The 7th

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 W T Reynolds has this day made complaint and information on oath before me, SHEFFEY L. DEVIER, Mayor of said City, that Walter Rhodes on the 31 day of March 1927 in said city, did unlawfully buy, receive, possess and transport ardent spirits in quantity less than 1 pint,

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

Given under my hand and seal this day of March 1927

Sheffey L Devier (Seal)
Mayor

VIRGINIA, CITY OF HARRISONBURG, TO-WIT:

This day..... came before me, Sheffey L. Devier, Mayor of the City of Harrisonburg, Va., and severally and respectively 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.....192..... 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 .....192.....

.....(SEAL)

.....(SEAL)

Taken and acknowledged before me this.....day of .....192.....

.....
Mayor City of Harrisonburg, Va.

WARRANT OF ARREST

CITY OF HARRISONBURG

vs. Walter Pleasler

Summons for City

Summons for Defense

COSTS

Fine	$5.00
Issuing and Trying Warrant	4.00
Commonwealth's Attorney	2.00
Summoning Witnesses	
Jail Fee	
Witnesses' Attendance	
Arrest	1.50
Total	$45.50

Executed 192

Set for May 6 at 1

4/7 .....192 7

The defendant is found.....guilty as charged, and adjudged to pay a fine of $ 5.00 .....

for the benefit of the City, and the costs noted on this warrant, and to serve 3 months on the

State Road Force, ...in jail.

Allow bond
Bail fixed for his appearance before Circuit Court of Rockingham County, Va. at the April term

Sheffey L. Devier, Mayor

W. T. REXRODE, sworn on behalf of the Commonwealth, testified:

BY MR. EARMAN:

Q Mr. Rexrode, you are a prohibition officer, are you?

A Yes, sir.

Q For the State or the Federal Government?

A The State.

Q How long have you been such officer?

A About three and a half years.

Q State whether you arrested the defendant, Walter O. Rhodes, on a charge of violating the liquor laws of this State?

A I did.

Q When did you make the arrest?

A I think it was the last day of March of this year.

Q Just state the circumstances to the Court under which you happened to arrest the defendant?

A On the last day of March of this year, I drove out the Valley pike, south of town, and in passing Kratzer's garage, out here, I noticed a Chrysler car standing there under the shed. Just after I crossed the B. & O. railroad track south of there this car passed me, with a youngman driving the car and Mr. Rhodes in the car with him.

MR. DECHERT: The youngman was Ray Fultz?

WITNESS: The youngman driving the car was Ray Fultz, yes, sir.

A (Contd.) Just after they passed me they turned off the Valley pike and drove across the road that goes over by the Pleasant Hill school-house. I drove out the pike just a little piece and turned and came back and followed them. I overtaken them on that road going up

W. T. MEXRODE, sworn on behalf of the Commonwealth, testified:

MR. MAHONEY:

Q. Mr. Mexrode, you are a Prohibition officer, are you?

A. Yes, sir.

Q. Not the State or the Federal Government?

A. The State.

Q. How long have you been engaged in that work?

A. Upon this occasion I was in Pearisburg, Giles County, Virginia, on the night of the 9th of March, 1920, and in company with Officers Kirkpatrick, Estes and Peters, I proceed to arrest the defendants.

Q. Just state the circumstances to the court under which you proceeded to arrest the defendants?

A. On the last day of March or first day of April. I drove out the Valley pike, south of town, and in company with Officers Kirkpatrick, Estes and Peters, I proceed to a cottage on Kentucky Avenue, and there I arrested Mr. A. A. Lattimer, Mr. Hughes and Mr. Hughes and Mr. Hughes in the cottage with him.

MR. DUCHMAN: Are Hughes and Lattimer

MILLER: Are Hughes and Lattimer the two men you have been talking about?

