

FOUND IN THE ARCHIVES, no. 51 – April 2019

Commonwealth vs. Henry & Poss

Fairfax Circuit Court Historic Records Center



This month's *Found in the Archives* looks at a Commonwealth trial from 1896, and the public interest and media coverage it garnered. This interest was fed, and possibly created, by the media frenzy that surrounded the incident and ensuing trial.

Two Young Men Brutally Assault and Rob a Farmer.

Evening Star (Washington, D.C.), November 30, 1895, Courtesy of Chronicling America, Library of Congress (LOC)

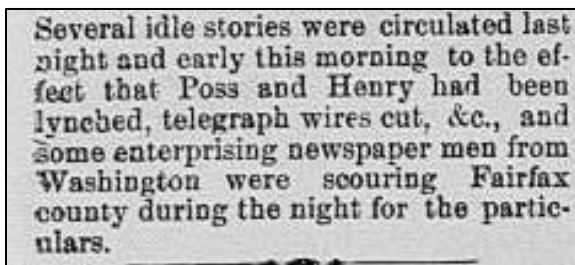
On the evening of November 29, 1895, Alexander McClintock was beaten and robbed on his way home from Edsall's Station, Fairfax County, near the City of Alexandria. His two assailants, who had ridden the same train as McClintock, asked him to recommend a place for them to stay, and he began walking them towards the woods where they could camp for the night. Before they had gotten very far, one of the men hit McClintock on the head, tied him up and gagged him with pieces of his own clothing. According to McClintock, while he was unconscious they also took a pair of newly-purchased pants, a knife and \$6 from his person. When he recovered his senses, McClintock managed to get to a friend's house, who removed his restraints and cleaned him up. The pair reported the crime, and two suspects, Thomas Henry and Harry Poss, were taken into custody in Alexandria. At the Mayor's office the following morning, McClintock identified his assailants as the men in custody. Media coverage began that same day, with the *Evening Star* from Washington, D.C., using the above headline.

ASSAULTED AND ROBBED.—Shortly after five o'clock yesterday evening Mr. Alexander McClintock, who lives near Edsall's station, on the Southern Railway, about three miles from this city, left on a train for his home. As the cars were moving out of the depot Harry Poss and Thomas Henry, both of this city, jumped aboard without tickets and secreted themselves on the platform. They were seen by Mr. Lee

Alexandria Gazette, November 30, 1895, Courtesy of Chronicling America (LOC)

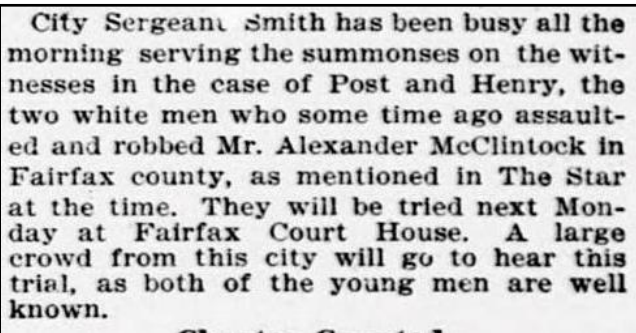
The *Alexandria Gazette* publicly condemned Poss and Henry in their first report of the incident. Many of the witnesses later called to testify in the case recollected having read about the incident in the papers the next morning. Much of the witness testimony contradicted facts stated by the *Gazette*. The article claimed that during the robbery, 'one of the men suggested that they cut their victim's throat.' This was later discovered to be untrue.

Likewise, the *Gazette* reported that a new pair of shoes had been taken from McClintock; these had been missing since before he boarded the train. The article claimed that the suspects had taken the stolen pants to Richard Burnett's saloon, where they threw them behind the door; Burnett and his wife testified that neither men had any packages when they entered the saloon, and the pants had been found in the saloon's sitting room by their daughter. The \$6 reported to have been taken from McClintock was in fact \$3, and Poss only had 35 cents on him, not \$1.35, when arrested and searched by the Alexandria police. The article finished by stating that Poss and Henry had been remanded to jail the next morning by two Alexandria justices, 'it being reported that a mob was coming down the road for the purpose of taking the prisoners from the officers and lynching them.' No record of any 'mob' exists in the case paperwork.



