~~, or that ~~the~~ he was interested therein, or that he aided, abetted, or participated in its unlawful possession, then they must find him not guilty

Instruction No. A

The Court instructs the Jury that unless they believe beyond every reasonable doubt that the liquor found in the basement under the store of the accused was the property of the accused, that some other person or persons had the right to use the basement for a purpose or purposes not inconsistent with the rights of the accused or that he might, or that he was interested therein, or that he aid, abetted, assisted or participated in its unlawful possession.

Com
v
Kennedy
MCB

INSTRUCTION NO. 13

The Court instructs the jury that in this case, as in all criminal cases, the accused's plea of not guilty raises a presumption of innocence in his favor and puts on the Commonwealth the burden of proving his guilt beyond every reasonable doubt. If, therefore, upon a consideration of the whole case, the testimony of the witnesses and the circumstances shown in evidence, there exists in the minds of the jury a reasonable doubt as to the guilt of the accused, they should find him not guilty. And the Court further tells the jury that a reasonable doubt is that state of the case which, after comparison and consideration of all the evidence, leaves the minds of the jurors in such condition that they cannot say that they feel an abiding conviction to a moral certainty of the truth of the charge.

INSTRUCTION NO. _____

The court instructs the jury that in this case, as in all criminal cases, the accused, whether or not charged with a crime, is presumed to be innocent in the first place until the contrary has first been shown by an adequate consideration of the evidence and the truth of the charge.

The jury are the community in the person of jurors and the guilt beyond every reasonable doubt. It, therefore, upon a consideration of the whole case, the reasonable of the evidence and the circumstances shown in evidence, there exists in the minds of the jury a reasonable doubt as to the guilt of the accused, then upon that ground alone they must find him not guilty. And the court further tells the jury that a reasonable doubt is that state of the case which, after consideration and consideration of all the evidence, leaves the minds of the jurors in such condition that they cannot say that they feel an abiding conviction to a moral certainty of the truth of the charge.

Case
v
Kennedy
1 Trial

Defendant's Instruction No. C

Before the jury can convict the accused they must be satisfied from the evidence that he is guilty of the offense charged in the indictment beyond all reasonable doubt. It is not sufficient that they should believe his guilt probable only, or more probable than his innocence. No degree of probability merely will authorize a conviction, but the evidence must be of such a character and tendency as to produce in the minds of the jury a moral certainty of the prisoner's guilt, to the exclusion of reasonable doubt.

Gen
Kennedy
1 Ward

Defendant's Instruction No. C

Before the jury can convict the accused they must be satisfied from the evidence that he is guilty of the offense charged in the indictment beyond all reasonable doubt. It is not sufficient that they should believe his guilt probable only, or more probable than his innocence. No degree of probability merely will authorize a conviction, but the evidence must be of such a character and tendency as to produce in the minds of the jury a moral certainty of the prisoner's guilt, to the exclusion of reasonable doubt.

Ore
v
Kennedy
No 20

INSTRUCTION NO. D.

The Court instructs the jury that if upon the whole evidence in the case there is any rational hypothesis consistent with the conclusion that the accused is innocent he cannot be convicted, and that the guilt of the accused is not to be inferred because the facts proved are consistent with his guilt, but they must be inconsistent with his innocence.

WARRANT OF ARREST

STATE OF VIRGINIA, CITY OF HARRISONBURG, TO-WIT:

To Frank L. Dovel, Chief of Police, or any Policeman of said City:

Whereas F.L. Dovel has this day made complaint and information on oath before me, WARD SWANK, Mayor of said City, that V.L. Kennedy and Claude Kennedy on the 22nd day of December, 1932 in said city did unlawfully have in their possession two gallons and three quarts of ardent spirits (moonshine)

in violation of an ordinance of the said city:

These are therefore in the name of the Commonwealth of Virginia to command you forthwith to apprehend and bring before me, or some other Justice, the body of the said V.L. Kennedy and Claude Kennedy

to answer the said complaint and to be further dealt with according to law.

Given under my hand and seal this 23rd day of December, 1932

Ward Swank (Seal)
Mayor

VIRGINIA, CITY OF HARRISONBURG, TO-WIT:

This day ..... came before me, WARD SWANK, Mayor of the City of Harrisonburg, Va., and severally and respectfully acknowledged themselves to be indebted to the Commonwealth of Virginia in the sum of $ ..... to be levied of their respective goods and chattels, lands and tenements, as to which obligation they waive their Homestead and all other exemptions.

YET UPON THIS CONDITION that if the said .....

.....

shall personally appear before ..... on the ..... day of ....., 193....., then and there to answer for and concerning the certain warrant herein set out and of which he stands charged and shall not depart therefrom without leave, then this recognizance shall be void otherwise to remain in full force and virtue.

Witness the following signatures and seals this ..... day of ..... 193.....

..... (SEAL)

..... (SEAL)

Taken and acknowledged before me this ..... day of ....., 193.....

.....

Mayor City of Harrisonburg, Va.

WARRANT OF ARREST

No. _____

CITY OF HARRISONBURG

vs. V. L. Kennedy and Claude Kennedy

Summons for City

E. T. Pettyjohn
C. R. Van Pelt
Clarence Lashley

Summons for Defense

COSTS (V. L. Kennedy)	
Fine	$ 100.00
Issuing and Trying Warrant	3.00
Commonwealth's Attorney	10.00
Summoning Witnesses	
Jail Fee	
Witnesses' Attendance	1.50
Arrest	1.00
Total	115.50

Executed ..... 193.....

THE SERVICE PRESS—531

Appeal filed Jan. 2, 1933.
J. Robert Switzer, Clerk.

Dec 24 ..... , 193 2

V. L. Kennedy

The defendent is found ..... guilty as charged, and adjudged to pay a fine of $ 100.00

To the Sheriff of Rockingham County

for the benefit of the City and the costs noted on this warrant, and to serve 4 months on the State Road Force, in jail.

Application for an appeal being made, the Court is hereby granted, and bond is fixed in the sum of $500.00 to repress & and it appearing that he is entitled to an appeal, the same is granted to put a term of 30 days from date of judgment, which term will end 1933 + it has been so ordered by the Court.

Mayor

Mr. Sheriff, you will execute this writ by taking the body of V. L. Kennedy into your custody & detained in the penitentiary until the 30 days shall expire or until he shall be discharged by the Circuit Court of Rockingham County.

Given under my hand this 24 day of Dec. 1932

Ward Swank
Mayor

Executed this 24 day of Dec. 1932 by putting the defendant in the penitentiary.

J. P. Sharpe
Sheriff

CERTIFICATE NO. 2.

Mr. Clarke Liskey, a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

By D. W. Earman, attorney for the Commonwealth: -

3-Q Mr. Liskey, you know where V. L. Kennedy's place of business is, do you in the City? A Yes Sir.

4-Q I want to ask you a few questions, no doubt you are reluctant to answer them. Did you ever get any whiskey over in the rear of his basement? A Yes, sir, through the basement part.

5-Q How long has that been? A Two months ago, I have an idea. I don't just know about the date. It has been quite a while ago.

Mr. Ott: I object to that on the ground that he has not said he got anything of Mr. V. L. Kennedy.

THE COURT: Objection overruled.

Mr. Ott: Exception is noted on the ground that the evidence of this witness does not specify that he got this of Mr. V. L. Kennedy.

6-Q Just state to the jury the procedure that you went through in order to get this whiskey. Just what was the system?

Mr. Ott: I object to the whole of that testimony.

THE COURT: Overruled.

Mr. Ott: Exception is noted to the ruling of the Court on the ground that this evidence is irrelevant and immaterial to the issue in this case.

Just what did you do, in order to get this liquor?

A I went in the door down there.

7-Q What door? A The basement door. I guess it is in the rear of the store, I don't know for sure.

8-Q Did you do anything before you entered this basement?

A Rang the bell.

CERTIFICATE NO. 4

MR. CLARKE FLAKEY, a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

By D. W. Earman, attorney for the Commonwealth: -

Q-1 Mr. Flakey, you know where V. L. Kennedy's place of business is, do you in the City? A Yes Sir.

Q-2 I want to ask you a few questions, no doubt you are interested to answer them. Did you ever see any mistake in the test of his pessement? A Yes: sir, although never in the test of his pessement.

Q-3 Now long was that pesm? A Two months ago. I have an idea. I don't just know exactly the date. It has been during a while ago.

MR. OFF: I object to that on the ground that the pesm not said he was surprised at Mr. V. L. Kennedy.

THE COURT: Objection overruled.

MR. OFF: Exception is noted on the Ground that the evidence of this witness does not specify that he was of Mr. V. L. Kennedy.

Q-4 That refers to the July the procedure that you went through in order to see this mistakey. That must was the statem?

MR. OFF: I object to the whole of that testimony.

THE COURT: Overruled.

MR. OFF: Exception is noted to the ruling of the court on the ground that this evidence is irrelevant and immaterial to the issue in this case.

What was did you do. In order to see this liquor?

A I went in the good down there.

Q-5 What good? A The pessement good. I guess it is in the test of the store. I don't know for sure.

Q-6 Did you go anything before you entered this pessement?

A Same the bell.

9-Q Where was the bell? A Beside the door.

10-Q Then you went into this little shed like. Did you close the door? A I don't remember.

11-Q After you got down into this little shed, what did you do? It appears that there are some auger holes through this door.

A I didn't see anything happen there.

12-Q What did you do? A I got what I went in there after.

13-Q How did you get it? Did someone ask you what you wanted? Who else was about there, who was on the inside?

A I don't know who was on the inside.

14-Q Just what did you do when you walked up to that door?

A I don't remember any more what I did do.

15-Q Did you tell them you --

Mr. Ott: Leading question.

THE COURT: Objection overruled.

Mr. Ott: Point saved on the ground that it is leading.

16-Q How did they know you wanted liquor? A I don't know if it was a man in there or not.

17-Q Whoever was inside, a man or woman, how did the person on the inside of this door know what you wanted? A I asked him.

18-Q Asked him for a drink? A Yes, sir.

19-Q Then what happened? A That's all that happened.

20-Q You got your drink, did you? A Yes sir.

21-Q Where did he put it up, in that little door on the metal plate? A Yes, sir.

22-Q What did you pay for it? A I don't remember any more what I did pay. It has been so long ago I have forgotten. Not so much, though, I don't think.

23-Q Don't you know whether you paid a dime, quarter or fifty cents, don't you remember? A No, sir.

24-Q Anyone with you? A I don't think there was.

25-Q How often were you over there? A Never but once that I remember of.

Q-6 Where was the party? A Beside the pool.

Q-7 Then you went into this little shed like. Did you close the door?

A I don't remember.

Q-8 After you got down into this little shed, what did you do?

A I didn't see anything happen there.

Q-9 It appears that there are some empty bottles through this door.

Q-10 Where were the bottles? A Beside the pool.

Q-11 How did they know you wanted liquor? A I don't know it, but it is a man in there or not.

Q-12 Whoever was inside, a man or woman, you did the person on the inside of this door know what you wanted? A I asked him.

Q-13 Asked him for a drink? A Yes, sir.

Q-14 Then what happened? A That's all that happened.

Q-15 You got your drink, did you? A Yes sir.

Q-16 Where did he put it up in that little door on the wall?

A Yes, sir.

Q-17 What did you do? A I don't remember any more what

I did then. It was been so long ago I have forgotten. Too much

though. I don't think.

Q-18 Don't you know whether you held a time, counter or little couple,

don't you remember? A No, sir.

Q-19 Anyone with you? A I don't think there was.

Q-20 How often were you over there? A Never but once that I

remember of.

Q-1 Did you tell them you --

A I don't remember any more what I did do.

Q-2 What what did you do when you walked up to that door?

A I don't know who was on the inside.

Who else was about there, who was on the inside?

Q-3 How did you get in? Did someone say you what you wanted?

Q-4 What did you do? A I got what I went in there after.

Q-5 What did you do? A I got what I went in there after.

Q-6 Where was the party? A Beside the pool.

Q-7 Then you went into this little shed like. Did you close

the door?

A I don't remember.

Q-8 After you got down into this little shed, what did you do?

A I didn't see anything happen there.

Q-9 It appears that there are some empty bottles through this door.

Q-10 Where were the bottles? A Beside the pool.

Q-11 How did they know you wanted liquor? A I don't know it,

but it is a man in there or not.

Q-12 Whoever was inside, a man or woman, you did the person on

the inside of this door know what you wanted? A I asked him.

Q-13 Asked him for a drink? A Yes, sir.

Q-14 Then what happened? A That's all that happened.

Q-15 You got your drink, did you? A Yes sir.

Q-16 Where did he put it up in that little door on the wall?

A Yes, sir.

Q-17 What did you do? A I got what I went in there after.

Q-18 What did you do? A I got what I went in there after.

Q-19 How did you get in? Did someone say you what you wanted?

Q-20 Where were the party? A Beside the pool.

Q-21 Then you went into this little shed like. Did you close

the door? A I don't remember.