MR. DUCHMAN: Are Hughes and Lattimer

A. (Contd.) that after they passed me they turned off the Valley pike and drove across the road that corresponds to the present Mill Bike and drove across the road that corresponds to the present Mill Bike and turned one a little place and turned and accost-house. I drove out the Bike just a little place and turned and came back and followed them. I overtaken them on that road south up

Q. Then did you make the arrest?

A. I did.

Q. Have you made a search of this place?

A. Upon that occasion we searched the premises and we found a part of a quart bottle of whiskey.

Q. How long have you been a prohibition officer?

A. Two years.

Q. Not the State or the Federal Government?

A. Yes, sir.

Q. Mr. Mexrode, you are a Prohibition officer, are you?

In the Circuit Court of Rockingham County.

City of Harrisonburg

B} On appeal from the judgment of the Mayor
W. O. Rhodes. convicting the defendant of violation of the Prohibition law.

Be it remembered that upon the trial of this cause the City of Harrisonburg to maintain the issue on its part, introduced as a witness, W. T. Rexrode, who testifies as follows:

W. T. REXRODE, sworn on behalf of the Commonwealth, testified:

BY MR. EARMAN:

Q Mr. Rexrode, you are a prohibition officer, are you?

A Yes, sir.

Q For the State or the Federal Government?

A The State.

Q How long have you been such officer?

A About three and a half years.

Q State whether you arrested the defendant, Walter O. Rhodes, on a charge of violating the liquor laws of this State?

A I did.

Q When did you make the arrest?

A I think it was the last day of March of this year.

Q Just state the circumstances to the Court under which you happened to arrest the defendant?

A On the last day of March of this year, I drove out the Valley pike, south of town, and in passing Kratzer's garage, out here, I noticed a Chrysler car standing there under the shed. Just after I crossed the B. & O. railroad track south of there this car passed me, with a youngman driving the car and Mr. Rhodes in the car with him.

MR. DECHERT: The youngman was Ray Fultz?

WITNESS: The youngman driving the car was Ray Fultz, yes, sir.

A (Contd.) Just after they passed me they turned off the Valley pike and drove across the road that goesover by the Pleasant Hill school-house. I drove out the pike just a little piece and turned and came back and followed them. I overtaken them on that road going up

a hill west of Mr. Hartman's, and, driving up close behind them, I saw Mr. Rhodes drinking out of a bottle. I followed the car on and they came to the Dayton pike and turned towards Harrisonburg, and when they got out near the C. & W. Railroad they turned in a lane there that goes into Elmer Bowman's garage. I ran my car in behind theirs so they could not back out, and I jumped out and ran around and asked them if they did not have some liquor in the car. Mr. Rhodes said that they did not. He started to get out, and I told him just to sit still. I searched him and he had a pint bottle in his pocket -- side pocket on his righthand side -- half-full of liquor.

MR. DECHERT: You said a pint bottle, did you?

WITNESS: A pint bottle half-full of liquor.

Q What kind of liquor was it?

A Moon-shine liquor.

Q Did you examine the contents of the bottle to find out what it was?

A Yes, sir.

Q Did you smell the liquor?

A I smelt the liquor; and it was moonshine liquor, and very bad liquor at that.

Q It smelt like it and it looked like it?

A Yes, sir.

Q And it was in your opinion moonshine liquor?

A Yes, sir; it was moonshine liquor.

Q Moonshine liquor is intoxicating, is it?

A It is.

Q You say, Mr. Rexrode, that he had this liquor on his person, in his pocket?

A Yes, sir.

Q Did you or not on that trip that you followed the car see

was a little deaf to Mr. Hathaway's, and quietly up close behind them. I was very much surprised to see a bright pocket-lamp in a hand a bright pocket in the hand of one of the bodyguards -- white handkerchief -- white handkerchief -- bright pocket-lamp to illuminate the contents of the pocket to find out what it

MR. DECHENEY: You mean a bright pocket, did you?

ATTENDER: A bright pocket multi-lamp to illuminate.

Q Did you smell any illuminant when it was

A Moon-shine illuminant.

Q What kind of illuminant was it?

A Yes, sir.

Q Did you to non to non on that night that you followed the car?

A Yes, sir.

Q Did you smell the illuminant?

A I smelt the illuminant; but it was moonshine illuminant, but very hard illuminant to find.