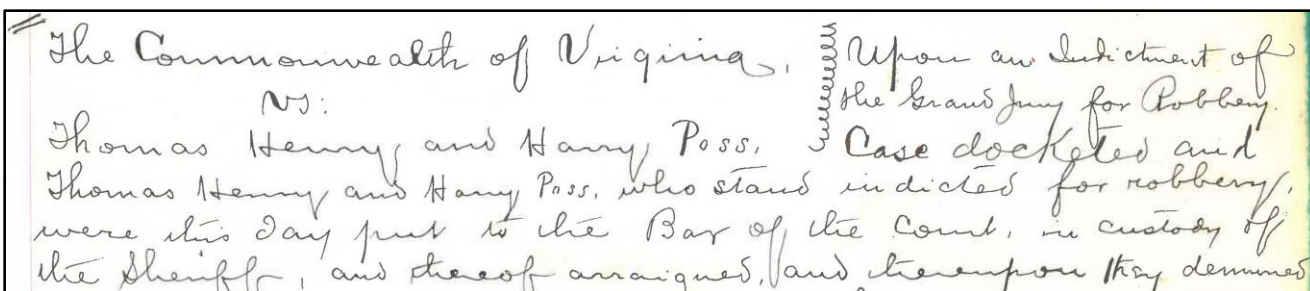
Alexandria Gazette, December 2, 1895, Courtesy of Chronicling America (LOC)

Poss and Henry were transferred to Fairfax County Jail on December 1, 1895. The *Alexandria Gazette* reported them as 'alleged highwaymen', and related that the two men mistook their own lawyers' coach as 'a lynching party in pursuit.' The article ended with rumors of lynching (see image at left), and alluded to the Washington papers' interest in the case.



Evening Star, December 11, 1895, Courtesy of Chronicling America (LOC)

The *Evening Star* reported on the build-up to the first court appearance of Poss and Henry, stating that 'A large crowd from this city will go to hear this trial, as both of the young men are well known.' As can be seen in the 1895 Minute Book entry below, Poss and Henry were indicted on charges of robbery on December 16; they pleaded not guilty.



Fairfax Minute Book 1895, p. 45, December 16, 1895

**INDICTED FOR HIGHWAY ROBBERY.
Harry Poss and Thomas Henry, the**

*Alexandria Gazette, December 16, 1895,
Courtesy of Chronicling America (LOC)*

Once more, the *Alexandria Gazette* ramped-up the charges to ‘Highway Robbery.’

The Commonwealth of Virginia, 1896						
To <i>G. A. Gordon</i>						
Month.	Day.	NAME.	COLOR.	OFFENCE.	DATE OF COMMITTAL.	DATE OF RELEASE.
<i>January</i>	<i>20</i>	<i>Harry Poss</i>	<i>White</i>	<i>Felony</i>	<i>Dec 1st 1895</i>	
<i>"</i>	<i>20</i>	<i>Thomas Henry</i>	<i>"</i>	<i>"</i>	<i>" 1st 1895</i>	

Poss and Henry were held in jail until their trial began on January 21, 1896.

Fairfax County Jail Account, January 1896

Notary Public
Exhibit to John H. Green
Alexandria Va
Jan 20th 1896
This is to certify that
Mr H Green is sick & con-
fined & his bed under
medical treatment & is
not able to attend to his
duties
J. M. Jones M.D.

*Dr. T. M. Jones' Note for Attorney John H. Green,
January 20, 1896*

Unfortunately for Poss and Henry, their trial began with a hitch. Their senior counsel, John H. Green, was ill and unable to attend court, sending the doctor’s note pictured here to be read into the record. Attorney Green got his continuance, and Poss and Henry returned to jail to await their new trial date in February.

Just as attorneys ask for pre-panels today under Virginia Code §8.01-353, Poss and Henry’s attorneys asked to see the list of potential jurors. But, unlike today’s trial practice, they were

overruled. This later became a sticking point, as the same jury called in January was called again for the February trial.

Witnesses summoned for both sides agreed that McClintock was very drunk, and he himself couldn’t remember how much he had had to drink. McClintock was seen drinking with Thomas Henry earlier in the day, a fact corroborated by Henry, at first denied by McClintock then admitted by him under cross-examination. McClintock had also been seen talking to both Harry Poss and Henry during the late afternoon, which he also denied then admitted. Friends of both men stated that Poss and McClintock were very well acquainted and had enjoyed each other’s company for many years. Yet, McClintock couldn’t recognize either of the men who assaulted him, and only identified Poss and Henry in the Alexandria lock-up after being informed of their identities by a police officer. A witness who saw the men with McClintock at

Edsall's Station knew Poss well, but did not recognize either of the assailants. Furthermore, a telegraph operator who saw the men leave the train at Edsall's Station stated that one of the men had a mustache; friends and family of Poss and Henry were adamant that neither had a mustache. The operator tentatively identified Henry at the jail in 'very dim' light.

February Court 1896
 Thomas Henry + Harry Poss, be imprisoned in the Penitentiary house of this Commonwealth, for the period of nine (9) years each, the time by the jury in their verdict accented and that the sheriff of this County do as soon after the adjournment of this Court as is possible, convey the said prisoners Thomas Henry + Harry Poss to the said Penitentiary house therein to be kept and treated for the period of nine (9) years each, according to law and the said prisoners are remanded to jail.