Q-22 After you got down into this little shed, what did you do?

A I don't know who was on the inside.

Q-23 How often were you over there? A Never but once that I

remember of.

Q-24 Anyone with you? A I don't think there was.

Q-25 Don't you know whether you held a time, counter or little couple,

don't you remember? A No, sir.

Q-26 How often were you over there? A Never but once that I

remember of.

26-Q How did you know you could get the liquor there?

A Someone told me I could get a drink around there.

27-Q How long after you pushed that button before you got it, did you have to wait some time?

A I waited a few minutes.

28-Q Service pretty good, was it?

A Yes, sir.

29-Q What kind of liquor was it, was it red liquor, white liquor, or moonshine liquor? A It was kind of dark. I couldn't tell what color it was. I didn't pay any attention.

30-Q May be it was water you drank? A I don't think it was water.

MR. OTT: With deference to the Court, I want to make a motion to strike out that evidence on the ground that from the testimony of the witness, it does not show that this liquor was purchased from the defendant, V. L. Kennedy, and it in no way connects V. L. Kennedy with the sale of this liquor. It is immaterial and irrelevant -- I say that with deference of course, to you -- and the introduction of it will be immaterial and irrelevant. I suppose you overrule that?

THE COURT: The motion is overruled. This is not a prosecution for sale but prosecution for possession. This evidence is admitted, under the circumstances, to go to the jury to determine whether or not the accused knowingly possessed this liquor.

MR. OTT: and Exception is noted to the ruling of the Court for reasons above stated.

The ~~the~~ foregoing questions propounded to Clarke Liskey, witness for the plaintiff upon direct examination by the attorney for the Commonwealth, and, notwithstanding the defendant's objection, allowed by the Court, the defendant by counsel, excepted for the reasons hereinabove given.

Teste: this 11 day of February 1933.

H. W. Bertram Judge.

Q-58 How did you know you could see the light there?

A Someone told me I could see a light around there.

Q-59 How long after you heard that person before you got it?

A I waited a few minutes.

Q-60 Did you have to wait some time?

A Yes, sir.

Q-61 Certainly Good, was it?

A It was kind of dark. I didn't pay any attention. I couldn't tell what color it was. I didn't think it was white.

Q-62 What kind of light was it, was it red light, white light, or moonshine light? A It was kind of dark. I didn't think it was white.

MR. OTT: Mich deference to the court, I want to make a motion to strike out that evidence on the ground that it is immaterial and irrelevant -- I say that with deference to the court, to you -- and the introduction of it will be immaterial and irrelevant. I suppose you overrule that.

THE COURT: The motion is overruled.

MR. OTT: Exception is noted to the ruling of the court for reasons above stated.

The ~~the~~ interrogatories propounded to Clarke Lykes, witness for the plaintiff upon direct examination by the approved for the commonwealth, and notwithstanding the defendant's objection, allowed by the Court, the defendant by counsel, excepted for the reasons heretofore given.

Teste: this 11 day of February 1921.

Clerk.

CERTIFICATE NO. 3.

The Commonwealth having rested its case, the defendant, by his attorney, moved the Court to strike out the evidence for the Commonwealth, because it was plainly insufficient to sustain a verdict of guilty, which motion the Court overruled, to which action of the Court the defendant by counsel excepted on the ground that the evidence introduced by the Commonwealth did not show that the liquor was in the possession of V. L. Kennedy, or that V. L. Kennedy was the owner or occupant of the premises from which it was taken.

Teste: this 11 day of February 1933.

H W Berkeley

Judge.

CRIMINAL ACTION NO. 2

The Commonwealth having rested its case, the defendant, by his attorney, moved the Court for the sustain the Commonwealth's evidence for the insufficient to sustain a verdict of guilty, which motion the Court overruled, to which action of the defendant excepted on the ground that the evidence introduced by the Commonwealth did not show that V. I. Kennedy, or that V. I. Kennedy was in the possession of the liquor was the owner or occupant of the premises from which it was taken.

Teste: _____ Clerk.

_____ Judge.

CERTIFICATE NO. 4.

INSTRUCTION NO. 2.

"The Court instructs the jury that if they believe from the evidence that the basement in which the moonshine liquor in this case was found was occupied or controlled by V. L. Kennedy solely, then the presumption of law is that said liquor was possessed by said Kennedy, but they are further instructed that this presumption may be overcome by satisfactory evidence showing that the location of said liquor in said basement was without the knowledge, connivance or consent of said Kennedy."

The foregoing instruction was granted at the request of the Commonwealth, and the defendant objected on the ground that positive, affirmative evidence had been introduced by the defendant on the subject of the ownership of the moonshine liquor, and there being no evidence introduced by the Commonwealth to contradict the same; that there was no presumption of law against the accused; that this instruction placed upon the accused a burden which he should not carry, but the Court overruled the objection of the defendant, and granted the instruction, to which action of the Court the defendant excepted.

Teste: this 11 day of February, 1933.

H. C. Gherstrell
Judge.

CERTIFICATE NO. _____.

INSTRUCTION NO. 5.

"The Court instructs the jury that if they believe from the evidence that the payment in money and the moonshine liquor in this case was found was occupied or controlled by J. L. Kennedy solely, then the presumption of law is that said liquor was possessed by said Kennedy. But they are further instructed that this presumption may be overcome by satisfactory evidence showing that the possession of said liquor in said payment was without the knowledge, connivance or consent of said Kennedy."

The foregoing instruction was given at the request of the commonwealth, and the defendant objected on the ground that positive, affirmative evidence had been introduced by the defendant on the subject of the ownership of the moonshine liquor, and there being no evidence introduced by the commonwealth to contradict the same; that there was no presumption of law against the accused; that this instruction placed upon the accused a burden which he should not carry, and the Court overruled the objection of the defendant, and granted the instruction to which action of the Court the defendant excepted.

Teste: this 11 day of _____, 1921.

_____
Judge.

CERTIFICATE NO. 5.

The following instructions granted at the request of the Commonwealth and of the defendant, respectively, as hereinafter denoted, are all of the instructions that were granted on the trial of this case.

This instruction was granted at the request of the Commonwealth:

Instruction No. 1.

"The Court instructs the jury that if they believe from the evidence that the basement was occupied or controlled, solely by V. L. Kennedy, and that the ardent spirits found there in was the property of V. L. Kennedy, or that he was interested in the same, or knowingly aided and abetted or participated in its unlawful possession, then they must find him guilty."

This instruction was granted at the request of the Commonwealth:

Instruction No. 2.

"The Court instructs the jury that if they believe from the evidence that the basement in which the moonshine liquor in this case was found was occupied or controlled by V. L. Kennedy solely, then the presumption of law is that said liquor was possessed by said Kennedy, but they are further instructed that this presumption may be overcome by satisfactory evidence showing that the location of said liquor in said basement was without the knowledge, connivance or consent of said Kennedy."

This instruction was granted at the request of the defendant:

Instruction No. A.

"The Court instructs the jury that unless they believe beyond every reasonable doubt that the liquor found

CERTIFICATE NO. $\frac{B}{\ }$.

The following instructions granted at the request of the commonwealth and of the defendant, respectively, as hereinafter denoted, are all of the instructions asked were granted on the trial of this case.

This instruction was granted at the request of the commonwealth.

INSTRUCTION NO. 1.

"The court instructs the jury that it does believe from the evidence that the pasement was occupied or controlled, solely by A. L. Kennedy, and that the possession, then that they must find the Entry."

This instruction was granted at the request of the defendant.

INSTRUCTION NO. 2.

"The court instructs the jury that it does believe from the evidence that the pasement in which the moonshine liquor in this case was found was occupied or controlled by A. L. Kennedy solely, then the possession of such liquor in said pasement was without the knowledge or consent of said Kennedy."

This instruction was granted at the request of the defendant.

INSTRUCTION NO. A.

"The court instructs the jury that unless upon reasonable doubt that the liquor found in said pasement was without the knowledge or consent of said Kennedy, or that he was interested in the same, or knowingly aided and abetted or participated in its unlawful possession, then they must find the Entry."

in the basement under the store of the accused was the property of the accused, or that he was interested therein, or that he aided, abetted, or participated in its unlawful possession, then they must find him not guilty."

This instruction was granted at the request of the defendant:

Instruction No. B.

"The Court instructs the jury that in this case, as in all criminal cases, the accused's plea of not guilty raises a presumption of innocence in his favor and puts on the Commonwealth the burden of proving his guilt beyond every reasonable doubt. If, therefore, upon a consideration of the whole case, the testimony of the witnesses and the circumstances shown in evidence, there exists in the minds of the jury a reasonable doubt as to the guilt of the accused, they should find him not guilty. And the Court further tells the jury that a reasonable doubt is that state of the case which, after comparison and consideration of all the evidence, leaves the minds of the jurors in such condition that they cannot say that they feel an abiding conviction to a moral certainty of the truth of the charge."

This instruction was granted at the request of the defendant: Instruction No. C.

"Before the jury can convict the accused they must be satisfied from the evidence that he is guilty of the offense charged in the warrant beyond all reasonable doubt. It is not sufficient that they should believe his guilt probable only, or more probable than his innocence. No degree of probability merely will authorize a conviction, but the evidence must be of such a character and tendency as to produce in the minds of the jury a moral certainty of the

In the present model the state of the accused was the property of the accused, of that he was interested therein, of that he might, speaking, of benefiting in its criminal possession, then they must find him not guilty."

Each instruction was framed as the request of the defendant:

"Defore the jury can convict the accused they must be satisfied from the evidence that he is guilty of the offense charged in the **MATTER** before all reasonable doubt. It is not sufficient that they should believe the Emily Jones, or more probable than his innocence. Do probable only, or more probable than his innocence. Do degree of probability merely will entitle a conviction. But the evidence must be of such a character and tendency as to produce in the minds of the jury a moral certainty of the

of the defendant:

Instruction No. B.

"The Court instructs the jury that in this case, as in all criminal cases, the accused's plea of not Guilty raises a presumption of innocence in his favor and rests on the commencement the burden of proving guilt beyond every reasonable doubt. It, therefore, upon a consideration of the whole case, the testimony of the defendant and witnesses sworn in evidence, there exists in the minds of the jury a reasonable doubt as to the Guilt of the accused, they should find him not Guilty. And the Court further tells the jury that a reasonable doubt is that state of the minds of the jury in such condition that they cannot say that they feel an abiding conviction to a moral certainty of the truth of the charge."

Each instruction was framed as the request of the defendant:

Instruction No. C.

"The Court instructs the jury that in this prosecution, then they must find him not Guilty."

prisoner's guilt, to the exclusion of reasonable doubt."

This instruction was granted at the request of the defendant: Instruction No. D.

"The Court instructs the jury that if upon the whole evidence in the case there is any rational hypothesis consistent with the conclusion that the accused is innocent he cannot be convicted, and that the guilt of the accused is not to be inferred because the facts proved are consistent with his guilt, but they must be inconsistent with his innocence."

Teste: This 11 day of February, 1933.

A C Bertram Judge.

prisoner's guilt, to the exclusion of reasonable doubt.

This instruction was granted at the request of the defendant:

Instruction No. D.

"The Court instructs the jury that if upon the whole evidence in the case there is any rational hypothesis consistent with the conclusion that the accused is innocent he cannot be convicted, and that the guilt of the accused is not to be inferred because the facts proved are consistent with his guilt, but they must be inconsistent with his innocence."

"Teste: This _____ day of _____, 1932.

_____ Judge.

CERTIFICATE NO. 6.

After the jury had returned into Court and rendered its verdict, the defendant moved the Court to set aside the verdict and grant a new trial on the following grounds: (1) Because the verdict of the jury is contrary to the law and the evidence; (2) Because the verdict of the jury is without evidence to support it; (3) Because of the admission of certain evidence tendered on behalf of the Commonwealth and received over the objection of the defendant, exceptions being duly taken thereto, the reasons being assigned for said exceptions; (4) Because of error in a certain instruction given by the court at the instance of the Commonwealth, which instruction was objected to by the defendant, and duly excepted to by the defendant for reasons assigned; (5) Because the verdict of the jury imposed an excessive fine and inflicted a cruel and unusual punishment contrary to Section 9 of the Constitution of Virginia, which motion was overruled by the Court and judgment entered upon said verdict against the defendant, to which said action of the Court in overruling said motion and entering said judgment the defendant excepted.

Teste: this 11 day of February, 1933.

H W Bestram Judge.

CERTIFICATE NO. _____.

After the jury had returned in court and rendered their verdict, the defendant moved the court to set aside the verdict and grant a new trial on the following grounds: (1) because the verdict of the jury is contrary to the law and the evidence: (2) Because the verdict of the jury is without evidence to support it: (3) Because of the admission of certain evidence rendered on behalf of the Commonwealth and received over the objection of the defendant, exceptions duly taken thereto: (4) Because of the reasons being assigned for said exceptions: (5) Because of error in a certain instruction given by the court at the instance of the Commonwealth, which instruction was objected to by the defendant, and duly excepted to by the defendant for reasons assigned: (6) Because the verdict of the jury was contrary to section 8 of the constitution of Kentucky, which motion was overruled by the court and judgment entered upon said verdict against the defendant. To which said action of the court in overruling said motion and entering said judgment the defendant excepted.

