

62 Quincy is said to have been killed he got there about 3 1/2 O'clock as near as he can state that Abraham Cowan was not there when he got there that William Quincy came to Auburn about 5 minutes after he got there he came in the horses and he and Abner went out at the horses about the same time that Bill Quincy requested for Abraham Cowan when he came I heard nothing that was said after Quincy & Abner Cowan left the horses. Quincy left in about 5 minutes after he came Abraham Cowan came in or I saw him in the yard about 5 minutes after Quincy left I saw Bill Cowan about the same time. I can't say whether Abner dressed himself for meeting or not. before we started to the Baptists, when we got ready to start to the baptizing Abner Cowan said he had to go must see Bill Quincy. I told him it was out of the way we then left and went to see Quincy we met him between Mrs. Reeders and Mrs. Quincy's and they held a private Communion together but I don't know who at passed between them. I was with Abner during the balance of said day got to the Baptizing about the time the preacher

63

was sounding the water or balloons with a stick, this was about 10 1/2 o'clock.

I guess.

William Cunniff introduced Slater that he is the brother of the two prisoners Abraham & Abner Cunniff. I was at home on the Sunday that Hanny died was killed, also at home the night before and slept in the same bed with my brother Abraham Cunniff and Abner slept in the same room with us.

On ^{Sunday} ~~Monday~~ mornings we do not get up as early as on work days, as this Sunday morning mother waked us up for breakfast. we got up and got our breakfast about. Sunday or 1/2 hour.

after I was up. Abner did not get up when Abner got did we went to feed after breakfast we went to the barn and fed four horses and one Cuck and the hogs. at the barn we fed other stock that morning, we carried the horses & the Cuck. and made us about two dozen Cigars we put the wrapper that went around the cigar from the leaf tobacco and returned to the house together before we got to the house I discovered John Prather's horse hitched there. Prather was there when we got back from feeding.

64
The barn where we fed is about 100 yards
from the house. The ground is level
and no obstruction to prevent seeing
the barn from the house the Calks
when we got the corn is nearer the
house than the barn after we got to the
house Prater & Abraham left together
I was with Abram all that morning until
he left with Prater and Thos. He did
not leave home until he left with
Prater. Witness states that he was at
home the night his brother Abraham
was arrested that when he went to bed
that night he and Abraham both
went to bed on top of the feather bed
that he did not wake up when the
pewee, his father Griffin Wright Job
Barry & others came in the room that
when he did wake up he found his
brother Abraham had gotten up the
feather bed got between that and the
mud bed. And under him and that he
was on the feather bed and on his
brother Abes when he did wake up
and did not wake up while Abes was
down this my father came to me and
put his hands on me but then did not
fully wake me, he called Abraham &
me but I did not answer. I did not

65
washed up fully and I was pushed off
my brother Abe. and when I needed
help of him I grunted, I heard my
father say to Mr Wright he may not be
there and asked, who was Abraham
After Abraham was pulled out of the
bed, Mr Wright asked Abe where was
Bill Shays father he said, he not have it
that he had sent it home Monday morning
before I told him that I had taken it
to Chic and gave it to him near the
warehouse between that and Mr Wright's
little field. I had a conversation
with Griffin Wright & W. Corcoran near my
father's house some 150. or 200 yards.
from there after Abe had been arrested
several days. As I was going to school
Korcoran asked me if Abraham was at home
Sunday morning that day and then I
told him he was. and did not tell them
that he left home early Sunday morning
I did not tell them that I saw Abraham
come home from the direction of the
new barn through the field. I did say
that he came home through the field
the new barn is some 600 yards. and a
little north¹⁰ east from the house. I called
had I put Mr Wright had B. and they
had search warrants and told me to tell

when the things were that the 2nd of Feb.
got off the train, & I did not they
would have me in Lawrenceville before
the next night Wright had one
pistol in his hands.

Miss Elizabeth Taylor says I was at home
that day Henry King was killed also
the night before. Charlie Smith was there
early next Sunday morning, he left with
Abel Lambert. I was with Smith on

Monday before the robbery until dinner
after dinner he went out with his team
and said he was going to gather persons
I saw him again in the evening, saw
a knife a little like the one there
shown witness in the possession of my
brother. When Smith came
back in the evening on the Monday
before the robbery of the train he had
staid on his brother.

Imperial Circuit Set

Of Geo. E. Rogers, judge of said Court
Certify that the foregoing contains all
the evidence or the substance thereof
introduced on the trial of the indictment
against W. P. King & others for the murder of
Henry King, that all the witnesses who

67

Gave as evidence on the testimony on said trial and testified in said Cause that duty was legally sworn before giving in their evidence and testifying in said Cause. Ad of which testimony is certified to the Court of Appeals and directed to be filed in the office of the Superior Court. And made a part of the record. *Ex H. Rogers. (Ex)*

Superior Court's Court
 Commonwealth of Kentucky
 Against. *Ex Bill of exceptions App.*
 Mrs. Perkins & others *Def.*

Bill
 exceptions
 App.

