

ANNUAL REPORT

OF THE

ATTORNEY-GENERAL

TO THE

GOVERNOR OF VIRGINIA,

FOR THE YEAR 1897.

RICHMOND :
J. H. O'BANNON, SUPERINTENDENT OF PUBLIC PRINTING.
1897.

REPORT.

COMMONWEALTH OF VIRGINIA,
ATTORNEY-GENERAL'S OFFICE,
RICHMOND, November 17, 1897.

To His Excellency CHARLES T. O'FERRALL,
Governor of Virginia :

GOVERNOR :

I have the honor to submit to you my annual report, composed in part of the work done by my father, Maj. R. Taylor Scott, up to August 5, 1897.

I was appointed to fill the vacancy caused by his death, and entered upon the duties of this office August 11, 1897. Since the last report of my father, which was his *seventh*, the year's work has been as follows :

SUPREME COURT OF APPEALS OF VIRGINIA.

1. Yost, J., *v.* The State Board of Canvassers of Virginia. The court awarded the writ and *held* :

First. The Board's work and duty are "ministerial," and not "judicial."

Second. The Board, in canvassing the abstracts sent to the Secretary of the Commonwealth, are confined to the said abstracts.

Third. When the abstracts prove to be erroneous and imperfect, or untruthful, the city and county commissioners, by "*mandamus*," may be reconvened, and required to correct their errors, &c., make up and forward to the Secretary of the Commonwealth corrected and proper abstracts, and when received the amended and corrected abstracts must be canvassed by the Board.

2. Charles M. Wallace, Jr., *v.* The State Board of Canvassers of Virginia. Petition for *mandamus*. *Mandamus* awarded. Court *held* : That "Jr." is no part of a name. Therefore votes certified in county and city abstracts for Charles M. Wallace must be counted for Charles M. Wallace, "Jr."

3. Garner *v.* Commonwealth. From the circuit court of Prince William county. *Charge* : Arson of mill-house. *Reversed*. The evidence held to be insufficient to convict.

4. Gaines' administrator *v.* Marye, auditor. Petition for writ of *mandamus*. *Writ refused*. Sections 183 V. C. 1887, sub-section "eighth," and section 1908 construed. *Held* : That the salary of the Register of the Land Office was \$1,500, compensation in full for all his services.

5. Will Cool *v.* Lynn, superintendent of the Virginia State penitentiary. Petition for writ of *habeas corpus*. Prisoner discharged. Sequel to the case of Cool *v.* Commonwealth, reported in last report. "No. 9," page 4.

6. Twitchell *v.* Solomon, sheriff of Henrico county. Petition for writ of *habeas*

corpus. Prisoner discharged. *Held*: That the county of Henrico has not jurisdiction over offences committed within the limits of Richmond city.

The attention of the Legislature is called to this decision, as it involves other and all counties where the county court-house is within the corporate limits of the city.

Quære: Have such courts thus held jurisdiction over offenders and offences committed within the four walls of the court-house?

Jurisdiction should be co-ordinate and coequal with city courts of similar kind; *e. g.*, as in matters of cession by a State to the United States of property for its use as court-houses, jails, custom-houses, &c.

7. *Kibler v. Commonwealth. Homicide*. From county court of Page county. Capt. R. S. Parks, Commonwealth attorney of Page county, was requested to assist the Attorney-General in this case. He rendered valuable service, and ably and thoroughly argued the law and evidence. This was a most remarkable as well as interesting case of "circumstantial evidence," and some of the many law points presented by the sixteen bills of exception upon practice and statute law are of general and great interest to the profession. Judgment of the lower court was *reversed* and *new trial* ordered, *because* jury was misled by the form and terms of the 4th instruction granted the Commonwealth.

8. *Pryor v. Commonwealth*. From the county court of Montgomery county. Indictment for "second offense" under section 3907, V. C. 1887. Pivotal point: Sufficiency of "the record evidence" of previous conviction to establish *this* fact. *Affirmed*.

9. *Commonwealth of Virginia v. Calve Fulks*. Appeal from the county court of Russell county. *Scire facias* on bail recognizance. *Affirmed*.