Terms: date 11 day of September, 1899.

_____ Judge.

CERTIFICATE NO. 1 .

The following evidence, on behalf of the Commonwealth and of the defendant respectively, as hereinafter denoted, is all the evidence that was introduced on thetrial of this case.

TESTIMONY FOR THE COMMONWEALTH.

MR. H. S. HARPINE, a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

By Mr. Earman:

1-Q What is your name?

A H. S. Harpine.

2-Q You are a special policeman, are you not, of the City of Harrisonburg?

A Yes, sir.

3-Q You were acting in that capacity on December 22nd, last year?

A Yes, sir.

4-Q Mr. Harpine, state whether or not you and other officers armed with a search warrant, searched the premises of the building of V. L. Kennedy on West Market Street for ardent spirits?

A Yes, sir.

5-Q What officers accompanied you?

A Mr. Morrison, Mr. Leake and Mr. Neff.

6-Q What time of day was this search made?

A Eight o'clock in the evening.

7-Q Did you state the date when it was?

A It was the 22nd of December.

8-Q Just state to the court and jury what happened--what you found.

A Well, Mr. Leake and I went in Mr. Kennedy's store with a search warrant.

9-Q Up stairs?

A Yes, sir, in the store. Mr. Neff, I think he went to the back door, Mr. Leake, he goes in through Mr. Figgatt's store to enter the basement through Mr. Figgatt's basement. We went in Mr. Kennedy's Store, Mr. Morrison and I, and we told him we had a search warrant to search his place, and I went on back in the store and he ordered me to stop.

10-Q Who did?

A Mr. Kennedy did. He said not to search until he read the warrant.

TESTIMONY FOR THE COMMONWEALTH.

MR. H. S. HARPINE, a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

By Mr. Barman:

1-Q What is your name?

A H. S. Harpine.

2-Q You are a special policeman, are you not, of the City of Harrisonburg?

A Yes, sir.

3-Q You were acting in that capacity on December 22nd, last year?

A Yes, sir.

4-Q Mr. Harpine, state whether or not you and other officers armed with a search warrant, searched the premises of the building of V. L. Kennedy on West Market Street for drawn liquor?

A Yes, sir.

5-Q What officers accompanied you?

A Mr. Morrison, Mr. Leake and Mr. Neff.

6-Q What time of day was this search made?

A Eight o'clock in the evening.

7-Q Did you state the date when it was?

A It was the 22nd of December.

8-Q Just state to the court and jury what happened--what you found.

A Well, Mr. Leake and I went in Mr. Kennedy's store with a search warrant.

9-Q Up stairs?

A Yes, sir, in the store. Mr. Neff, I think he went to the back door; Mr. Leake, he goes in through Mr. Piggatt's store to enter the basement through Mr. Piggatt's basement. We went in Mr. Kennedy's store, Mr. Morrison and I, and we told him we had a search warrant to search his place, and I went on back in the store and he ordered me to stop.

10-Q Who did?

A Mr. Kennedy did. He said not to search until he read the warrant.

Mr. Kennedy and his boy Claude Kennedy, was in the store together, so Mr. Morrison, he stood at the front of the store and I went on to the back, and Claude Kennedy walked out and so we read the warrant and we went on to searching. Claude Kennedy went over to Figgatt's and he ran into Mr. Leake and Mr. Leake stopped him and told him--

11-Q While the search warrant was being read, Claude Kennedy left the store room and went somewhere, you don't know where?

A Yes, sir.

12-Q What, if anything, was found in the way of liquor?

A When I went out the back down to the basement, Mr. Neff was there and he said to get the key to get the key to unlock the basement, and I went back and said to Mr. Kennedy, I asked him to open the basement, and he said all right, and he came down and unlocked the basement. We went on in to search and I walked over to the potato bin, and found five fruit jars, one of them--four of them full and one of them about half full.

13-Q You found these four half-gallon fruit jars full and one about half full?

A Yes, sir.

14-Q Nine quarts?

A Yes, sir. I think it was nine quarts.

15-Q Do you have the liquor here that was foundthere?

A Yes, sir.

16-Q It was liquor, was it?

A It smelled like whiskey to me.

17-Q What kind of liquor--I mean did it appear to be moonshine liquor?

A Yes, sir.

18-Q It did not appear to be liquor acquired before the State went dry?

A It appeared to be moonshine.

19-Q You say Kennedy had the keys to this building?

A Yes, sir, he went down and unlocked the door for me.

20-Q That is the door--which door was that?

A There was a little shed over the place where you went into the

A There was a little bend over the hence where you went into the

Q-50 That is the door--which door was that?

A Yes, sir, he went down and unlocked the door for me.

Q-49 You saw Kennedy had the keys to their building?

A. If appeared to be mechanical.

Q-48 If she not appear to be likely acquainted before the dance went girl?

A Yes, sir.

Q-47 What kind of liquor--I mean did if appear to be moonshine liquor?

A If smelled like whiskey to me.

Q-46 If was liquor, was it?

A Yes, sir.

Q-45 Do you have the liquor here that was introduced?

A. Yes, sir. I think it was nine quarts.

Q-44 Nine quarts?

A Yes, sir.

Part Trial

Q-43 You found there just half-gallon tight jars full and one about

just of them full and one of them about half full.

Q-42 Then in the door--which door was that?

A There was a little bend over the hence where you went into the

Q-41 What/it happen, was found in the way of liquor?

A When I went out the back down to the pressure Mr. Holt was there

and he said to Sgt the key to Sgt the key to unlock the pressure, and I went

back and said to Mr. Kennedy, I asked him to open the pressure, and he said

all right, and he came down and unlocked the pressure. We went on in to search

and I walked over to the bottom where the hence where you went into the

one of them full and one of them about half full.

Q-39 You found these just half-gallon tight jars full and one about

half full?

A Yes, sir.

Q-38 Nine quarts?

A Yes, sir. I think it was nine quarts.

Q-37 Do you have the liquor here that was introduced?

A Yes, sir.

Q-36 If was liquor, was it?

A If smelled like whiskey to me.

Q-35 What kind of liquor--I mean did if appear to be moonshine liquor?

A Yes, sir.

Q-34 If she not appear to be likely acquainted before the dance went girl?

A If appeared to be moonshine.

Q-33 You saw Kennedy had the keys to their building?

A Yes, sir, he went down and unlocked the door for me.

Q-32 That is the door--which door was that?

A There was a little bend over the hence where you went into the

Q-31 What/it happen, was found in the way of liquor?

A When I went out the back down to the pressure Mr. Holt was there

and he said to Sgt the key to Sgt the key to unlock the pressure, and I went

back and said to Mr. Kennedy, I asked him to open the pressure, and he said

all right, and he came down and unlocked the pressure. We went on in to search

and I walked over to the bottom where the hence where you went into the

one of them full and one of them about half full.

Q-30 You found these just half-gallon tight jars full and one about

half full?

A Yes, sir.

Q-29 Nine quarts?

A Yes, sir. I think it was nine quarts.

Q-28 Do you have the liquor here that was introduced?

A Yes, sir.

Q-27 If was liquor, was it?

A If smelled like whiskey to me.

Q-26 What kind of liquor--I mean did if appear to be moonshine liquor?

A Yes, sir.

Q-25 If she not appear to be likely acquainted before the dance went girl?

A If appeared to be moonshine.

Q-24 You saw Kennedy had the keys to their building?

A Yes, sir, he went down and unlocked the door for me.

Q-23 That is the door--which door was that?

A There was a little bend over the hence where you went into the

before room and went somewhere, you don't know where?

A Yes, sir.

Q-22 What/it happen, was found in the way of liquor?

A When I went out the back down to the pressure Mr. Holt was there

and he said to Sgt the key to Sgt the key to unlock the pressure, and I went

back and said to Mr. Kennedy, I asked him to open the pressure, and he said

all right, and he came down and unlocked the pressure. We went on in to search

and I walked over to the bottom where the hence where you went into the

one of them full and one of them about half full.

Q-21 You found these just half-gallon tight jars full and one about

half full.

A Yes, sir.

Q-20 Nine quarts?

A Yes, sir. I think it was nine quarts.

Q-19 Do you have the liquor here that was introduced?

A Yes, sir.

Q-18 If was liquor, was it?

A If smelled like whiskey to me.

Q-17 What kind of liquor--I mean did if appear to be moonshine liquor?

A Yes, sir.

Q-16 If she not appear to be likely acquainted before the dance went girl?

A If appeared to be moonshine.

Q-15 You saw Kennedy had the keys to their building?

A Yes, sir, he went down and unlocked the door for me.

Q-14 That is the door--which door was that?

A There was a little bend over the hence where you went into the

basement. The outside door was not locked, this was the inside door. He had it padlocked on the outside and a bar across the door on the inside.

21-Q That is the door at the foot of the steps? Just describe that to the jury.

A There is a little room closed in over the steps with a door on the outside, and at the foot of the steps another door goes into the basement, with a hole cut in the door and a kind of a little plate of iron in that across there for a shelf, and some small holes bored in the door above this about the heighth of a man's head. There is a light right in the door frame, right above the door outside on the cellar steps.

22-Q Right at the top of the door?

A Right on the door frame on the outside of the door.

23-Q How many of these auger holes were in there?

A Two or three, I don't just recollect.

24-Q Where were they with reference to this hole?

A Right above it.

25-Q What else was found?

A There was a push botton on the outside of the building which was a call bell to the store and a push botton about midway of the store on a post that rang the same bell.

26-Q What else, if anything, was found in the basement besides the liquor?

27-Q Well, there were a good many potatoes in the bin where I found this whiskey. The whiskey was sitting on top of the potatoes. There were several cases of empty bottles in there, beer bottles. Inside the door there was a half gallon jar with water in it and a small glass.

28-Q Any fruit jars about the place?

A Yes, sir, a good many fruit jars on the back porch in a little closet like, built on the back porch.

29-Q How many would you tell the jury were there?

A I judge probably as many as a hundred and fifty around there.

30-Q Any evidence of these jars having at one time contained liquor?

P-20 Was evidence of those lamps burning in one flame communal lighting?

A I judge probably as much as a hundred and fifty whole spots.

P-21 How many would you call the lamps were spots?

A Right above it.

P-22 Where were they with reference to their posts?

A Right above it.

P-23 What else was found?

A There was a bread position on the outside of the building which was a small pell of the store and a bread position about midway to the store on a bone that terms the same pell.

P-24 What else, if anything, was found in the basement besides the lightup?

P-25 Well, there were a good many bones in the pile where I found this anvil. The anvil was sitting on top of the bones. There were several camen to which pottles in there, best pottles. Inside the door there was a small kellon lar. with metal in it and a small flame.

P-26 Was first lamp about the bones?

A Yes, sir, a good many first lamp on the back porch in a little clos- er like, built on the back porch.

P-27 How many would you call the lamp were there?

A I judge proably as much as a hundred and fifty whole spots.

P-28 Was evidence of those lamp burning in one flame communal lighto?

A Right above it.

P-29 What else was found?

A There was a bread position on the outside of the building which was a small pell of the store on a bone midway to the store and a bnaq position about the same pell.

P-30 What else, if anything, was found in the basement besides the li- ghtup?

P-31 Well, there were a good many bones in the pile where I found this anvil. The anvil was sitting on top of the bones. There were several camen to which pottles in there, best pottles. Inside the door there was a small Kellon lar. with metal in it and a small flame.

P-32 Was first lamp about the bones?

A Yes, sir, a good many first lamp on the back porch in a little clos- er like, built on the back porch.

P-33 How many would you call the lamp were there?

A Right above the door on the ceiling where.

P-34 Right at the top of the door?

A Right on the door frame on the outside of the door.

P-35 How many of those wedge poles were in there?

A Two or three, I don't recollect.

P-36 Was evidence of those lamp burning in one flame communal lightup?

A I judge probably as much as a hundred and fifty whole spots.

A Yes, we drained nearly a half a pint out of some.

31- Q That had been over there before the search?

MR. OTT: I object to what was done before. He asked what was--

THE COURT: I understood him to say that these jars--was this drained out of the jars you found there at this time?

A Yes, sir.

THE COURT: Objection overruled.

A I found several jars the last time--

MR. OTT: I object to that statement.

A When we found the liquor--

THE COURT: What did you observe?

A They all had whiskey that I examined.

32-Q Did Mr. Kennedy make his home where his store was at that time?

A No, sir, I think Mr. Kennedy lives up the street a little further.

33-Q You just found--who stays about his place, what help as he or did he have at that time?

A No one but him and his boy that night. I don't know whether he has any help or not.

34-Q What size is that basement, what is down there?

A Well, it is not such a large basement. It don't cover quite half the store, I don't think.