Q It smelt like it but it looked like it?

A Yes, sir.

Q Did it make the illumination moonshine illuminant?

A Yes, sir; it was moonshine illuminant.

Q Moonshine illuminant is intoxicating, is it?

A If is.

Q You was, Mr. Hexter, that on that night illuminant on the person, in the pocket?

A Yes, sir.

Q Did you to non to non on that night that you followed the car? ???

Q Was kind of illuminant was it?

A Moon-shine illuminant.

Q Did you examine the contents of the pocket to find out what it was?

A Yes, sir.

Q Did you smell the illuminant?

A I smelt the illuminant; but it was moonshine illuminant, but very hard illuminant to find.

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Mr. Hathaway's, and quietly up close behind them. I was a little deaf to Mr. Hathaway's, but quietly up close behind them. I was very much surprised to see a bright pocket-lamp in a hand a bright pocket in the hand of one of the bodyguards -- white handkerchief -- white handkerchief -- bright pocket-lamp to illuminate the contents of the pocket to find out what it was. Mr. Hathaway's, and quietly up close behind them. I was very much surprised to see a bright pocket-lamp in a hand a bright pocket in the hand of one of the bodyguards -- white handkerchief -- white handkerchief -- bright pocket-lamp to illuminate

him take a drink from that bottle, or a bottle?

A I did.

Q Was that before or after you arrested him?

A Before.

THE COURT: Was that within a mile of the corporate limits of this City?

WITNESS: Oh, yes, sir. It was within about a mile of the corporate limits, I suppose.

CROSS-EXAMINATION BY MR. DECHERT:

X Mr. Rexrode, this case against W. O. Rhodes, growing out of your finding this pint bottle half full of liquor on him, was tried before the Mayor of Harrisonburg, wasn't it?

A It was.

X Harrisonburg is a city?

A Yes, sir.

X It was tried on a warrant sworn out by you as the result of this search and seizure?

A It was.

X You were present the day the case was called for trial before the Mayor, were you not?

A Yes, sir.

X And when that case was called you heard me, as attorney for Rhodes, say that it was -- you were called to the stand, and I said it was unnecessary to hear your evidence, that I would admit the facts as claimed in the warrant?

A You did; yes, sir.

X And, so, your evidence was not heard in that case?

A No, I did not testify against Mr. Rhodes. He entered a plea of guilty, as I understand.

THE COURT: Did you testify?

WITNESS: No; he entered a plea of guilty.

Q. Did you see a truck from that point, or a pointer

A. I did.

Q. Was that before or after you started

A. Before.

THE COURT: How far was a mile of the corporate limits of the corporate limits of this City?

WITNESS: Oh, very, very. It was without about a mile and a half, I suppose.

CROSS-EXAMINATION BY MR. DRUMMER:

Q. Mr. Hendrix, this case began W. O. Hendrix, driving one of your trucks, was it not, in Lima, Ohio, was it not?

A. It was.

Q. Was it a truck?

A. It was a truck.

Q. Was it a truck belonging to Hendrix Brothers?

A. It was.

Q. You were present when the case was called for trial before the Mayor, were you not?

A. Yes, sir.

Q. And when that case was called you moved for a continuance, did you not, and it was -- you were called to the stand, and I asked Hendrix, was that it was -- you moved to continue the case, and it was continued to next term of court, is it not?

A. Yes, sir.

Q. Was that before or after you started for Lima, Ohio?

A. Before.

THE COURT: How that witness a mile of the corporate limits of the City?

WITNESS: Oh, very, very. It was without about a mile and a half, I suppose.

CROSS-EXAMINATION BY MR. DRUMMER:

Q. Mr. Hendrix, this case began W. O. Hendrix, driving one of your trucks, was it not, in Lima, Ohio, was it not?

A. Yes, sir.

Q. Was that before or after you started for Lima, Ohio?

A. It was.

Q. Was it a truck belonging to Hendrix Brothers?

A. It was.

Q. You were present when the case was called for trial before the Mayor, were you not?

A. Yes, sir.

Q. And when that case was called you moved for a continuance, did you not, and it was -- you were called to the stand, and I asked Hendrix, was that it was -- you moved to continue the case, and it was continued to next term of court, is it not?