10. *United States Branch of the Employers Liability Assurance Corporation (Limited) of London, England, v. A. W. Harman, Jr., Treasurer*. Petition for writ of *mandamus*. *Writ refused*. Object was to compel the Treasurer to accept five per cent. upon the amount of money held by the trustees of this company in the United States, and not upon the capital stock of the home company. Section 1271, V. C. 1887, as amended, Acts 1889-90, p. 105, construed.

11. *Hippert v. Commonwealth*. *Dismissed*.

12. *Commonwealth v. Ashlin's administrator*. From the circuit court of the county of Albemarle. The Commonwealth's contention was:

First. That upon principle and *ex necessitate*, "revenue" being "the State," the Commonwealth's lien for taxes must have and be given priority over all other liens.

Second. That when the Commonwealth purchased at the delinquent tax sale, she took the land discharged from all liens.

The circuit court of Albemarle was *reversed*, and my contention sustained. See report of 1896 for case in lower court.

This being a case of general importance I give the opinion of the court in full.

The Commonwealth <i>versus</i> Ashlin's Administrator.	}	<i>Opinion by Judge James Keith, P., Staunton, Va., September 16, 1897.</i>
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The facts of this controversy, so far as they are material, are as follows:

Charles A. Scott, of the county of Albemarle, died in 1865, possessed of considerable real and personal estate, His widow, P. B. Scott, qualified as his administratrix, and in 1866 she in her own right, as administratrix of her deceased hus-

band, and as guardian of their infant children, filed a bill in the circuit court of Albemarle county for the administration of his estate, making all necessary parties defendant. Into this suit at a later day came the creditors of the decedent, and such proceedings were had after arduous litigation, which ultimately found its way to this court and was decided at the January term, 1890. (See *Scott's ex'or. v. Ashlin et als.*, 86 Va. 581). The right of the widow, distributees, heirs, and creditors were finally fixed and determined, and the case was remanded to the circuit court. Into that court came the Commonwealth by Morton Marye, Auditor of Public Accounts, and filed a petition stating the death of Scott, the real estate of which he died seized, and the assignment of dower to his widow; that from 1883 to 1891 taxes had been assessed upon this land which were in arrears and unpaid, aggregating the sum of \$327.72; that on the land allotted as dower the tax from 1885 to 1892 aggregated the sum of \$122.37; that of this real estate 1,295 acres were purchased in the year 1886, by the Commonwealth for taxes delinquent and in arrears for 1883, and all the formalities required by statute were strictly complied with; that in 1888, the Commonwealth for delinquent taxes in 1885, purchased the portion of the land assigned to the widow as dower, and the statute law having been complied with, these tracts of land, without the execution of a deed, vested in the Auditor for the benefit of the Commonwealth in accordance with section 663 of the Code.

The Commonwealth prayed to be made a party defendant in the suit of *Scott v. Ashlin*, to be allowed to file its petition, and to enforce its title to the real estate, of which Charles A. Scott died seized, and that as provided by section 3214 of the Code, (sub-section 6), and by section 3216, the cause be removed to the circuit court of the city of Richmond.

This petition was filed and the creditors answered it, saying that no part of the taxes claimed by the State accrued in the life-time of Charles A. Scott, who died in March, 1865; that he was indebted to respondents at the time of his death in large sums of money established by judgments and decrees set forth in the record of these chancery suits. They further show that the widow and heirs of Scott had resisted the right of the creditors to have his real estate subjected to the payment of his debts, and that pending the litigation thus occasioned the widow and heirs had retained possession of the land, had failed to pay the taxes thereon, and having suffered them to become delinquent should now be compelled to pay them; that the purchase money for the said lands would fall far short of satisfying the debts; and that it would be inequitable and unjust to divert any part thereof to the payment of the taxes. They aver that the law gave them a lien on the land long before the taxes accrued; and that the Commonwealth in buying acquired a title which is subordinate to the right of the creditors. They further state that the Commonwealth when it intervened for the purpose of having the decrees which recognized the right of the creditors annulled, and to have the purchase money for the land sold applied to the payment of the taxes, had voluntarily become a plaintiff in the suit and not a defendant, and was therefore not within the purview of section 3214 of the Code, and the suits ought not to be transferred to the circuit court of Richmond.