35-Q The basement is in the rear of the building?

A Yes, sir.

36-Q What kind of a floor?

A I think it has a cement floor.

<u>Cross Examination by Mr. Ott:</u>

1-XQ Mr. Harpine, you said something about fruit jars.

MR. EARMAN: Pardon me, there is one more question. What, if anything did you find on the steps leading down to this basement?

MR. OTT: Which steps are you talking about?

MR. EARMAN: In the rear of the building.

A Yes, we discussed nearly a dozen, a dozen out of some.

Q-12 What had been over there before the accident?

MR. OTT: I object to what was done before. He marked what was--

THE COURT: I understood him to say that there were--was there a date discussed out of the late November terms--

A Yes, sir.

THE COURT: Objection overruled.

A I terms several late the last time--

MR. OTT: I object to that argument.

A When we turned the lights--

THE COURT: What did you operate?

A They all had whitewash that I examined.

Q-13 Did Mr. Kennedy make this whole whole side state of that time?

A No, sir. I think Mr. Kennedy times up the street a little instead.

Q-14 Now that took place--the street where this place, what depth was it or did he have at that time?

A No one but him and his boy that night. I don't know whether he marked what was--

Q-15 What size is that parement, what is down there?

A Well, it is not such a large parement. It don't cover durice hall the street. I don't think.

Q-16 Was parement is in the time of the building?

A Yes, sir.

Q-17 What kind of a floor?

A I think it was a cement floor.

Cross examination by Mr. Ott:

J-XQ Mr. Hartman, you said something about trash here.

MR. ZAMMAN: Turton me, there is one more ques-
tion. What, if anything did you find on the street lamp down to this pavement?

MR. OTT: Which street are you talking about?

MR. ZAMMAN: In the test of the building.

MR. OTT: I object to what was done before. He marked what was--

THE COURT: I understood him to say that there was a date discussed out of the late November terms--was this date discussed on this time?

A Yes, sir.

THE COURT: Objection overruled.

A I terms several late the last time--

MR. OTT: I object to that argument.

A When we turned the lights--

THE COURT: What did you operate?

A They all had whitewash that I examined.

Q-18 Did Mr. Kennedy make this whole whole side state of that time?

A No, sir. I think Mr. Kennedy times up the street a little instead.

Q-19 Now that took place--the street where this place, what depth was it or did he have at that time?

A No one but him and his boy that night. I don't know whether he marked what was--

A The steps leading down to the basement?

MR. EARMAN: What, if anything did you see thrown on the steps.

A I don't recall anything, Mr. Earman, on the steps there.

MR.EARMAN: I just want to refresh your memory--any cigarette stubs, or anything of that sort?

A I didn't pay much attention.

2-XQ If I understand you correctly, you searched Mr. Kennedy's store and the basement thereunder on Thursday night, December 22nd?

A Yes, sir.

3-XQ About 8:30 o'clock?

A Yes, sir, it was around eight or eight thirty.

4-XQ Now, you have said something about fruit jars. These fruit jars you have referred to were in a ware room on the back porch, were they not?

A Yes, sir.

5-XQ They were the usual brands, Mason and other well known brands of fruit jars weren't they?

A I can't say about the brand.

6-XQ They were just the ordinary half gallon jars that people put up preserves and can fuits in, weren't they?

A Yes, sir.

7-XQ You speak about getting the odor of liquor from some of these jars. How many jars did you examine there that night?

A I guess I drained out about a dozen.

8-XQ Well, you mean that in some of these jars you got out a few drops of something you too k to be liquor or moonshine or something like that?

A I drained that much out in a pint bottle.

9-XQ That much out of them all together?

A Yes, sir.

10-XQ In other words you had quite a small quantity out of about a dozen jars?

A Yes, sir.

11-XQ Not a gill, hardly, that you got out of about a dozen jars?

A Inch, or inch and a half in a pint bottle.

A The apple landing down on the pavement;

MR. EARMAN: Would, in multiplying pie you see

fruit on the apple.

A I don't recall multiplying MY. Earman, on the apple fruit.

MR.EARMAN: I just want to refresh your memory to multiplying of

this sort

A I didn't pay much attention.

Q-X. Il I understand you correctly you mentioned Mr. Kennedy's store and the payment furnished on Thursday night, December 23rd?

A Yes, sir.

Q-X. About 8:30 o'clock?

A Yes, sir, it was around eight to eight thirty.

Q-X. Now, you have said something about Little John. These Little John were not seen in a white room on the back porch, were they not?

A Yes, sir.

Q-X. They were the usual friends, known and other well known friends of Little John Kennedy?

A I can't say about the friend.

Q-X. They were just the ordinary small Kaffirs John was friend people but up

friendships and can little in, mean, t they?

A Yes, sir.

Q-X. You speak about Kaffirs the odor of liquor from some of these John

was much John did you examine there that night?

A I guess I drank one about a dozen.

Q-X. Well, you mean that in some of these John Kaffirs you a ten drink

of something you too a . to be liquor or moonshine or something like that?

A I drank that much one in a time pretty.

Q-X. That much one of them all together?

A Yes, sir.

Q-X. In other words you had drink a small amount one to about a dozen

John?

A Yes, sir.

Q-X. Not a full, merely that you kaffirs to about a dozen John?

A Just, or that one a small in a time pretty.

12-XQ That was the sum total of what you drained from twelve jars?

A Yes, sir.

13-XQ Now, did you take the trouble to examine any other jars?

A No, sir, I did not.

14-XQ There was quite a quantity there, of fruit jars, were they not?

A Probably a hundred and fifty.

15-XQ There were some in cartons that were stacked up one on the other in that place, and there were others down loose?

A Yes, sir.

16-XQ Isn't that so?

A There were a lot of them in sacks.

17-XQ Do you remember whether they were all quarts or all half gallons?

A No, sir, I don't.

18-XQ So, out of each and every jar, you did not get much of what you thought was liquor?

A No, sir.

19-XQ And you couldn't tell the jury absolutely that that was liquor could you?

A Only by the smell, that is all.

20-XQ It might have been some other something that was like liquor or looked like liquor to you?

A Could have been.

21-XQ You say you made this raid on the 22nd of December?

A Yes, sir.

22-XQ When you went back for the key you got the key from Mr. Kennedy?

A Yes, sir, he went right down and opened the basement.

23-XQ There was no hesitation or reluctance about him giving it to you?

A No, sir.

24-XQ And after you had Mr. Robert Morrison, who was with you, and an officer of the City of Harrisonburg, to read to Mr. Kennedy the search warrant which gave you the right to make the search, he told you to go right ahead and search anywhere you pleased, didn't he?

A Yes, sir.

Q-12 Then was the end result of what you distinct from twelve lens?

A Yes, sir.

Q-13 Now, did you take the trouble to examine any other lens?

A No, sir. I did not.

Q-14 There was quite a number of little lens, were they not?

A Probably a hundred and fifty.

Q-15 There were some in cartons that were stacked up one on the other in that place, and there were other boxes lying around?

A Yes, sir.

Q-16 Then you went back for the key for the key from Mr. Kennedy?

A Yes, sir, he went right down and opened the basement.

Q-17 There was no hesitation or reluctance about him giving it to you?

A No, sir.

Q-18 And after you had Mr. Robert Mottram, who saw with you, and an officer of the City of Martinsburg, to look at Mr. Kennedy the search warrant which was for the right to make the search, he told you to go right ahead and look around, didn't he?

A Yes, sir.

Q-19 And you continued, didn't you, until the lens apparently first came into your possession?

A No, sir.

Q-20 If might have been some other something that was like lighter or looked like lighter to you?

A Could have been.

Q-21 You was under quite a lot of pressure at the time, was you not?

A No, sir, I did not.

Q-22 Now, did you take the trouble to examine any other lens?

A Yes, sir.

Q-23 There were a lot of them in boxes.

A Yes, sir, I don't.

Q-24 So, out of such and every lens, you did not pay much of any attention to in that place, and there were other boxes lying around?

A Yes, sir.

25-XQ Didn't he say that?

A Yes, sir.

MR. EARMAN: Was Mr. Logan with you?

A No, sir.

MR. CLARENCE LEAKE, a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

By Mr. Earman:

1-Q You are a special officer for the City of Harrisonburg?

A Yes, sir.

2-Q And were on December 22nd of last year?

A Yes, sir.

3-Q You were one of the officers, I believe, that searched the premises here on West Market Street for liquor on that day?

A Yes, sir.

4-Q Just what part did you play in it, what did you have to do with it?

A Well, I taken Figgatt's side to go down in the basement. I went in there to tell Mr. Figgatt I wanted to go down on his side in case there was any liquor being moved away, so I could stop it.

5-Q Kennedy's Store is immediately west of Mr. Figgatt's Grocery Store?

A Yes, sir.

6-Q And there is a basement under Kennedy's Store and also under Figgatt's Store?

A Yes, sir.

7-Q There is a passageway between the two basements?

A Yes, sir.

8-Q And you entered Figgatt's basement and went where?

A You have to go down from Figgatt's side to get over into Mr. Kennedy's side. So I goes down in there and waits there a few minutes, and down comes Mr. Kennedy and opens the door and reached up his hand to lift the bar off and I took it off because I was standing there.

9-Q What Kennedy was that?

A Mr. Kennedy.

25-Q Didn't he say that?

A Yes, sir.

MR. BARMAN: Was Mr. Logan with you?

A No, sir.

MR. CLARENCE LEAKE, a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

By Mr. Barman:

1-Q You are a special officer for the City of Harrisonburg?

A Yes, sir.

2-Q And were on December 22nd of last year?

A Yes, sir.

3-Q You were one of the officers, I believe, that searched the premises here on West Market street for liquor on that day?

A Yes, sir.

4-Q Just what part did you play in it, what did you have to do with it?

A Well, I taken Piggott's side to go down in the basement. I went in there to tell Mr. Piggott I wanted to go down on his side in case there was any liquor being moved away, so I could stop it.

5-Q Kennedy's store is immediately west of Mr. Piggott's Grocery Store?

A Yes, sir.

6-Q And there is a basement under Kennedy's Store and also under Piggott's Store?

A Yes, sir.

7-Q There is a passageway between the two basements?

A Yes, sir.

8-Q And you entered Piggott's basement and went where?

A You have to go down from Piggott's side to get over into Mr. Kennedy's side. So I goes down in there and waits there a few minutes, and down comes Mr. Kennedy and opens the door and reached up his hand to lift the bar off and I took it off because I was standing there.

9-Q What Kennedy was that?

A Mr. Kennedy.

There was a board setting there, I guess it was that, on a little box, and a half gallon of water, and a whiskey glass about that big. (Indicating). And he walks in and sets the water and the glass behind the board

10-Q Who did that?

A Mr. Kennedy. Sets the half gallon jar with water in it and the whiskey glass, he sets it down behind the board beside the wall. I goes on over to Mr. Figgatt's side then, and he starts over there and I says you can't go over there, and he says "That's right" and he locks the door and I comes on around. While I was in Mr. Figgatt's side this Claude Kennedy he comes running through there and he sees me and I told him to wait a minute, I wanted to be the first one to go down in the basement, and it looks like it taken his breath.

MR. OTT: I object to that statement. It is depicting what it looks like. That is of no evidential value.

THE COURT: Overruled.

He came running around there then, and his father came down. I tried to go into Mr. Figgatt's store a few minutes ahead of the other boys in order to get in the basement, so after they went across to the other side, that is when this boy came running over.

11-Q V. L. Kennedy entered the building from the rear?

A Yes, sir.

12-Q He had the key and unlocked that door?

A Him and Mr. Neff was out there and he was the first one in the door.

13-Q How was that door fastened?

A There was a bar right across the top. You had to reach through a hole for to lift that bar up. That was on the inside. It was locked on the outside.

14-Q Padlocked on the outside and barred on the inside?

A Yes, sir.

15-Q Just describe to the jury something about the electric equipment there inthe basement.

A The lights over in the basement are on a switch from Mr. Figgatt's

THE COURT: CONTINUED.

He came running around there then, and his instrument came down. I tried to go in-
to Mr. Tyrkraff's store a few minutes after 9 of the other boys in order to keep in
the basement, so after they went across to the other side, that is when this boy
came running over.

Q-11 W. L. Kennedy entered the building from the north?

A Yes, sir.

Q-12 He had the key and unlocked that door?

A Him and Mr. Hoff was out there and he was the first one in the door.

Q-13 How was that door insecure?

A There was a pat right across the top. You had to reach through a
hole not to little that put up. There was no the inside. It was locked on the out-
side.

Q-14 Padlocked on the outside and pulled on the inside?

A Yes, sir.

Q-15 Just describe to the jury somewhat about the electric equipment
there in the basement.

A. The lights over in the basement are on a switch from Mr. Tyrkraff's

side, and a light right on the outside of the door. There is a little shed built over the place and a light up in the door frame and a hole in the door about middle way and a little iron plate stuck in there like it was put in there to serve drinks over and a bell on the outside of this shed right up at the other door at the right that comes down the basement steps, and that rings a bell inside the store.