A. Yes, sir.

Q. Was that before or after you started for Lima, Ohio?

A. Before.

THE COURT: How that witness a mile of the corporate limits of the City?

WITNESS: Oh, very, very. It was without about a mile and a half, I suppose.

X Mr. Rhodes, however, was placed on the stand by me, you recall that, do you not, to show that the pint was all that he purchased?

A Yes, sir.

X And his testimony was complete; and the Mayor announced that he would await the pronouncement of judgment until after the succeeding case was heard, didn't he?

A He did.

X And he did so withhold his judgment until the other case was heard?

A Yes, sir; that is correct.

X That other case was the case against Ray Foltz?

A No, sir.

MR. EARMAN: It was the case against Kratzer.

X Against George Kratzer? I believe his name was George Kratzer.

A Yes, sir.

X Kratzer was employed in a garage somewhat south of town?

A He operates the garage.

X That garage was within the two mile limits of this city, also, wasn't it?

A Yes, sir; it was.

X The charge against Kratzer was one under a warrant sworn out by you before the Mayor of the city, wasn't it?

A It was.

X And the charge was that he had sold this same pint of liquor to W. G. Rhodes? Wasn't it?

A That was the charge; yes, sir.

X When the Kratzer case was called, Rhodes was the first witness called by the Commonwealth's Attorney on behalf of the Commonwealth, wasn't he?

A No, sir.

X Mr. Knowles, however, was hired on the basis by me, was it not?

A Yes, sir! It was.

X Was he employed in a George Washington to form?

A He operates the Zerbee.

X Martin George was attach the two mile limits of this city, also?

A Yes, sir! It was.

X The charge against Martin was one count a warrant issue once by the Mayor, was it not?

A Yes, sir! It was.

X And his testimony was complete: the Mayor announced that he would admit the introduction of judgment until after the successful case was heard, didn't he?

A No sir.

X Did you ever see the case against Mr. Roffe?

A Yes, sir! That is correct.

X Was he also charged with the same offense?

A Yes.

X Was he also withdrawn his judgment until the other case was heard?

A No sir.

X Was the testimony in the case against Mr. Roffe the same as in the case against Martin?

A It was.

X And the charge against Martin was that he was operating a gambling house?

A Yes, sir.

X Martin George was arrested on the same day by me, was it not?

A Yes, sir.

X Martin George was charged with the same offense as Roffe?

A Yes, sir! That is correct.

X Was the case against Martin George also heard before the Mayor?

A Yes, sir! That is correct.

X Was he also withdrawn his judgment until after the other case was heard?

A No sir.

Q. W. Knowles. Was it?

A That was the question! Yes, sir.

X Was the charge against Martin George the first witness called by the Commonwealth, a witness on behalf of the Commonwealth.

A Yes, sir.

X Martin George was charged with the same offense as Roffe?

A Yes, sir.

X Martin George was arrested on the same day by me, was it not?

A Yes, sir.

X Martin George was hired on the basis by me, was it not?

A Yes, sir.

X Mr. Knowles, however, was hired on the basis by me, was it not?

A He was.

X He testified in that case?

A He did; yes, sir.

X And in answer to questions propounded to him by the Commonwealth's Attorney, he testified that he had bought the liquor from some person there in the garage of Kratzer's though not from Kratzer himself, didn't he?

A Yes, sir; I think that is about the substance of his testimony.

X And that it was the same liquor which he had been transporting at the time you searched him and found him with the half-pint?

A Yes, sir.

X Now, ~~after~~ this second case against Kratzer was tried before Councilman Stickley, acting as justice of the peace, wasn't it?

A It was.

X But the Mayor was present during the time that the case was being tried also?

A Yes, sir; he was present.

X After the completion of the evidence in the Kratzer case, Rhodes was recalled to the stand by me, under permission of the Mayor, and testified to the fact that he had just testified in the Kratzer case to these incriminating facts, didn't he?