On the 21st of October, 1896, the causes of *Scott v. Langhorne* and *Scott v. Ashlin's* administrator came on to be heard upon the papers formerly read, the petition of the Commonwealth and the answers thereto; and thereupon the court admitted the Commonwealth as a party plaintiff and not as a party de-

fendant, and refused to transfer the cause to the circuit court of Richmond, and being "of the opinion that the lien for defaulted taxes, asserted by the Commonwealth in her said petition is subordinate to the rights and liens asserted by said Walton, administrator, as aforesaid, in behalf of his decedents for the debts due them by Charles A. Scott, deceased, at the time of his death in 1865, asserted and established in these causes long before the taxes were assessed, and that the Commonwealth by the sale made to her or to the Auditor, acquired no right to displace the prior right of said creditors or to have the land or the proceeds of sale thereof, subject to the order of the court herein, discharged from the prior rights and liens of said creditors, and applied to the payment of said taxes; and it appearing that the debts of said creditors amount to much more than the proceeds of sale, the court doth adjudge and order that the said petition of the Commonwealth be dismissed."

From this decree an appeal was allowed by one of the judges of this court.

The question here presented has been decided by this court in the case of *Simmons v. Lyle's administrator et als.*, 32 Gratt. 753. The widow in that case having paid off a vendor's lien upon the real estate and the taxes due thereon, was held to be entitled to have the amount of the taxes thus paid refunded to her upon the sale of the land as against judgment creditors of her deceased husband. Judge Staples, delivering the opinion of the court, says: "The lien of the Commonwealth for taxes is paramount to the lien of their judgments, and must be satisfied. If these taxes are not and cannot be paid by the heir, some one must pay them while the litigation is pending in order to preserve the property from a forced sale by the Commonwealth. The obligation of the widow to pay them for the protection of her interest is no greater than that of the executors to pay for the protection of theirs. As the statute gives her the right to occupy without charge, they cannot impose upon her the duty of discharging the taxes, as a condition of her occupation. If one of them should pay in order to prevent the Commonwealth's sale, he would have the right to be refunded the amount so paid. She stands upon ground equally high. If it be said she has the use and occupation of the property in the meantime, the answer is that under the statute she is entitled to it without charge; but if she be compelled to pay the taxes, then to that extent she is charged for the privilege of remaining in the mansion house." And further he says: "The widow in paying the taxes cannot be considered a volunteer. The property of which she has possession under the statute was debtor to the State, and she had the right to make the payment for her own protection and indemnity, and to look to the property for reimbursement."

In the more recent case of *Thomas v. Jones*, decided at the June term of this court, 1897, Judge Harrison delivering the opinion, says: "The second enquiry involves the order of priority between the tax lien and the vendor's lien. This court has held in *Simmons v. Lyle's administrator*, 32 Gratt. 752, that taxes are a prior lien to judgments obtained and duly docketed long prior to the date at which the taxes were assessed. There is no distinction, in principle, between the two cases; for the same reason that the tax is held to be prior in dignity to the judgment lien, it must be preferred to the vendor's lien. That taxes are prior in dignity to all other liens must be so from the very necessity of the case, otherwise the State would be powerless to collect her revenue; the liens upon

the land would, as in the case at bar, often be greater than the value of the land, and the tax lien being inferior the land would escape all taxation."