As it remembered that on the trial of this prosecution against Mrs. Perkins & others for murder the Court for the Commonwealth asked the Court to give to the jury the following instructions numbered 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14 & 15.

Empson's Curious Card

01

4th Feb

Acta

The Court instructs the

the Commonwealth.

A Conspiracy is a Combination of
Two (2) or more persons by some concerted

large or purposes -

10

Even, prison entering into a Conspiracy
or Combining designs, already formed.

Given - Geo. C. Hoar, M.

3rd No act & declaration of each

Geo. C. Rogers

4. CP Conspiracy formed w/ a further
obj. of 31 billion & more

... are responsible

69
by for all act done or words uttered by any
member thereof, in conformity with the
agreed plan of operations - or in
accomplishing the common designs or
designs concerted.

Given. Geo. C. Rogers.
5th. All homicides are presumed to have
been done with malice aforethought,
either express, or implied, and when
the killing is once established beyond
a reasonable doubt, by proof, the
jury are authorized to presume that the
slayer was prompted by malice until
the contrary is established by proof.

Given. Geo. C. Rogers -
6th. The crime of Murder or Conspiracy may
be established by positive proof, or Circum-
stantial evidence and whenever a belief
is generated in the minds of the jury
beyond a reasonable doubt, by such
testimony, of the guilt of the accused,
petitioner or any of them they are then
authorized to so find. Given
No. 7th. Geo. C. Rogers.

The term "reasonable doubt" is not
easily defined. It is not a mere possible
doubt, because every thing relating to
human affairs, and depending from
moral evidence is open to some

possible or imaginary doubt. It is that
 State of Case! which after the entire
 Confession and Considerations of all
 the evidence. leaves the minds of
 men in that Condition that they
 cannot say they feel an abiding
 Conviction to a moral Certainty of
 the truth of the Charge. Given Geo Rogers

8th While the Jury have no right to weigh the
 testimony they may nevertheless estimate
 it - and in determining the value and
 force of the evidence left any witness
 they are authorized to take into consid-
 =eration his or her deportment. relationships
 prejudiced partiality. for or against the
 accused parties - and the means and
 opportunities of knowing the truth whereas
 he or she deposes. and to increase or
 diminish the force or value of such
 statements. Commensurate with such
 influences - motives or Causes.

Given Geo Rogers.

9. 7th

The flight or concealment of himself
 by any of the accused parties after
 the murder of Harvey King. is a
 Circumstance much claimed unfavorable
 to innocence
 Given Geo Rogers.

10th A Knowledge of the act and Slavery
of Henry Thurgood if he be one of the
Conspirators and the suppression or
concealment of such knowledge by a
party if he be likewise one of the
Conspirators - if explained in favor
= able to innocence as to such party
having & Concealing the same and
consider to prove the guilt.

19 The effort to manufacture or procure
false evidence by an accused party
in his own behalf is a circumstance
that should be considered by the jury.
Given Geo Rogers.

[illegible][illegible]

7th
 No 12. On Motion of the Attorney for the Common
 Pleas the Court mustered the Jury. That the object
 of all witnesses is to elicit the truth, and
 although they may believe that John Evans
 & Stephen Burdwell from the testimony are men
 of bad Character and not entitled to Credit
 on oath yet if they further believe from the
 testimony that they have been substantially
 corroborated in the material facts stated and
 deposed to by them it is in the discretion of the
 Jury to give such weight and Credit to their
 statements as the facts & circumstances in
 this Case will warrant and justify.
 Given Geo L Rogers.

No 13. The Neglect of indictment or encouragement
 employed & waited to procure the Con-
 mission of a Crime is not. Agreed by the
 legal authorities, but that indictment or
 encouragement in any given Case is
 sufficient which has the effect to produce
 the end desired, intended & designed
 by those who did so induce & encourage
 and it is no defense to him or them
 who did so encourage or induce that
 the particular Crime wanted have been
 committed in the absence of such
 encouragement or indictment.

Given Geo L Rogers

No 14. Jurors who were encouraged or procured
 are other to kill & murder his fellow
 man and in consequence of which
 the crime is committed, and just as
 guilty as the offender, as the actual
 perpetrator whether absent from the place
 or ignorant of the time of murder. or
 not. It makes no difference

Given Geo Rogers.

No 15. The jury are authorized to take into
 consideration, and act upon the testimony
 of the accomplices given & received. If
 they believe their statements have been corroborated
 by other facts and circumstances

As to each and all of which the
 defendant by their Counsel objected but
 the Court overruled their objections and
 gave said instructions. So which
 ruling & decision of the Court in giving
 said the defendants by their Counsel
 at the time accepted and still accept
 and pray no appeal that their their
 Bill of exceptions be signed sealed &
 sealed and made part of the record
 which accordingly done
 Geo Rogers Secy

74 Superior Circuit Court
 Commonwealth of Kentucky vs Jeff
 A. Smith

3 Bail Recaption

W P King vacher

3 Note

100

But it is remembered that on the trial
 of this transaction a grant Mr. King
 vacher for murder the defendants by their
 counsel asked the Court to give for
 their behalf to the jury the following
 instructions. Lettered A. B. C. D. E. F.
 which are as follows.