A He did.

X And it was then claimed by Mr. Morrison and me, representing him, that he was entitled to be discharged because he was immune under the statute from prosecution by reason of his having been called as a witness to testify in the Kratzer case. You recall that, don't you?

A Yes, sir.

X Then the Mayor pronounced judgment, sentencing him to three months on the road and a fine of five dollars?

A Yes, sir; that was the Mayor's judgment.

A Yes, sir.

X Now, maybe this second case against Kinsser was filed before

Commissioner Hatchler, acting as Inspector of the Police, was, I'm

A It was.

X But the Major was present during the time that the case was

being filed also?

A Yes, sir! He was Present.

X After the completion of the evidence in the Kinsser case, Major

Hua was recalled to the witness by me, under Permission of the Major, and

testified to the fact that he had just testified in the Kinsser case

to those identical facts, didn't he?

A He did.

X And it was then claimed by Mr. Morris and he, representing

Mr. Hua, that he was entitled to be discharged because he was immune under

the statute from prosecution by reason of his previous being called as a

witness to testify in the Kinsser case. You recall that, don't you?

A Yes, sir.

X Then the Major pronounced judgment, sentencing him to fifteen

months on the road and a fine of five dollars?

A Yes, sir! Major pronounced judgment.

MR. DECHERT: I think that is all.

MR. EARMAN: I will have to prove the former conviction of Rhodes, if your Honor please.

MR. DECHERT: It is admitted that the defendant, Rhodes, prior to the time of the commission of the offense for which he is now being tried -- I refrain from using the word "prosecuted" -- was convicted of a like offense -- being the transportation of one-half pint of liquor, said first conviction having been since 1916.

MR. EARMAN: It was in June, 1924.

THE COURT: I do not see that the time is material, since it was after 1916.

~~MR. DECHERT: We move the Court to dismiss the warrant on the ground that the defendant is immune from punishment by virtue of the provisions of Sec. 4675 (42) Michie's Code of Virginia 1924.~~

~~Which motion the Court overruled and the defendant by Counsel excepted.~~

This warrant is not a bar

MR. EARMAN: If there is any question raised as to the alcholic content of the liquor I wish to introduce evidence as to that.

MR. DECHERT: ~~Just say~~; It is admitted that the liquid contained in the pint bottle found on the person of the defendant, being one-half pint or thereabouts, contained alcohol of a per centage exceeding that permitted by statute

STIPULATION: It is stipulated that at the time of the trial of ~~the~~ Kratzer and the Rhodes cases before the Councilman and the Mayor, respectively, there was in force in the City of Harrisonburg an ordinance adopted pursuant to the statute against the offence of selling transporting ~~and~~ or having unlawful possession of ardent spirits; and that said ordinance was in the same language as that employed by the State statute in similar prohibitions; the said ordinance having been adopted December 10, 1924, and the punishments for said offenses under the ordinance being not less than under the Statute.

MR. DECHERT: I think that is all.

MR. HAMAN: I will then go before the former commission of inquiry.

MR. DECHERT: It is understood that the government, through the commission of the citizens committee, will not hold us to the strict letter of the contract -- I mean, that we will be allowed to substitute "substantially" for "substantially" -- and that the substitution of one-like citizens -- being the representation of one-half time to "houses," and that strict compliance will be waived.

MR. HAMAN: Just as long as it was a fair deal.

THE COURT: I do not see that the time is material, since it was a fair deal.

MR. DECHERT: We have the contract to erect the buildings on the ~~Lincoln Avenue site, and the contractor is present with his counsel.~~

~~Mr. Dechert: Mr. Chairman and Members of the Committee, I propose to submit the contract to the Committee.~~

~~Mr. Haman: Mr. Chairman, I move that the contract be accepted.~~

~~Motion was duly seconded.~~

MR. HAMAN: It then is a unanimous motion to the effect that the contract be accepted.

MR. DECHERT: Mr. Chairman, I move that the contract be accepted.