The case before us is a far stronger one in favor of the Commonwealth than either of those just quoted. The Code beyond controversy gives to the Commonwealth a lien for five years upon the land as against which taxes are assessed. During the life of that lien the land was sold for its payment and the Commonwealth became the purchaser. By force of the statute the title vested in the Commonwealth as a result of the sale, so that there is no question in the case of the statute of limitations. The Commonwealth holding a lien enforced it before the bar of the statute attached, and stands now as a purchaser for value of the land upon which it rests. She had a lien and the *only complete lien* that rested upon this property. The judgments spoken of in the decree appealed from were all obtained after the death of Charles A. Scott, and while they served to ascertain the debt, have not the effect of judgments obtained during the life-time of the defendant. It is true, that the lands of which he died seized were assets for the payment of all his debts whether reduced to judgment or not, but they were not liens in any proper sense of that term. The Commonwealth having purchased the land came into court and offered to relinquish her position as purchaser upon the payment of the sum due her for taxes. She could have rested upon her rights as purchaser, but voluntarily submitted herself to the jurisdiction of the courts, and in thus relieving all concerned of any embarrassment in the assertion of their claims to this real estate upon the condition of having the taxes justly due paid to her, has acted with entire propriety and the conduct of her officials, so far from being the subject of criticism, is worthy of commendation.

It was suggested in argument that the taxes were in some respects incorrectly stated in the record; but if that be so the error can be easily corrected in the circuit court.

For the foregoing reasons we are of opinion that the decree of the circuit court, in so far as it dismisses the petition of the Commonwealth and subordinates her demand for taxes to the debts reported, is erroneous, and should be reversed.

13. *C. B. Lohr v. The State Board of Veterinary Examiners.* Petition for *mandamus.* *Pending.*

14. *The Board of Supervisors of Alexandria County v. The City Council of Alexandria and Charles T. O'Ferrall, Governor of Virginia.* Appeal from the circuit court of the city of Richmond. Relative to the partition of the old court-house and jail in the city of Alexandria between the county and city of Alexandria. *Pending.*

CIRCUIT COURT OF RICHMOND CITY.

1. *Commonwealth v. A. A. Chapman.* Attachment in equity. (No. 6 in last report.) Appeal to the Supreme Court of Appeals. *Dismissed.* Resale of attached real estate ordered.

2. *Commonwealth v. Bennett Taylor,* late clerk of Albemarle county, and sureties. In hands of court. *Pending.* (No. 7 in last report.)

3. *Harris & Smith v. Commonwealth.* In chancery. *Pending.*

4. *Commonwealth v. R. S. Ryland and others.* To enforce lien of Commonwealth's judgment against Ryland, late treasurer of King William county, and

to construe trust-deed made by Ryland and wife to secure certain sureties. Referred to commissioner to report liens, &c.

5. Commonwealth *v.* E. S. Moorman, late treasurer of Campbell county, and sureties. Judgment for \$15,316.95, subject to the following credits:

June 15, 1896	\$ 4,523 50
November 19, 1896	3,728 78
November 19, 1896	534 45
November 27, 1896	330 93
December 19, 1896	2,000 00
January 23, 1897	242 05
March 29, 1897	101 78

6. Commonwealth *v.* E. S. Moorman, late treasurer of Campbell county, and sureties, for sum of \$729.48, with interest from September 17, 1896. Paid and dismissed.

7. Commonwealth *v.* J. R. Peebles, treasurer of Nelson county, and sureties. *Pending.*

8. Same *v.* same. *Pending.*

9. Commonwealth *v.* Roger Gregory, Jr., treasurer of King William county. Judgment for *defendant*.

10. Commonwealth *v.* W. P. Tyree, treasurer of Neapolis, and sureties. *Pending.*

11. Commonwealth *v.* C. J. Reynolds, administrator John R. Cabell. *Pending.*

12. Norfolk and Western Railway Company *v.* The Board of Public Works and Morton Marye, Auditor of Public Accounts. Bill in chancery to correct an erroneous assessment.

13. The Board of Supervisors of Alexandria county *v.* Charles T. O'Ferrall, Governor of Virginia, and others. Bill in equity. Object of suit to make sale of court-house and jail located in Alexandria city, granted by S. Barton, solicitor of the Treasury of the U. S., by deed dated May 31, 1847, pursuant to an act of Congress approved July 9, 1846, to the then Governor of Virginia, and his successors, when Alexandria city and county was retroceded, said act entitled "An act to retrocede the county of Alexandria," &c., &c.

14. Maia's administrator *v.* The Directors of the Eastern State Hospital. Action for damages \$10,000, caused by alleged negligence, killing of plaintiff's intestate, who was a patient in said hospital. Demurrer sustained and dismissed.