16-Q How about the outside door to this shed, how was it fastened? Do you remember about it?

A I don't remember about the outside door. I think it has a hook on it.

17-Q Hook it from the inside?

A Yes, sir.

18-Q Any other lights in the basement except the one over the door, or do you remember?

A I think there's one or two lights on his side. Two, I think, on his side.

19-Q I mean in this little shed?

A No.

No Cross-Examination.

MR. B. S. NEFF, a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

By Mr. Earman:

1-Q What are your initials, Mr. Neff?

A B. S. Neff.

2-Q You are an officer of the City of Harrisonburg?

A Yes, sir.

3- Q What do you know about finding some liquor over here in the basement of Kennedy's, under his store?

A Well, Mr. Leake got me one evening about seven o'clock and told me to be at a certain place, and Mr. Harpine and Mr. Morrison went in. Mr. Leake went on ahead of us, he was going in Figgatt's side. Mr. Harpine and Mr. Morrison went in through Kennedy's and I went to the back. The only thing I saw, Harpine had come out the back and asked Kennedy for the key, and Kennedy brought

edge, and a light right on the underside of the door. There is a little space

door

pull over the place and a light up in the\ frame. And a pole in the door

about middle way and a little from brass screw in there like it was but in

there to serve drinks over and a pull on the underside of this bend light up at

the other door at the right that comes down the passement areas, and that light

a pull inside the store.

Q-50 How about the underside door to this bend, how was it fastened? Do you remember about it?

A I don't remember about the underside door. I think it was a hook on it.

Q-51 Hook it from the inside?

A Yes, sir.

Q-52 Why other lights in the passement except the one over the door, to

do you remember?

A. I think there's one or two lights on his side. Two, I think, on his side.

Q-53 I mean in this little space?

A No.

No Cross-Examination.

MR. B. S. MEYY, a witness introduced on behalf of the Commonwealth, being

first duly sworn, testified as follows:

By Mr. Eastman:

Q-1 What's your initials, Mr. Meyy?

A B. S. Meyy.

Q-2 You are an officer of the City of Hartfordunder?

A Yes, sir.

Q-3 Do you know about finding some liquor over here in the passement

of Kennedy's, under his store?

A Well, Mr. Jones got me one evening about seven o'clock and told me

to be at a certain place, and Mr. Harpine and Mr. Mottram went in. Mr. Jones

went on ahead of us, so we came Down in Kennedy's alone. Mr. Harpine and Mr. Mot-

tram went in front of Kennedy's, and I went to the back. The only light I saw

the key to unlock it, and Leake was in the basement when we got down there. Kennedy went to reach up there through this little hole--a small hole in the door, and an iron plate--he reached up to open this bar and Leake taken it off for him and it seemed to surprise him. Leake was down in there and we went on in and started to searching, and directly Harpine went towards the bin that had some potatoes in it, and he said "Here it is", and found it there in a paper carton--a pasteboard carton.

4-Q Found the liquor in the paper carton?

A Yes, sir, those jars. I think one of them was about half full and the rest was full.

5-Q About how long did it appear that this shed had been built over this place?

A Oh, I don't know, maybe six or eight months. Maybe a little longer.

6-Q Just describe to the jury this door down at the foot of the steps.

A It has got a hole, I imagine four and a half foot up from the floor with a hole cut in the door there and a little iron plate there that you might set drinks or something on, and above that there is one hole just about the heighth of a man's head.

7-Q What kind of a hole?

A About that big around (indicating). An auger hole.

8-Q How was this outside door fastened? Couldn't they lock or hook it?

A There was no lock on it.

9-Q Was there a hook on the inside?

A I don't remember whether there was a hook on the inside or not.

10-Q What, if anything, did you observe thrown on the steps?

A There was a lot of matches and cigar stups and dirt in there.

11-Q Did you see any push buttons to the entry ofthis building?

A One on the outside there, right outside of that little building, maybe a foot from the floor, something likethat. Maybe not that far.

12-Q If you push the button, where did the bell ring?

A Inside the store, I don't know where. I didn't see the bell inside at all.

A It has got a hole, I imagine that's the a small knot up from the floor with a hole out in the wood there and a little plug there that you might see of something on, and above that there is one hole just about the height of a man's head.

Q-7 What kind of a hole?

A About that big around (indicating). An angel hole.

Q-8 How are this outside door fastened; couldn't they lock or hook it?

A There was no lock on it.

Q-9 Was there a hook on the inside?

A I don't remember whether there was a hook on the inside or not.

Q-10 What, if anything, did you observe fastened on the window?

A There are a lot of matches and cigar ashes and dirt in there.

Q-11 Did you see any hand pictures in the empty circle painting?

A One on the outside there, right outside of that little painting, wha-
ve a foot from the floor, something likeabut. Maybe not that far.

Q-12 If you hung the picture, where did the hole right

A Inside the store, I don't know where. I didn't see the hole inside
at all.

Cross Examination by Mr. Ott:

1-XQ You were at the rear of the store room, you didn't go in the front door?

A No, sir.

2-XQ You were there at the rear. You did come upstairs then after you saw Mr. Harpine discover the six jars, I believe you said six, which was it, five or six?

A Six, the way I counted. Five full ones and one about half full.

3-XQ Did you bring it up after Mr. Harpine had discovered it? What did you do with it?

A Brought it up through the store.

4-XQ You and he together?

A Yes, sir.

5-XQ Isn't it true that at that time Mr. V. L. Kennedy denied having anything to do with it?

A Yes, sir, he did.

6-XQ Did Mr. Kennedy make any objections to your searching the building at all?

A I never taken the warrant in there.

MR. EARMAN: What statements, if any, did V. L. Kennedy make when the liquor was found, when you took it upstairs. What statement did he make then, that is, if you recall?

A Well, he denied it, he said it wasn't his and he turned around to the boy and told the boy to tell them whose the liquor was.

MR. EARMAN: That was Claude?

A The boy stood there a while, he didn't say right away, and directly he said it was his.

MR. EARMAN: What, if anything, did he say about occupying or leasing the premises?

A I don't remember what he said about that. I didn't hear him say anything about that.

CROSS EXAMINATION BY MR. OFF:

Q-You were at the rear of the score room, you didn't go in the front room?

A No, sir.

Q-You were there at the test. You did come upstairs then after you was in MR. HARTMAN discovery the six jars, I believe you said six, which was it, five or six?

A Six, the way I counted. Five full ones and one about half full.

Q-Did you prime it up after MR. HARTMAN had discovered it? Where did you do with it?

A Throughout it up throughout the score.

Q-You put it up.

A Yes, sir.

Q-Is it true that at that time MR. V. L. Kennedy desired having mul-
tiplying about that? I don't remember what he said about that. I didn't paint him any
occupying or leaving the premises!

MR. EARMAN: Move, it multiplying, did he say about

MR. EARMAN: Just are changed!

A The pot stood there a while, he didn't say right away, and directly
he held it was mine.

A Well, he desired it, he said it mean, I mean and he turned around to
the pot and told the pot to tell them where the liquor was.

MR. EARMAN: Just are changed!

A I never taken the matter in there.

Q-Did Mr. Kennedy make any objections to your restoring the building
at all?

A Yes, sir, he did.

MR. EARMAN: Move, strike, said V. L. Kennedy make when the liquor was found, when
Kennedy make when the liquor was found, strike the statement did he
not look it upstairs. Move strike statement did he
make them, that is, it not recall!

A Well, he desired it, he said it mean, I mean and he turned around to
the pot and told the pot to tell them where the liquor was.

MR. EARMAN: Just are changed!

A The pot stood there a while, he didn't say right away, and directly
he held it was mine.

MR. EARMAN: Move, it multiplying, did he say about

A I don't remember what he said about that. I didn't paint him any
multiplying about that.

MR. H. S. HARPINE recalled.

By Mr. Earman:

1-Q Mr. Harpine, is the liquor on exhibition here on the table the same liquor that was found over there on the occasion you made the raid, five half-gallon jars full and one about half full?

A Yes, sir, in a pasteboard carton.

MR. JOHN LOGAN, a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

By Mr. Earman:

1-Q Mr. Logan, you were not present when this search was made?

A No, sir.

2-Q How long have you been on the police force?

A Twenty-two years this coming April.

3-Q Have you had much experience with prohibition cases?

A Some.

4-Q Can you tell moonshine whiskey when you see it?

A Tell it by the smell.

5-Q Will you kindly examine that and state to the jury what it is?

A It smells like a great deal of it. (Examining jar).

6-Q I understand you to say it is about the same as the rest of it. The other that you didn't examine, that you just saw in the jars there, maybe you better look at all of it and just state what it is.

(Witness examines other jars and states it is all the same.)

Mr. Logan, do you know in whose custody this liquor has been since it was seized?

A It was taken over to the Chief.

7-Q He keeps it where?

A He has a locker in his office.

MR. C. R. VAN PELT, a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

MR. H. S. HARRINE recalled.

By Mr. Gardner:

Q-1 Mr. Morphine, is the liquor on exhibition here on the table the same
liquor that was found over there on the occasion you made the raid, five months
ago?

A Yes, sir, in a Brazeborrd carton.

Question here and one about half full?

A Yes, sir.

MR. JOHN LOGAN, a witness introduced on behalf of the Commonwealth, being
first duly sworn, testified as follows:

By Mr. Gardner:

Q-1 Mr. Logan, you were not present when this search was made?

A No, sir.

Q-2 How long have you been on the police force?

A Twenty-two years this coming April.

Q-3 Have you had much experience with prohibition cases?

A Some of them.

Q-4 Can you tell approximate when you see it?

A Tell it by the smell.

Q-5 Will you kindly examine that and state to the jury what it is?

A It smells like a Pierce Gold of it. (Examining jar).

Q-6 I understand you to say it is about the same as the rest of it. The
other that you didn't examine, that you just saw in the jars there, maybe you
perhaps look at all of it and just state what it is.

(Witness examines other jars and states it is
all the same.)

Mr. Logan, do you know in whose custody this liquor has been since it was
seized?

A It was taken over to the Court.

Q-7 He keeps it where?

A He has a locker in his office.

MR. C. E. VAN TUYL, a witness introduced on behalf of the Commonwealth,
being first duly sworn, testified as follows:

By Mr. Earman:

1-Q You are Mr. C. R. Van Pelt?

A Yes, sir.

2-Q Where do you live?

A I live about ten miles west, out towards Clover Hill.

3-Q What is your business?

A Electrician.

4-Q By whom are you employed?

A Harrisonburg Electric Supply Company.

5-Q Were you employed by them some three months ago?

A Yes, sir.

6-Q Just state to the jury what electric equipment, if any, you installed in V. L. Kennedy's basement sometime last fall.

A I installed--

7-Q I will ask you first if you remember when it was that you did this?

A I don't remember exactly, somewhere around three months ago. I couldn't say for sure.

8-Q Who had the work done?

A Mr. Cooley sent me there, Mr. T. R. Cooley.

9-Q Who told you what was to be done?

A Mr. V. L. Kennedy.

10-Q What work did he order done?

A He ordered two lights on the inside of the basement and one in the outside entrance and the switch at the inside entrance to his part of the basement.

11-Q There were two bulbs in the basement proper?

A Yes, sir.

12-Q One bulb where else?

A In the outside entrance right over the lower door.

13-Q By the door frame?

A Yes, sir, on the outside there, the lower door.

14-Q The lower door, of course, is the door at the foot of the steps?

DR MR. HARMON:

Q-1 Don's the Mr. C. R. Adam house?

A Yes, sir.

Q-2 Where do you live?

A I live about ten miles west, one township CLOVER HILL.

Q-3 What is your business?

A Electrician.

Q-4 By whom are you employed?

A Hattiesburg Electric Supply Company.

Q-5 Were you employed by them some three months ago?

A Yes, sir.

Q-6 Have you employed on them since that electric equipment, if any, you installed in V. L. Kennedy's basement some time last fall.

A I installed--

Q-7 I will ask you if you remember when it was that you did that?

A I don't remember exactly, somewhere around three months ago. I couldn't say for sure.

Q-8 Who had the work done?

A Mr. Cooley sent me there, Mr. T. H. Cooley.

Q-9 Who told you what was to be done?

A Mr. V. L. Kennedy.

Q-10 What work did he order done?

A He ordered two lights on the inside of the basement and one in the outside entrance and the switch at the inside entrance to his part of the basement.

Q-11 There were two bulbs in the basement proper?

A Yes, sir.

Q-12 One bulb where else?

A In the outside entrance right over the lower door.

Q-13 By the door itself?

A Yes, sir, on the outside there, the lower door.

Q-14 The lower door, of course, is the door at the foot of the stairs

A At the foot of the steps.

15-Q Was there a hole at that time, or did you notice, in this door where you put this light?

A I never noticed in particular. The door was open all the time I was working.

16-Q What was the object of putting up a light at this place?

MR. OTT: I object to that. It is calling for an opinion, not a fact.