Fairfax Minute Book 1895, p. 78, February 24, 1896

Despite discrepancies in the witness testimonies, and multiple accounts providing alibies for Poss and Henry, they were found guilty and sentenced to 9 years'

incarceration each in the Virginia Penitentiary. On applying for a stay of the judgment's execution, they were granted 60 days to begin the appeals process and sent back to jail.

away from home. Young McClintock started the conversation about the assault on his father and handed witness' sister a copy of the Fairfax Herald, a newspaper published at Fairfax Court House, saying at the same time, "Read that. The Fairfax paper has not done the harm your Alexandria and Washington papers have."

Excerpt from Witness Examinations, Mrs. Alice Poss, February 1896

The counsel for the defense were very much disappointed at the verdict, and seemed to think that the newspapers had been the cause of the whole trouble.

Alexandria Gazette, February 24, 1896, Courtesy of Chronicling America (LOC)

Both sides blamed the newspapers for the unwelcome public attention the trial received. McClintock's son told Poss' mother Alice that "the Fairfax paper has not done the harm your Alexandria and Washington papers have." Poss and Henry's attorneys held the newspapers responsible for the verdict, as stated in the *Alexandria Gazette* excerpt above.

RISKED LIFE FOR LIBERTY
 ———
 Thomas Henry Leaped an Ailey
 From Roof to Roof.
 ———
ESCAPED FROM FAIRFAX JAIL.

Morning Times (Washington, D.C.), March 22, 1896, Courtesy of Chronicling America (LOC)

However, on March 18, Poss and Henry joined two other prisoners in a jailbreak. The *Alexandria Gazette* reported that the escape was not orchestrated by Poss and Henry, and they 'refused to leave, but were threatened if they made an outcry.' The *Evening Star* announced that Virginia Governor O'Ferrell was offering cash rewards of \$125 for both Poss and Henry apiece upon capture. The *Morning Times* from Washington, DC, reported on the escape and subsequent capture using the

attention-grabbing headline ‘Risky Life for Liberty.’ The *Morning Times* also reported that Governor O’Ferrell sent the arresting officer, Sergeant Perry, a congratulatory telegram ‘complimenting the Washington Detective Corps on its splendid work in the capture of Bandits Henry and Poss’. The capture of Poss and Henry was reported all the way south to Richmond and as far west as Roanoke.

During the progress of the trial several exceptions were taken to the admissibility of certain testimony, injurious to your petitioners, and the refusal to admit in evidence certain other testimony, favorable to your petitioners,

Excerpts from Petition of Thomas Henry and Harry Poss vs. Commonwealth of Virginia, May 2, 1896

After all the evidence in the cause, admitted by the Court, had been submitted to the jury, the attorney for the Commonwealth requested the Court to grant a single instruction, as follows: "It is the province of the jury to pass upon the credibility of witnesses, and the weight of evidence".

Poss and Henry remained in jail throughout their appeal. Excerpts from their Petition can be seen at left; the main thrust of their argument was that the Court and the Commonwealth were not even-handed in their treatment of witness testimony. On July 13, 1896, the Virginia Supreme Court

Commonwealth totally failed to prove by any legally sufficient testimony the identity of the prisoners Poss and Henry as the persons who assaulted Mc Clintock. The testimony of the com-

of Appeals denied Poss and Henry’s Appeal and they were sent to the penitentiary to serve their sentences.

Pardoned during fiscal year ending September 30, 1898.

WHITE MEN.			
NUMBER.	NAME.	WHERE SENTENCED.	TERM.
1	William Cave	Rockingham	12
2	David Cabbage	Rockingham	12
3	James E. Brady	Norfolk city	18
4	John Keen	Buchanan	5
5	Jack Smith	Bland	9
6	L. F. Revell	Southampton	15
7	Jesse Wolf	Smythe	8
8	Charles Hobbs	Russell	3
9	E. J. Wortham	Alleghany	18
10	Drew F. Smith	Franklin	20
11	Harry Poss	Fairfax	15
12	Albert Johnston	Norfolk city	3

We don’t know what became of Thomas Henry.

Harry Poss was pardoned in September 1898. The next year, Harry and his wife, Mary, had a son, Louis.

Virginia Penitentiary Pardons 1898, Courtesy of Google Books

Harry Poss died in 1937 and is buried in the Presbyterian Cemetery in Alexandria City.

For more information on these and other records held at the Fairfax Circuit Court Historic Records Center, please call 703-246-4168 or email CCRHistoricRecords@fairfaxcounty.gov.

Sign up for *Found in the Archives*, the monthly newsletter of the HRC:

<https://www.fairfaxcounty.gov/circuit/historic-records-center>