The following are cases that have been pending for a long time. From various causes it has been impossible to obtain a final hearing:

1. Commonwealth *v.* Joseph Mayo and others.

2. Same *v.* Joseph Mayo and others.

3. Commonwealth *v.* Thomas, treasurer of Fluvanna, and sureties.

4. Commonwealth *v.* Ingles, treasurer of Henry county, and others. *Four cases.*

5. Commonwealth *v.* J. F. Jones, treasurer of Craig county, and others.

6. Commonwealth *v.* G. H. Baughman and others.

7. Commonwealth *v.* Sears, treasurer of Mathews county, and others.

8. Commonwealth *v.* Barr, treasurer of Washington county, and others.

9. Commonwealth *v.* W. M. Gray and J. J. Guster.

10. Commonwealth *v.* O. D. Foster and R. W. Adams.

11. Commonwealth *v.* A. K. Phillips' administrator.

12. Commonwealth v. Mary R. Randolph's administrator.
13. Commonwealth v. C. R. Randolph.

CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

1. People's National Bank of Lynchburg v. Marye, auditor.
2. First National Bank of Lynchburg v. same.
3. Lynchburg National Bank v. same.
4. The National Exchange Bank of Lynchburg, Va., v. same.

Injunctions granted in each of above cases, and Auditor of Public Accounts forbidden to execute the statutes which impose a tax upon the banks' stockholders passed at the last session of the General Assembly. (Acts 1895-'96, pp. 700 and 726.)

Demurrer and answer of Marye, auditor, have been filed, and the demurrer fully argued before Judge Hughes November 12 and 13, 1897, and submitted.

5. Commonwealth v. B. & O. R. R. Settled and dismissed.
6. Gatewood v. State of Virginia. Settled and dismissed.
7. Parsons v. Marye, auditor. Settled and dismissed.

In Equity.

8. James P. Cooper v. Lewis P. Winston. Settled and dismissed.
9. D. K. Stewart v. J. W. Southward, sheriff. Settled and dismissed.

CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA.

1. S. Brown Allen *et als.* v. Speck, sheriff of Augusta county. Bill of injunction: Coupons tendered in satisfaction of Commonwealth's judgment obtained in the circuit court of Richmond city accepted in discharge of Commonwealth's judgment (see 83 Va 94) and so decreed at Lynchburg, Va., April 22, 1897, and case finally disposed of, following terms of debt settlement made by Virginia with her creditors.

2. W. R. Richardson v. Commonwealth. *Habeas corpus*; dismissed.
3. Lizzie Richardson v. Commonwealth. *Habeas corpus*; dismissed.
4. Commonwealth of Virginia v. Tyler De Hart. *Removed from Patrick county court. Charge: Wilful trespass.*
5. Commonwealth of Virginia v. I. W. Wilson. *Removed from magistrate's court Carroll county.*
6. Commonwealth of Virginia v. Thomas Bingham. *Removed from magistrate's court Franklin county*
7. Commonwealth of Virginia v. George S. Fitzwater. *Removed from magistrate's court Franklin county.*
8. Commonwealth of Virginia v. W. B. Addington. *Removed from Dickenson county court. Charge: Shooting with intent to kill.*
9. Commonwealth of Virginia v. J. M. Carrico. *Charge as above. Removed from Dickenson county court.*
10. Same v. J. W. Dougherty. *Removed, and charge as above.*
11. Same v. John E. Moss. *Removed, and charge as above.*
12. Same v. Shelby Gibson. *Charge as above. Removed from Lee county.*
13. Same v. W. F. Clay. *Charge as above. Removed from Lee county.*

The above cases were called October 13th last, and for the Commonwealth I moved that they be remanded to the State Court. This motion the court took under advisement and continued them until the next term.