A Commonwealth
 vs
 King vacher

The Court instructed the jury on motion of
 the defendants that death they may believe
 from the evidence that the defendants
 conspired together to throw the train
 off the track of the Louisville & Nash-
 ville Rail Road and to rob the passen-
 -gers thereof, and did throw said
 train off the track and rob said
 passengers. Yet they must find said
 defendants, not guilty of the murder
 of Harvey King unless they believe they
 killed said King while in the act
 of throwing off said train and robbing
 said passengers. Refused Les & Rogers
 That if they believe from the evidence
 that the train was thrown off the track

D.

between 2 P M & O'clock of Wednesday night and the passengers were robbed at that time pursuant to a Conspiracy and Combination between the defendant and that Harry King was killed at a place 2 or 3 miles distant on Sunday morning following about 9 o'clock. They must find the Defendants not guilty unless they believe from the evidence that all of the Defendants participated in killing him.

Refused Geo C Rogers.

As the Court further mistrust the jury that if they believe from the evidence (that John Brown and Stephen Cornwell witnesses introduced by the Commonwealth against the prisoners were associated with the prisoners in the Conspiracy they prove and assisted in throwing the brand of the tract and robbing the passengers. This fact deprives their statements material of credit to permit the jury to so disregard these altogether.

11.

And if in addition to these facts the jury believe they from their general knowledge Character and want of veracity are unworthy of belief upon which the jury is instructed to disregard their testimony altogether.

Refused

Geo C Rogers

26

Q.

That if they the jury believe that any of the witnesses introduced by the Commonwealth have been offered a reward of \$1000 or any other sum for the arrest & conviction of each one of the prisoners then such witness has no right and immediate interest in convicting the prisoners and they must disregard and reject the testimony of such witness.

Refused Geo C Rogers.

A.

That if they believe from the evidence that any of the witnesses has actually sworn against the prisoners to what is false this fact is sufficient to authorize the jury to disregard the entire testimony of such witness. Refused

Geo C Rogers.

But the Court refused to give said instructions to which ruling and decision of the Court in refusing to give said instructions the defendant & they their counsel excepted at the time and still except. and pray that this their Bill of exceptions be signed sealed entered and made part of the record which is accordingly done

Geo C Rogers (Seal)

Best understood that out the
 trial of this prosecution for murder.
 Against Mr. Perkins, within the Court. See
Report gives to the jury in lieu of some
 of those given back on the part of the
 Commonwealth and defendants the
 following instructions numbered 16
 17. 18. 19. &c.

10

The Court ~~assesses~~ the jury is of the opinion & is instructed the jury that even if it is proven to their satisfaction beyond a reasonable doubt that the defendants took upon themselves and with that death shewed be the penalty to any one of them who should disclose the secrets of their conspiracy to throw a train off the car. from the track of the Louisville & Nashville Rail Road road. the passengers. then the same is not sufficient to make them all guilty of the murder of Harvey Kido, provided he was killed and murdered by any of them unless they all had knowledge of the fact. that

was to be tried for the disclosure of
 said secrets and aided, counselled &
 abetted, in the killing. But if they
 believe from the evidence beyond a
 reasonable doubt that the defts with
 Harvey Stein did conspire to throw
 to Chicago said train of cars from the
 track of said road Robb the passen-
 -ger thereof and that they did take
 an oath promising that death should
 be the penalty to any of them who should
 disclose or reveal the same and that
 the conspiracy to throw off said train
 Robb said passengers was carried
 out & consummated by them that Harvey
 Stein did reveal the facts and was
 soon afterwards killed, then they have
 the right to consider these facts as proven
 in connection with all other facts and
 circumstances proven in the case in order
 to determine whether or not the defend-
 -ant or any of them is charged. did
 the killing & murder said Harvey Stein
 as charged - in the indictment and if
 upon the whole case they believe from the
 testimony beyond a reasonable doubt
 that the defendant or any of them did
 so kill & murder said Harvey Stein
 or did procure the same to be done for

aided, counselled or abetted in the killing & murdering of said Harvey King, as charged in said indictment they should find the ones so killing, or procuring the killing or aiding, counselling or abetting in the killing guilty of Murder.

GIVEN Geo. C. Rogers.

17. The Jury are the exclusive judges of the Credibility of any witness who has testified before them. If they believe that any witness has knowingly sworn falsely, or to any material fact or that any witness has been proven to be of bad Character & unworthy of belief on oath they may in their discretion give but little if any weight to his testimony. But this is with them they are not bound to disregard his statements although such may give them such evidence as they think they deserve taking into consideration when corroborated by other testimony if there be such. GIVEN

Geo. C. Rogers.

18. in coming to a conclusion as to the guilty or innocence of the Rife the Jury should duly consider all the facts & circumstances proven before them.

GIVEN Geo. C. Rogers