MR. HAMAN: It is moved and seconded that the contract be accepted.

THE COURT: Is there any further business?

MR. DECHERT: I move that the committee do now adjourn.

MR. HAMAN: It is moved and seconded that the committee do now adjourn.

THE COURT: It is moved and seconded that the committee do now adjourn.

Carried.

MR. DECHERT: I think that is all.

MR. EARMAN: I will have to prove the former conviction of Rhodes, if your Honor please.

MR. DECHERT: It is admitted that the defendant, Rhodes, prior to the time of the commission of the offense for which he is now being tried -- I refrain from using the word "prosecuted" -- was convicted of a like offense -- being the transportation of one-half pint of liquor, said first conviction having been since 1916.

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~~And therefore, the City of Harrisonburg~~

And this being the only witness introduced in the case by the City of Harrisonburg and by the defendant, respectively, the defendant moved the Court to dismiss the warrant against him on the ground that he having been called as a witness in the case of Commonwealth v. Kratzer, referred to in the evidence, by the Commonwealth's attorney and having, upon such call, testified to the facts tending to incriminate him on the charge contained in the warrant herein, ~~he~~ the defendant became immune from prosecution or punishment by virtue of the provisions of Sect. 4678(42) of Michie's Code of Virginia of 1924; which motion the Court ~~sustained and~~ which, by agreement of Counsel had heard the case without the intervention of a jury over-ruled, and proceeded to sentence the defendant to serve three months on the public roads and to pay a fine of five dollars and the costs of this proceeding; to which action of the Court, in so over-ruling said motion, and in so entering said judgment, the defendant, by counsel, excepted, and prays that this, his bill of exceptions he signed, sealed and enrolled, and made a part of the record in this cause, which is therefore, within 60 days after the rendition of the judgment, the Commonwealth's attorney being present, and receiving notice of the time and place of the presentation of this bill to the Court for signature, accordingly done, this 9th day of May 1927.

H W Bergstrom
Judge. (Seal)

Rhodes case

See 8 Va Cont. - Cannot compel accused to give evidence against himself.

Flannery v Commonwealth 113 Va 775 says

where the law gives the witness full indemnity and assurance against any liability to prosecution for a disclosure he can be called upon to make as to his own implication or complicity in the unlawful act as to which he is sworn and called upon to testify, he is bound to answer and cannot shield himself under this section of Const.

Code Sec 4675 (42)

This section of the probation law protects the witness in his constitutional rights by providing that when called in a case against another, the evidence which he, as ~~a witness~~ has given such witness shall not be used against him and that he shall not be prosecuted as to the offence as to which he testified.

It seems to me that the immunity by this section applies only in ~~the~~ case ~~where~~ the accused is called and the evidence given, in a Court of Record, otherwise the clause "in a court of record" would be meaningless - The provision is that when ~~accused~~ a person is called to the stand by the court, or atty for Commonwealth &c, or is summoned by the Commonwealth and sworn as a witness by the court or clerk and sent before the grand jury, In a Court of Record, in such events the testimony shall not be used against him and he shall not be prosecuted for the offence as to which he testified.

See and cmp - Sec 4675 (97)

The objects of Sec. 4675 (42) ~~to~~ Act. 41½ of the Subversive Liquor statute are;

Appeals - 4430

1 - To provide evidence in prosecution for violations of this law, where it might be otherwise impossible to obtain a conviction, by providing that no person shall be excused from testifying on the ground that this testimony would tend to incriminate himself.

2 - To grant immunity from prosecution for offenses against the subversive Liquor statute, to the person compelled to testify for the Commonwealth. In a court of record or is called by the Court or the Atty for the Commonwealth or the Commissioner, to the stand, or summoned by the Commonwealth and sworn as a witness and sent before the grand jury.

It seems to me that the immunity applies only to the specific instances enumerated in this section - which by its terms are ~~are~~ confined to the giving of incriminating testimony in a court of record.