The following cases are unchanged since my last report, and stand as received from *Mr. Ayers*:

John S. Lupton *v.* P. C. Gore, trespass on the case.
 W. H. Ebert *v.* P. C. Gore, trespass on the case.
 W. L. Brown *v.* P. C. Gore, trespass on the case.
 W. W. Glass *v.* P. C. Gore, trespass on the case.
 Mrs. S. W. Tidbal *v.* P. C. Gore, trespass on the case.
 J. S. Robinson *v.* P. C. Gore, trespass on the case.
 George W. Ward *v.* P. C. Gore, trespass on the case.
 James Ginn, exor., *v.* P. C. Gore, trespass on the case.

The above are suits instituted to recover damages for refusal to receive coupons and for levying executions. The cases are matured and ready for trial, but the principles involved have been adjudicated in other cases decided in the *Eastern Circuit*, and will, I presume, be dismissed when called for trial.

The following cases have been dismissed:

Samuel Moore *v.* William H. Wightman, trespass on the case.
 Samuel Garber *v.* same, trespass on the case.
 William Penn *v.* same, trespass on the case.
 John H. Wise *v.* same, trespass on the case.
 Cornelius Zircle *v.* same, trespass on the case.
 H. M. Smootz *v.* same, trespass on the case.
 J. W. Wakeman *v.* same, trespass on the case.

SUPREME COURT OF THE UNITED STATES.

There are pending in this court:

1. *McCullough v. Virginia*. This case was submitted on briefs, November 3, 1896, but was replaced upon the docket and oral argument called for. At the beginning of the October term, I moved the court to fix the 23d day of November for argument. The court refused to fix this day because there would not then be a full bench, saying that it was necessary that it be heard by a full court, therefore they fixed the first Monday in January, 1898, as the day for argument.

2. *The American Harrow Co. v. Shaffer et als.* Appeal from Circuit Court of the Western District of Virginia.

Bone of contention, Virginia's statute which imposes "license tax" on persons who sell manufactured articles, except sewing machines, Acts 1889-'90, sections 108, 109. This case was decided in favor of the State statute by Judge Paul. The appeal was argued and submitted March 24, 1897. Not yet decided.

3. *J. R. Harkrader, sheriff, etc., v. H. G. Wadley*. From the Circuit Court of the United States for the Western District of Virginia. (See report 1896, pp. 6, 7, 8, and 9.)

4. *Henry C. King v. M. B. Mullins*. The following letter explains this case:

OFFICE OF THE CLERK,
 SUPREME COURT OF THE UNITED STATES,
 WASHINGTON, D. C., October 20, 1897.

Hon. R. CARTER SCOTT,
 Richmond, Va.:

DEAR SIR:

Case of Henry C. King, plaintiff in error, *v.* M. B. Mullins, in error, of the Circuit Court for the District of West Virginia, No. 157, October

term, '97, was submitted to the court on printed briefs January 11th, 1897. On Monday last the court set aside the submission and ordered the case for oral argument before a full bench, no date being fixed for the hearing. It is probable there will not be a full bench until some time in January. The court directed that the Attorney-General of Virginia and West Virginia be notified that the case is pending. I enclose copy of motion to advance, which shows what is involved.

I cannot furnish copies of the record and briefs in case.

Maynard F. Stiles, of Charleston, Kanawha county, West Virginia, appears for King, and James H. Ferguson and William E. Chilton, of the same city, for Mullens, *et al.*

Yours truly,

JAMES H. MCKENNEY,
Clerk.

STATUTES.

Commonwealth's revenue laws; collection of fines; what the remedy?

RICHMOND, VA., MARCH 16, 1897.

Mr. WILLIAM H. WERTH,
Attorney at Law,
Coeburn, Va.

DEAR SIR:

Your letter of the 13th instant came to me yesterday. In it you ask the following questions, namely:

1. "What is your opinion as to the right of appeal in such case?" that is, prosecutions before justices of the peace for violation of the liquor license law.
2. "Can there be any question as to the action of debt lying for the Commonwealth in such case under sections 574, '5, '6, and should not such a proceeding be brought?"

I have given this matter careful investigation heretofore, and since the receipt of your letter again made it my study and reached the following conclusions, viz.:

Engaging in a business in this State for which "a license" is required without first obtaining such license in the mode prescribed by law, is a breach of the revenue law of the Commonwealth, and where no specific fine is imposed, punished by a fine of not less than thirty nor more than one thousand dollars for each offense. Code of Virginia, section 574.