THE COURT: He can ask him what would be the effect of it.

17-Q What would be the effect of it?

A It would light the steps.

18-Q Is it customary to put a light at such places?

MR. OTT: Objection.

THE COURT: Objection sustained.

19-Q Where was the switch?

A The switch was at the door leading from the other part of the basement over into Mr. Kennedy's. Figgatt's part of the basement.

20-Q At the passageway between the two basements?

A Yes, sir.

21-Q Was there anything else that you installed?

A Two buttons and a bell.

22-Q Where were they?

A The bell was in the rear of the store and was operated by either button; one button was at the outside entrance to the basement, outside the entrance, and one was about the center of the store on a post.

23-Q How high up on this post was the push button?

A So you could reach it handy. I put it according to my own idea.

24-Q Could it be reached upstairs? I mean there is a kind of an upstairs part to his store room there. Could one reach it from upstairs without lying down?

A I would not see how.

25-Q Pushing either one of these buttons would ring the bell in the rear of the store room?

A. At the foot of the steps.

Q-12. Was there a place at which first, or did you notice, in this room, where you were walking?

A. I never noticed in particular. The door was open all the time I was working.

Q-13. Where was the switch to bringing up a light at this place?

A. MR. OTTO: I object to that. It is calling for an opinion, not a fact.

THE COURT: He can ask him what would be the effect.

Q-14. What would be the effect of it?

A. It would light the stage.

Q-15. Is it customary to put a light at some place?

MR. OTTO: Objection.

THE COURT: Objection sustained.

Q-16. Where are the switches?

A. The switch was at the foot leading from the orchestra pit to the pass-
over into the backstage. Backstage, a part of the passageway.

Q-17. At the passageway between the two passageways?

A. Yes, sir.

Q-18. Was there anything else that you functioned?

A. Two buttons and a bell.

Q-19. Where were they?

A. The bell was in the rear of the stage and was operated by either
button; one button was at the outside entrance to the passageway, outside the
entrance, and one was about the center of the stage on a post.

Q-20. How high up on the post was the back button?

A. So you could reach it handy. I put it according to my own idea.

Q-21. Could it be reached upstairs? I mean there is a kind of an up-
stairs part of the stage room there. Could one reach it from upstairs without
flying down?

A. I would not see how.

Q-22. Leaving either one of these buttons would bring the bell in the rear
of the stage room?

26-Q You don't know who paid for having this work done, ordo you?

A No, sir, I don't know.

27-Q Did Mr. Kennedy tell you where to put these push buttons and switches and all this sort of thing?

A Yes, sir.

28-Q Did his son Claude take any part in it?

A I don't remember of seeing him.

29-Q Did anyone, so far as you remember, have anything to do with the installation of that equipment except V. L. Kennedy?

A No, sir, not as far as I know.

30-Q Was there any way to get from the store room down in the basement under Kennedy's store?

A Yes, sir.

31-Q Just describe that to the jury,please. If Kennedy were in his store and wanted to go to the basement, how would he get there?

A He had a door that led through to Figgatt's place, that is the way to go down.

32-Q One staircase leading down, as I understand you, between the two basements.

A Yes, sir, a door enters the other side from Figgatt's store. That is the way I went down, anyway.

33-Q That is the only way to go down?

A Yes, sir, from inside the store. That is the way I went down.

34-Q Is the same stair case used by both Figgatt and Kennedy or does each store have a separate stair case or do you know about that?

A I don't know for sure. It looked that way to me.

35-Q Do you happen to know, or not, that both store rooms are owned by the same person?

A No, sir.

Cross-Examination by Mr. Ott:

1-XQ If I understand you, you are an employee of the Harrisonburg Electric Company?

A Yes, sir.

Q-32 Don don,t know who held for Oswald that night. Only how;

A No, sir, I don,t know.

Q-33 Did Mr. Kennedy call you from where he had been painting and wanted

to go to the basement;

A Yes, sir, a good entrée the office girls from Kennedy,s store. That

is the way I went down, anyway.

Q-34 That is the only way to go down;

A Yes, sir, from inside the store. That is the way I went down.

Q-35 Is the main street door used by both Kennedy and Kennedy or does each

store have a separate street door or do you know about that?

A I don,t know for sure. It looked that way to me.

Q-36 Do you publicly to know, or not, that both stores room were owned by the

same person;

A No, sir.

Cross-examination by Mr. Off:

Q-1 Is I understand you, you are an employee of the Kennedy Enter-

prise Company;

A Yes, sir.

Q-2 Describe that to the jury,please. If Kennedy were in his store

and wanted to go to the basement, you would be just there;

A He had a door that led through to Kennedy,s house, that is the way

to go down.

Q-3 One particular landing down as I understand you, between the two

basements.

A Yes, sir, a door enters the office girls from Kennedy,s store. That

is the way I went down, anyway.

Q-4 That is the only way to go down;

A Yes, sir, from inside the store. That is the way I went down.

Q-5 Is the main street door used by both Kennedy and Kennedy or does each

store have a separate street door or do you know about that?

A I don,t remember if there is one.

Q-6 Did Mr. Kennedy call you upstairs and ask you if you do with the

maintenance of that equipment except V. L. Kennedy;

A No, sir, not as far as I know.

Q-7 Did Mr. Kennedy call you upstairs to have there been painting and varnish-

ing all this sort of thing;

A Yes, sir.

Q-8 Did his son Claude take any part in it;

A I don,t remember if seeing him.

Q-9 Did anyone, so far as you remember, make multiple to do with the

maintenance of that equipment except V. L. Kennedy;

A No, sir, not as far as I know.

Q-10 Was there any way to get from the store room down in the basement

under Kennedy,s store;

A Yes, sir.

Q-11 That describe that to the jury,please. If Kennedy were in his store

2-XQ And some three months ago, or maybe a little more, you went down to Kennedy's store here on West Market Street and installed some wires for lights and for a bell. It is true, at the same time, that you did some work at Mr. Kennedy's residence, which is over Mr. Reilly's store on West Market Street and the other stores there?

A Yes, sir.

3-XQ Now, if I understand you correctly, you put two lights in the basement?

A Two on the inside and one outside of this door.

4-XQ And one outside the door. Now, I don't know that I clearly get what you said about the bells. Did you install more than one bell?

A One bell at the store.

5-XQ You spoke about push buttons. How many did you have?

A Two at the store.

6-XQ Where were these?

A One at the center of the store room and one at the back entrance.

7-XQ You said you had another bell. That happened to be in Mrs. Kennedy's room. She was sick, was she not, and he had one put in there for her?

A He had a button put on the same bell that was there.

8-XQ So she could ring him if she needed anything?

A Yes, sir.

9-XQ Now Mr. Van Pelt, I want you to tell this jury whether or not there was any secrecy observed by you at all about Mr. Kennedy in having this work done, or whether he did that open and aboveboard.

A I didn't see he had any secrecy at all.

10-XQ He didn't tell you not to tell anybody about it?

A No, sir.

MR. EARMAN: Did you ever install any such system as that in any other basement?

MR. OTT: I object to that.

THE COURT: Objection sustained.

MR. ZUMMAN: Did you ever installed such shop equipment in your office?

MR. OTTO: I object to form.

THE COURT: Objection sustained.

PITTINGTON, a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

By Mr. Earman:

1-Q Mr. Pittington, just state to the jury what you know about this electric equipment over at Mr. Kennedy's basement. Did you see it?

A The only thing I know, Mr. Cooley sent me down to see what Mr. Kennedy wanted and he just explained to me that he wanted a push button on the outside of his door, some lights in the basement on a switch and also a push botton upstairs.

2-Q Mr. V. L. Kennedy is the one who told you? You heard Mr. Van Pelt's testimony, did you, or not? Is that the man who told you what he wanted?

A Yes, sir. It was V. L. Kennedy who told me he wanted that work done.

3-Q You had a cold and didn't want to go down in the basement, and the other man did the work?

A Yes, sir, that's right.

Cross Examination by Mr. Ott:

1-XQ Did you talk to Mr. Kennedy at allabout the work?

A Yes, sir.

2-XQ Did he tell you not to tell anybody about it, that he wanted you to do it secretely or anything of that kind?

A No, sir.

MR. CLARKE LISKEY, a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

By Mr. Earman:

1-Q You are Mr. Clarke Liskey?

A Yes, sir.

2-Q You are a son of Mr. T. A. Liskey and live some two or three miles east of Harrisonburg near Cedar Grove?

A Yes, sir.

3-Q Mr. Liskey, you know where V. L. Kennedy's place of business is, do you, in the city?

A Yes, sir.

TRUTHWORTHY, a witness introduced on behalf of the commonwealth,

being first duly sworn, testified as follows:

By Mr. Bartlett:

Q-1 Mr. Littlefield, just speak to the jury what you know about this electric equipment over at Mr. Kennedy's pasture. Did you see it?

A The only thing I know, Mr. Cooley sent me down to see about Mr. Kennedy having had his bull exhibited to me that he had a horse on the outside of his cooler, some lights in the pasture on a bench and also a bench position underneath.

Q-2 Mr. V. L. Kennedy is the one who\who you; you heard Mr. Van Tolf, a farmer, say you, or not: is that the man who told you about it?

A Yes, sir. It was V. L. Kennedy who told me he saw that horse down in the pasture, and the

Q-3 You had a color and sign, a name to go down in the pasture, and the horse began to dig the work?

A Yes, sir, that's right.

Cross Examination by Mr. Orr:

Q-X Did you talk to Mr. Kennedy at allabout the work?

A Yes, sir.

Q-X Did he tell you not to tell anybody about it, that he wanted you to do it secretely or something of that kind?

A No, sir.

TRUTHWORTHY, a witness introduced on behalf of the commonwealth,

being first duly sworn, testified as follows:

By Mr. Bartlett:

Q-1 Mr. Littlefield, just speak to the jury what you know about this electric equipment over at Mr. Kennedy's pasture. Did you see it?

A The only thing I know, Mr. Cooley sent me down to see about Mr. Kennedy having had his bull exhibited to me that he had a horse on the outside of his cooler, some lights in the pasture on a bench and also a bench position underneath.

Q-2 Mr. V. L. Kennedy is the one who\who you; you heard Mr. Van Tolf, a farmer, say you, or not: is that the man who told you about it?

A Yes, sir. It was V. L. Kennedy who told me he saw that work going.

Q-3 You had a color and sign, a name to go down in the pasture, and the horse began dig the work?

A Yes, sir, that's right.

Cross Examination by Mr. Orr:

Q-1 Did you talk to Mr. Kennedy at allabout the work?

A Yes, sir.

Q-2 Did he tell you not to tell anybody about it, that he wanted you to do it secretely or something of that kind?

A No, sir.

4-Q I want to ask you a few questions, no doubt you are reluctant to answer them. Did you ever get any whiskey over in the rear of his basement?

A Yes, sir, through the basement part.

5-Q How long has that been?

A Two months ago, I have an idea. I don't just know about the date. It has been quite a while ago.

MR. OTT: I object to that on the ground that he has not said he got anything of Mr. V. L. Kennedy.

THE COURT: Objection overruled.

MR. OTT: Exception is noted on the ground that the evidence of this witness does not specify that he got this of Mr. V. L. Kennedy.

6-Q Just state to the jury the procedure that you went through in order to get this whiskey. Just what was the system?

MR. OTT: I object to the whole of that testimony.

THE COURT: Overruled.

MR. OTT: Exception is noted to the ruling of the court on the ground that this evidence is irrelevant and immaterial to the issue in this case.

Just what did you do, in order to get the liquor?

A I went in the door down there.

7-Q What door?

A The basement door. I guess it is in the rear of the store, I don't know for sure.

8-Q Did you do anything before you entered this basement?

A Rang the bell.

9-Q Where was the bell?

A Beside the door.

10-Q Then you went into this little shed like. Did you close thedoor?

A I don't remember.

11-Q After you got down into this little shed, what did you do? It appears that there are some auger holes through this door.

A I didn't see anything happen there.

12-Q What did you do?

A I got what I went in there after.

MR. OTTO: I object to that on the Ground that he has not held Mr. V. L. Kennedy.

THE COURT: Objection overruled.

MR. OTTO: Exception is noted on the Ground that the evidence of this witness does not specify that he Got this of Mr. V. L. Kennedy.

Q-6 Have you ever been arrested over in the town of this personnel?

A Yes, sir, through the personnel here.

Q-6 How long has that been?

A Two months ago, I have an idea. I don't just know about the date.

If has been twice a month ago.

MR. OTTO: I object to that on the Ground that he has not held Mr. V. L. Kennedy.

THE COURT: Objection overruled.

MR. OTTO: Exception is noted on the Ground that the evidence of this witness does not specify that he Got this of Mr. V. L. Kennedy.

Q-6 Have you been in jail in the town of this personnel?

A Yes, I have been in jail several times.

Q-6 What was the reason?

A Well, I was accused of being in the town of this personnel.

Q-6 Have you been in jail in the town of this personnel?