The mayor's court in which this case was tried and from which an appeal was taken is not a court of record. It therefore follows that the mere calling of the accused, to the stand, and swearing him as a witness did not compel him to testify and that he could have refused to testify under the Constitutional provision against compulsory evidence against himself; but what reason would there have been for Rhodes to refuse to testify in the Kratzer case after he had already admitted his guilt in his trial concerning the offense for which he was ~~afterwards~~

Cullen
24 Grat
p. 624

sentenced by the mayor, after the trial of Kratzer, his accomplice in crime. No constitutional right of his was violated, he had already admitted his guilt in his own trial, of the offense for which he was tried, which admission was and when made amounted to a plea of guilty.

But should it be held that the immunity statute extends to testimony given in a trial of a court not of record, contrary to the foregoing findings, can it be said that after a plea of guilty ~~in a court of record~~ and a trial ~~of that~~ case on that plea that the accused would be ~~immu~~ immune from punishment simply because he is called and gives testimony against another ~~what~~ who was an accomplice in the offense for which himself was tried? I think not.

It may just as well be said that if Rhodes had been tried, convicted, sentenced and was serving out the sentence, and was then called and testified against Kratzer, his punishment would, by that act by reason of the statute, immediately cease and he be discharged from custody.

Certainly after confession of guilt by plea of guilty and trial, the reason for the immunity given by the statute no longer exists. No constitutional right or privilege of Rhodes was violated by the attorney for the Commonwealth calling him to testify in the Kratzer case as he had voluntarily surrendered, and waived any such right by his plea of guilty and submitted his case to the court for judgment.

This is entirely different case from that of Cullen v Commonwealth 24 Grat. 624 - cited by counsel for the accused. That was not a case of claimed immunity from prosecution, but one concerning the right to refuse to give testimony which might tend to incriminate the witness in face of the statute giving immunity to a witness testifying as to offences under the anti-duelling laws, where ~~it was held that the immunity given by statute did was not~~ the statute provided that the "statement" made by a witness should not be used against him in a prosecution against himself. The court refused to punish for contempt for the refusal to testify on the ground that the immunity provided by the statute was not complete and that to compel the witness to testify under the circumstances would be to deprive him of his constitutional privilege without indemnity, ~~and that~~ notwithstanding the witness had already made elsewhere a full and voluntary disclosure of the facts, before the coroner ~~in~~ when holding an inquest over the dead body of the deceased who was killed in the duel at which the witness was in attendance as surgeon. The court in that case said: "We entertain no doubt that a witness may waive his privilege, whether secured to him by the Constitution or otherwise, on the familiar principle that a man may always waive a provision made for his benefit. But the waiver of such privilege as we are now considering, must always be made intelligently and willingly, and generally after being warned

by the Court. See 1 Greenleaf Ev. 5451 we are told that whether the testimony will tend to criminate the witness is not is a point on which the Court is bound to instruct him x x x But in all cases where the witness, after being advised of his privilege, chooses to answer, he is bound to answer everything relative to the transaction." Holding ~~that~~ in that case that because the supposed waiver was not made before a Court, but before a Coroner without being advised of his privilege "and evidently without appreciating the position in which he was placed," he had not actually waived his privilege.

When Rhodes at his own trial confessed his guilt he waived any right to claim the immunity granted by the statute when he was called by the Commonwealth to testify in the subsequent trial against his accomplice in crime. As I view it the provisions of the statute no longer existed as to him. So far as he was concerned it was a dead letter so far as it related to the particular crime for which he had already been tried and in that trial had confessed his guilt.

It has been argued that on the trial of this case on appeal, the case is tried de novo. That may be true and yet he still confesses his guilt and the plea he made before the Mayor remains the plea here, namely: guilty. In fact he cannot change it, and if it were not for the question raised as to the claimed immunity from prosecution, there would be nothing left

in this trial to be determined by the court but the amount of the punishment to be inflicted within the limits provided by the statute.

I do not see that this last point affects the question involved in any degree.

The motion to dismiss the accused from prosecution is denied.

Apr. Term 1897 # 389

City of Harrisburg

vs } Pro-

Walter Rhodes

Bushnell

QUALITY WORKMANSHIP

20-4446