A Yes, I have been in jail several times.

Q-6 What was the reason?

A Well, I was accused of being in the town of this personnel.

Q-6 Have you been in jail in the town of this personnel?

A Yes, I have been in jail several times.

Q-6 What was the reason?

A Well, I was accused of being in the town of this personnel.

Q-6 I want to ask you a few questions, no doubt you have testimony to me- mory then. Did you ever Get any arrested over in the town of this personnel?

A Yes, sir, through the personnel here.

Q-6 How long has that been?

A Two months ago, I have an idea. I don't just know about the date.

If has been twice a month ago.

MR. OTTO: I object to that on the Ground that he has not held Mr. V. L. Kennedy.

THE COURT: Objection overruled.

MR. OTTO: Exception is noted on the Ground that the evidence of this witness does not specify that he Got this of Mr. V. L. Kennedy.

Q-6 Have you been in jail in the town of this personnel?

A Yes, I have been in jail several times.

Q-6 What was the reason?

A Well, I was accused of being in the town of this personnel.

Q-6 Have you been in jail in the town of this personnel?

A Yes, I have been in jail several times.

Q-6 What was the reason?

A Well, I was accused of being in the town of this personnel.

13-Q How did you get it? Did someone ask you what you wanted? Who else was about there, who was on the inside?

A I don't know who was on the inside.

14-Q Just what did you do when you walked up to that door?

A I don't remember any more what I did do.

15-Q Did you tell them you--

MR. OTT: Leading question.

THE COURT: Objection overruled.

MR. OTT: Point saved on the ground that it is leading.

16-Q How did they know you wanted liquor?

A I don't know if itwas a man in there or not.

17-Q Whoever was inside, a man or woman, how did the person on the inside of this door know what you wanted?

A I asked him.

18-Q Asked him for a drink?

A Yes, sir.

19-Q Then what happened?

A That's all that happened.

20-Q You got your drink, did you?

A Yes, sir.

21-Q Where did he put it up , in that little door on the metal plate?

A Yes, sir.

22-Q What did you pay for it?

A I don't remember any morewhat I did pay. It has been so long ago I have forgotten. Not so much, though, I don't think.

23-Q Don't you know whether you paid a dime, quarter or fifty cents, don't you remember?

A No, sir.

24-Q Anyone with you?

A I don't think there was.

25-Q How often were you over there?

A Never but once that I remember of.

Q-12 How did you far it? Did someone tax you what you wanted? And also what about there, who was on the inside?

A I don't know who was on the inside.

Q-13 What did you do when you walked up to that door?

A I don't remember any more what I did do.

Q-14 Did you do anything?

A I don't know if I did anything.

Q-15 Where did he put it up, in that little door on the metal frame?

A Yes, sir.

Q-16 Did you fall down or--

MR. OTT: Leading question.

THE COURT: Objection overruled.

MR. OTT: Point sewed on the Florida flag is in issue.

Q-17 How did they know you wanted it down?

A I don't know if I came a man in there or not.

Q-18 Whoever was inside, a man or woman, you did the person on the inside of ship good know what you wanted?

A I asked him.

Q-19 Then what happened?

A Yes, sir.

Q-20 Then what happened?

A That's all that happened.

Q-21 You did not ever look at it?

A Yes, sir.

Q-22 Now often were you over there?

A Never but once that I remember of.

26-Q How did you know you could get the liquor there?

A Someone told me I could get a drink around there.

27-Q How long after you pushed that button before you got it, did you have to wait some time?

A I waited a few minutes.

28-Q Service pretty good, was it?

A Yes, sir.

29-Q What kind of liquor was it, was it red liquor, white liquor, or moonshine liquor?

A It was kind of dark. I couldn't tell whatcolor it was. I didn't pay any attention.

30-Q Maybe it was water you drank?

A I don't think it was water.

MR. OTT: With deference to the court, I want to make a motion to strike out that evidence on the ground that from the testimony of the witness, it does not show that this liquor was purchased from the defendant, V. L. Kennedy, and it in no way connects V. L. Kennedy with the sale of this liquor. It is immaterial and irre~~velent~~levant--I say that with deference of course, to you--and the introduction of it will be immaterial and irre~~velant~~levant. I suppose you overrule that?

THE COURT: The motion is overruled.

This is not a prosecution for sale but prosecution for possession. This evidence is admitted, under the circumstances, to go to the jury to determine whether or not the accused knowingly possessed this liquor.

MR. OTT: An exception is noted to the ruling of the court, for the reasons above stated.

MR. H. S. HARPINE recalled.

Re-Direct Examination
By Mr. Earman:

1-Q When you seized this liquor over at Kennedy's, what did you do with it?

A Mr. Neff carried it up in the store.

2-Q Where was it taken to?

A We taken it over to Chief's office.

MR. OTT: With deference to the court. I move to make a motion to strike one short evidence on the Kennedy funds from the testimony of the witness, it does not show that the liquor was purchased from the defendant, V. L. Kennedy and it in no way connects V. L. Kennedy with the sale of this liquor. It is immaterial and irrelevant--I say that with deference of course, to you--and the introduction of it will be immaterial and irrelevant. I suppose you overrule that?

THE COURT: The motion is overruled.

MR. OTT: An exception is noted to the ruling of the court for the reasons above stated.

MR. H. S. HAMPTON testified.

Re-Direct Examination

BY MR. HAMPTON:

1-Q When you sealed this liquor over at Kennedy's, what did you do with it?

A Mr. Mott carried it up in the store.

2-Q Where was it taken to?

A He taken it over to Chief's office.

3-Q Maybe it was water you drank?

A I don't think it was water.

4-Q Maybe it was water you drank?

A It was kind of dark. I couldn't tell whatcolor it was. I didn't pay any attention.

5-Q What kind of liquor was it, was it red liquor, white liquor, or moonshine liquor?

A Yes, sir.

6-Q Service pretty good, was it?

A I switched a few minutes.

7-Q How long after you bought that passed before you got it, did you have to wait some time?

A someone told me I could get a drink around there.

8-Q Now did you know you could get the liquor there?

3-Q F. L. Dovel?

A Yes, sir.

4-Q The same day it was seized?

A It was turned over the next morning. The chief wasn't there. We found it at night. We took it over next morning when he came in.

No Cross-examination.

MR. F. L. DOVEL, a witness introduced on behalf of the Commonwealth, being first duly sworn, testified as follows:

By Mr. Earman:

1-Q You are F. L. Dovel, Chief of Police of the City of Harrisonburg?

A Yes, sir.

2-Q Mr. Dovel, was this whiskey--there was some whiskey turned over to you by Harpine and others that was seized over here at Kennedy's?

A Yes, sir.

3-Q When did it come into your possession?

A Why, it was turned over to me in the morning early.

4-Q Early the next morning after it was alleged to have been found?

A Yes, sir.

5-Q What did you do with it?

A I placed it down on a little shelf all by itself. The lower shelf in my office there in a little cabinet I had built, and carry the key to it myself.

6-Q Does anyone else have the key to it?

A No, sir.

7-Q Has it been in the cabinet from that time until today?

A Yes, sir, it was taken out at the call trial, and after that it was put right back in thesame place.

8-Q At the trial before Mayor Swank?

A Yes, sir.

9-Q Mr. Dovel, do you know V. L. Kennedy?

A Yes,s ir.

10-Q Do you know his general reputation here in the City of Harrisonburg

for violating the prohibition law and if so, is it good or bad?

A Yes, sir, I know it.

11-Q What is it?

A It has been bad for the past four months.

No cross-examination.

MR. JOHN LOGAN recalled.
Re-direct examination
By Mr. Earman:

1-Q You know V. L. Kennedy do you not, Mr. Logan?

A Yes, sir.

2-Q How long have you known him?

A A long time.

3-Q Do you know his general reputation in the City of Harrisonburg for violating the prohibition law?

A Yes, sir.

4-Q What is it, good or bad?

A Bad, for the last four or five months.

No cross-examination.

MR. H. S. HARPINE recalled.
Re-re-direct examination
By Mr. Earman:

1-Q Do you know V. L. Kennedy's general reputation in the City of Harrisonburg for violating the prohibition law, and if so, is it good or bad?

A It has been bad since I have been working on the force, the last two months that I know of.

No cross examination.

The Commonwealth rests.

for violating the prohibition law and if so, is it good or bad?

A Yes, sir, I know it.

Q Q What is it?

A It has been bad for the past four months.

No cross-examination.

MR. JOHN LOGAN recalled.
Re-direct examination
By Mr. Barnum:

Q Q You know V. L. Kennedy do you not, Mr. Logan?

A Yes, sir.

Q Q How long have you known him?

A A long time.

Q Q Do you know his general reputation in the City of Harrisonburg for violating the prohibition law?

A Yes, sir.

Q Q What is it, good or bad?

A Bad, for the last four or five months.

No cross-examination.

MR. H. S. HARPINE recalled.
Re-re-direct examination
By Mr. Barnum:

Q Q Do you know V. L. Kennedy's general reputation in the City of Harrisonburg for violating the prohibition law, and if so, is it good or bad?

A It has been bad since I have been working on the force, the last two months that I know of.

No cross examination.

The Commonwealth rests.

At the conclusion of the evidence for the Commonwealth, the defendant moved to strike it out, because it was plainly insufficient to sustain a verdict of guilty, which motion the Court overruled, to which action of the Court the defendant by counsel excepted on the ground that the evidence introduced by the Commonwealth did not show that the liquor was in the possession of V. L. Kennedy, or that V. L. Kennedy was the owner or the occupant of the premises from which it was taken.

TESTIMONY FOR THE DEFENDANT.

MR. CHARLES HUFFMAN, a witness introduced on behalf of the defendant, after being first duly sworn, testified as follows:

By Mr. Ott:

1.-Q You are Mr. Charles Huffman, I believe?

A Yes, sir.

2-Q Where do you live?

A Four miles north of here, near Linville.

3-Q What is your age?

A Sixty-two.

4-Q You are a contractor or carpenter by occupation?

A Yes, sir.

5-Q I wish you wouldtell the jury whether or not, sometime in February, 1932, you did some work in the rear of Mr. Kennedy's store here?

A I did.

6-Q What did you do there, and how did you happen to do it?

A I came along by Mr. Kennedy's store one day and saw Mr. Lokey in there, the fellow I wanted to go home with, and I went in there and there was some four or five men in there, and they were talking about no work, and Mr.--what is that man's name on Bruce Street--Mr. Lambert, he said "Why don't you do this work for Judge Paul?" I said, "What work", and he said "He wants a pair of steps put back here". I went back and I said, "This is a mess here". It was a mess sure enough. In about a week after that I met Judge Paul down here at the Court House and I asked him about this. I said, "I understand you want some work done about the Kennedy store", and he said, "I will be glad to have you go down and look at it". I went around and looked at it and went back to the office, and he said, "What did you find?"

THE COURT: Don't go in to all that.

at the conclusion of the evidence for the commonwealth, the defendant moved to strike it out, because it was brought inadmissible to endeavor a verdict of Murder, upon motion the court overruled, to which action of the court the defendant by counsel excepted on the Ground that the evidence introduced by the commonwealth did not show that the injury was in the possession of V. L. Kennedy, or that V. L. Kennedy was the owner of the occupant of the premises upon which it was taken.

TESTIMONY FOR THE DEFENDANT.

MR. CHARLES HUFFMAN, a witness introduced on behalf of the defendant, after being first duly sworn, testified as follows:

EX MR. OFF:

Q-1 Mr. Huffman, Charles Huffman, I believe?

A. Yes, sir.

Q-2 Where do you live?

A. Circle-two.

Q-3 Are you a contractor or carpenter by occupation?

A. Yes, sir.

Q-4 I ask you whether you have had any experience in repairing, remodeling, or erecting some work in the town of Mr. Kennedy's store?

A. I did.

Q-5 Where did you do repairs, and how did you happen to do it?

A. I came around by Mr. Kennedy's store one day and saw Mr. Lockey in repairs, and talking I wanted to go home again, and I went in repairs and there was some cost of time men in repairs, and they were talking about an work, and so.--

Q. Why don't you go home--Mr. Lockey, he said "Why don't you go home--I'm a man's a house on Prince Street--Mr. Lockey, he said "Mr. Huffman, I want work." And he said "He wants a bart full work for Queen Family." I said, "Want work." And he said "He wants a bart of stepe but back here." I went back and I said, "Talk is a mess here." If saw a mess sure enough. In about a week after that I met Lucke Lamb down here and I mentioned you about I wanted him about that. I said, "I understand you want at the court house and I asked him about that." I said, "I will go kind to have some work done about the Kennedy store." And he said, "Yes, you go home and look at it." I went around and looked at it and went back to you and said, "Want did you tring."

EX CONT: Don't go in to all that.

Q-6 Where did you do repairs, and how did you happen to do it?

A I came around by Mr. Kennedy's store one day saw Mr. Lockey in repairs, and talking I wanted to go home again, and I went in repairs and there was some cost of time men in repairs, and they were talking about an work, and so.--

Q-7 Where do you live?

A. Circle-two.

Q-8 Are you a contractor or carpenter by occupation?

A. Yes, sir.

Q-9 I ask you whether you have had any experience in repairing, remodeling, or erecting some work in the town of Mr. Kennedy's store?

A I did.

Q-10 Where did you do repairs, and how did you happen to do it?

A. Mr. Huffman, I want work." And he said "He wants a bart full work for Queen Family." I said, "Want work." And he said "He wants a bart of stepe but back here." I went back and I said, "Talk is a mess here." If saw a mess sure enough. In about a week after that I met Lucke Lamb down here and I mentioned you about I wanted him about that. I said, "I understand you want at the court house and I asked him about that." I said, "I will go kind to have some work done about the Kennedy store." And he said, "Yes, you go home and look at it." I went around and looked at it and went back to you and said, "Want did you tring."

EX CONT: Don't go in to all that.

7-Q Did Judge Paul employ you to fix the cellarway in the rear of Mr. Kennedy's store?

A Yes, sir, he is the man.

8-Q Judge Paul is one of the owners, andrepresents the other owners of the building?

A Yes, sir.

9-Q Now, what did you do, what was the nature of the building you put up there?

A Well, it was the place that had fallen in, a part of the roof, a part of it had fallen down. The Judge asked me what I thought about it, and I said the only way I see to fix it is to clean this out and put up some steps and put a building over it.

10-Q Did you, at Judge Paul's direction, build the cement steps down to the basement under Mr. Kennedy's Store?

A I did.

11-Q And did you build a top over these cement steps at the direction of Judge Paul?

A Yes, sir.

12-Q Have you looked at that work again today since you have been in town?

A I did this morning.

13-Q It seems that there are two doors, one outside of this enclosure that you made, and one at the bottom of the stemps going onto the basement.

A Yes, sir.

14-Q Somebody has said something about there being a hole in the middle of the door and some kind of a contraption about the center of the door running on either side goes through the door. Did you see that?

A I don't remember that, Mister.

15-Q Did you see that today?

A Yes, I saw it today.

16-Q Would you tell the jury whether or not that was on the door at the time you were doing your work there, or not?

A I would tell them I don't know. I didn't do anything to the door

A I moved fast then I don't know. I didn't do anything to the door frame you were going your work there' or not?

Q-6 Would you tell the jury whether or not that was on the door or the door jamb you were going your work there' or not?

A I did.

Q-7 And did you build a top cover there cement at the direction of Judge Lamb?

A Yes' sir.

Q-8 Judge Lamb is one of the owners' representative the other owners of the property?

A Yes' sir.

Q-9 Have you looked at that work again today since you have been in court?

A I did this morning.

Q-10 It seems that there are two doors' one outside of this enclosure that you made' and one at the bottom of the steps going into the basement.

A Yes' sir.

Q-11 Somebody has said something about there being a hole in the middle of the door and some kind of a construction upon the center of the door through on either side door frames the door. Did you see that?

A I don't remember that' material.

Q-12 Did you see that today?

A Yes' I saw it today.

Q-13 Would you tell the jury whether or not that was on the door at the time you were going your work there' or not?

A I would tell them I don't know. I didn't do anything to the door frame.

Q-14 Now' when did you do' what was the nature of the building you put up there?

A Well' it was the place that had fallen in' a part of the roof' a part of it had fallen down. The judge asked me what I thought about it' and I said the only way I see to fix it is to clean this one and put up some steps and put a building over it.

Q-15 Did you' as judge Lamb's direction' build the cement steps down to the basement door? Yes' sir.

A Yes' sir.

Q-16 Now' when did you do' what was the nature of the building you put up there?

A Well' it was the place that had fallen in' a part of the roof' a part of it had fallen down. The judge asked me what I thought about it' and I said the only way I see to fix it is to clean this one and put up some steps and put a building over it.

Q-17 Did Judge Lamb employ you to fix the collapsed in the rear of the kennedy's store?

A Yes' sir' he is the man.

Q-18 Judge Lamb is one of the owners' representative the other owners of the property?

A I did.

Q-19 And did you build a top cover there cement at the direction of Judge Lamb?

A Yes' sir.

Q-20 Have you looked at that work again today since you have been in court?

A I did this morning.

Q-21 It seems that there are two doors' one outside of this enclosure that you made' and one at the bottom of the steps going into the basement.

A Yes' sir.

Q-22 Somebody has said something about there being a hole in the middle of the door and some kind of a construction upon the center of the door through on either side door frames the door. Did you see that?

A I don't remember that' material.

Q-23 Did you see that today?

A Yes' I saw it today.

Q-24 Would you tell the jury whether or not that was on the door at the time you were going your work there' or not?

A I would tell them I don't know. I didn't do anything to the door frame

except run my cement down to the door. The door was open all the time. It was banked up there.

17-Q So, whether or not that was there, this hole in the center of the door, you don't know?

A No, sir, I don't know.

18-Q Well, now, with regard to this basement. What was in the basement at that time, tell just as briefly as you can?

A Rags, old bed ticks, half rotted up, straw, ashes and water around the basement door.

19-Q A lot of rubbish in there. Did you take it out?

A Oh, my,yes. I taken it out.

20-Q Do you happen to know whether the rubbish there belonged to other people, or Mr. V. L. Kennedy?

A I don't know who it belonged to.

21-Q Who told you to remove that rubbish in the cellar?

A I went to put the steps in and clean the basement up--Judge Paul.

22-Q Judge Paul directed you to do that?

A Yes, sir.

23-Q I think you have made that clear, but in order that there might be no misunderstanding, did V. L. Kennedy have anything to do with the building of those steps or that shed at all?

A No, he never said nothing to me. Judge Paul hired me.

24-Q When was that?

A I think I commenced there February 8th.

Cross Examination
By Mr. Earman:

1-Q Judge Paul did not direct you to put in any push buttons or electrical equipment.

A No, sir, I didn't do anything like that.

MR. LAWRENCE DAVIS, a witness introduced on behalf of the defendant, being first duly sworn, testified as follows:

By Mr. Ott:

1-Q You are Mr. Lawrence Davis, I believe, and you are cook for the Nor-

except that my element down to the door. The door was open all the time. If was packed up there.

Q-71 Who's whether or not that was there, this hole in the center of the door, you don't know?

A No, sir, I don't know.

Q-72 Well, now, with regard to this basement. What was in the basement at that time, tell just as plainly as you can?

A Kegs, old beg tricks, half rotted up, stews, cases and water around the basement door.

Q-73 Did you happen to know whether the trapped there belonged to Orbet people, or Mr. V. L. Kennedy?

A I don't know who it belonged to.

Q-74 Who told you to remove that trapped in the cellar?

A I went to but the steps in and clean the basement up--Judge Hunt.

Q-75 Judge Hunt directed you to do that?

A Yes, sir.

Q-76 I think you have made that clear, but in order that there might be no misunderstanding, did V. L. Kennedy have anything to do with the building of those steps or that shed at all?

A No, he never said nothing to me. Judge Hunt hired me.

Q-77 When was that?

A I think I commenced there Tuesday 8th.

CROSS EXAMINATION

BY MR. BARNEY:

Q-78 Judge Hunt did not direct you to but in new boxes partions or electrical equipment.

A No, sir, I didn't do anything like that.

MR. LAWRENCE DAVIS, a witness introduced on behalf of the defendant, being first duly sworn, testified as follows:

BY MR. ORR:

Q-1 You are Mr. Lawrence Davis, I believe, and you are cook for the Not-

mal--the Harrisonburg State Teachers College, are you not?

A Yes, sir.

2-Q You get off one afternoon a week, do you not?

A Two.

3-Q Have you been spending, for the last year or two, a good part of your time loafing at Mr. Kennedy's place?

A Yes, sir.

4-Q Have you ever gone outwith him into the country when he would go out on business for himself?

A Yes, sir.

5-Q What would you say with reference to--has he any fruit jars over there?

A He did have.

6-Q How did he acquire those?

A Oh, go out to sales and buy them up, and brought them back there, I suppose, to sell. I bought some of them.

7-Q Do you know, as a matter of fact, that he frequently bought and sold fruit jars?

A Yes, sir.

Cross Examination by Mr. Earman:

1-Q Did he need them in his business over there?

A I suppose he did. He made a profit on them as well as the rest of it, I suppose.

2-Q You say you loafed about the place a good deal when you were not at work, Mr. Davis. What was the significance of having those call bells? Did you hear that bell ring around there?

A Got my first time to hear it.

3-Q Did you know there was any such bell there?

A Not until the trial down here, that is the first. It may have been there, I never paid any attention.

4-Q How many jars did you buy from him?

A Three or four dozen, something like that.

5-Q To put up fruit? A Yes, sir.

Mr.--the Metropolitan Opera Company, did you hear

A Yes, sir.

Q-3 You kept up a conversation a week, do you know?

A Two.

Q-4 Have you been engaged, for the last few or two, a food part of your time longing to Mr. Kennedy's, a friend?

A Yes, sir.

Q-5 Have you ever done anything film into the country when he would go out on business for himself?

A Yes, sir.

Q-6 Just by the conversation a week, do you know

A No, sir.

Q-7 How did he admire those?

A Oh, he was to walk and put them up, and throw them back there, I suppose, to settle. I couldn't hear of them.

Q-8 You say that you know of a matter of fact, that he tremendously powdered and to turn them?

A Yes, sir.

Q-9 Did he need them in his business over there?

A I suppose he did. He made a profit on them as well as the rest of it, I suppose.

Q-10 You say you looked upon the films a good deal when you were not at work, Mr. Lyle. What was the expenditures of money those small dollars? Did you pay their bills around there?

A Got my first time to pay it.

Q-11 Did you know there was such bill there?

A Not until the final down note, that is the first. It may have been there, I never held any attention.

Q-12 How many times did you put them back?

A Times or just dozen, something like that.

Q-13 To put up limit? A Yes, sir.

Cross Examination by Mr. Freeman:

Q-1 Did he need them in his business over there?

A I suppose he did. He made a profit on them as well as the rest of it, I suppose.

Q-2 You say you looked upon the films a good deal when you were not at work, Mr. Lyle. What was the expenditures of money those small bills? Did you pay those bills around there?

A Got my first time to pay it.

Q-3 Did you know there was such bill there?

A Not until the final down note, that is the first. It may have been there, I never held any attention.

Q-4 How many times did you put them back?

A Times or just dozen, something like that.

Q-5 To put up limit? A Yes, sir.

6-Q He had plenty to supply your needs?

A Yes, sir.

7-Q Were they new jars or old ones?

A I don'tthink they were new ones.

8-Q Old ones?

A Yes, sir.

MR. STANLEY FIGGATT, a witness introduced on behalf of the defendant, being first duly sworn, testified as follows:

By Mr. Ott:

1-Q Mr. Figgatt, you, I believe, have the store room adjoining Mr. Kennedy, do you not?

A Yes, sir.

2-Q Is there a joint stairway between the two stores?

A Both parties use the same stairway. Both have the same entrance.

3-Q There is an opening from the Figgatt store room, from your store room, out to your stairway, and an opening from Mr. Kennedy's store room into that same stairway.

A Yes, sir.

4-Q Do you, or had your father, during his lifetime, also at times used this basement there?

A What do you mean, our basement?

5-Q No, I mean the basement under Mr. Kennedy's store.

A Well, no, not that I know of, not specially. Somebody might walk down in there sometime and look around, but we never had any use for it.

6-Q What I mean by that, someone, I think, has testified about some bottles being down there, some beer bottles. Do you sell Budweiser Beer there in your store?

A Yes, sir.

7-Q Did you have any of these empty cases down there in the basement under Mr. Kennedy's store?

A Yes, sir.

8-Q Do you remember about how many you had down there?

MR. STANLEY RIGGATT, a witness introduced on behalf of the defendant, being duly sworn, testified as follows:

1-C MR. RIGGATT, you, I believe, have the store room adjoining Mr. Kennedy's store?

A Yes, sir.

2-C Is there a door between the two stores?

A There is an opening from the RIGGATT store room, from your store room, and to your store, and an opening from Mr. Kennedy's store room into that same entrance.

A Yes, sir.

3-C Do you remember about how much you had down there?

A Yes, sir.

4-C Do you, or had your father, during his lifetime, also at times used this basement there?

A Just do you mean, our basement?

5-C No, I mean the basement under Mr. Kennedy's store.

A Well, no, not that I know of, not absolutely. Somebody might easily come in there sometime and look around, but we never had any use for it.

6-C What I mean by that, someone, I think, has testified about some potatoes being down there, some pock potatoes. Do you see any buildings near there in that part down there?

A Yes, sir.

7-C Did you ever see or think there was any other cellar down there in the basement under your store?

A No, sir.

8-C He had plenty to supply your needs?

A Yes, sir.

9-C Were they new lots or old ones?

A I don't think they were new ones.

10-C Old ones?

A Yes, sir.