That the statute gives *two remedies* to the Commonwealth (*a*) *civil* action, action of debt; (*b*) *criminal*, namely, presentment, indictment, or information.

That for the collection of *all fines* this double remedy is provided, and the "civil" remedy enlarged, embracing "action of debt or action on the case or by motion." Code of Virginia, 1887, c. 31, "section 712."

Between these remedies it is for the Commonwealth to elect, and by her election she is bound.

If the "civil" remedy be chosen, then the right of appeal from judgments of justices of the peace is given by sections 2947, 2955, and 2958. If the "criminal," by section 4052, and limited from judgments of circuit, corporation, and hustings courts to the court of appeals, and from the county to the circuit court having jurisdiction over the county.

Section 4106, last amended, Acts 1895-'6, c. 845, p. 924, prescribes the jurisdiction when the Commonwealth wishes the "criminal" remedy, and "section 4107" confines the right of appeal to *the accused*.

My reply to your question numbered [1]: When the Commonwealth elects the "criminal" remedy and proceeds before a justice of the peace, there is no appeal allowed.

To that numbered [2]: The "civil" remedies specified in the statute laws, "debt, action on the case, or by motion," may be resorted to and used *ad libitum*, and in my judgment the proper and best the Commonwealth can use for the enforcement of her revenue laws and the collection of fines. Further, my advise to *all* attorneys for the Commonwealth to use the "civil" remedy. The following text-writers and cases uphold my conclusions in this matter:

THE STATUTES THEMSELVES.

Code, 1887, sections 574, 575, and 576.

Same, sections 712, 713, and 714.

1 Bish. Crim'l Law, sections 30-34 *and notes*.

Bishop on Stat'y Crimes, section 1098.

Mitchell v. State, 12 Neb., 538.

People v. Hoffman, 3 Mich., 248.

Indianapolis v. Fairchild, 1 Cart Ind., 315.

Belcher v. Johnson, 1 Met., 148.

Webster v. People, 14 Ill., 365.

1 Enc. Pld'g and Prac., p. 116, *note*, in which this text-writer cites "Mitchell v. State," 12 Neb., 538, *supra*, with approval.

Read v. Commonwealth, 24 G., 618.

Commonwealth v. Lewis & Divinney, 25 G., 938.

Very truly and respectfully yours,

R. TAYLOR SCOTT.

TAX ON EXPRESS COMPANIES.

(Acts 1889-'90, p. 209, 211.)

The attention of the Legislature is directed to this "tax law" in the light of the recent decision of the U. S. Supreme Court in the following case:

Adams Express Company v. Ohio State Auditor, 165 U. S. R., 194-255. It was *held* that the express companies' property may be assessed "*as a unit*" on the principles announced in the statute of Ohio, known as the "Nichols Law."

Mr. J. White dissented in an elaborate opinion, which was concurred in by Messrs. J. Field, Harlan, and Brown.

SALE BY PEDDLERS.

The attention of the Legislature is again called to sections 32-33, Acts 1889-'90, pp. 217, 218. The Supreme Court of Appeals of Virginia in the case of the Commonwealth v. Myer, 92 Va., p. 809, *held* that the above section is void because it injuriously discriminates against the products of other States and the rights of other citizens, and is an attempt to fetter commerce among the States, and deprives the citizens of other States of the privileges and immunities possessed by the citizens of this State.

ELECTION LAW.

The Legislature should amend section 5 of chapter 700, p. 763, Acts 1895-'96, so as to make it perfectly plain what character of *notice* should be given by every person who intends to be a candidate for any county or district office. The words "*a similar*" are left out of the above-named section, whereas they are to be found in section 4 of the "Walton Law," Acts 1893-'94, p. 862, chapter 746.

The object and spirit of the law evidently contemplate that the same character of notice shall be given by *all* candidates and thus I have construed it. But the Legislature in matters of this kind should not leave room for doubt.

The following opinions have been given by this office :

RICHMOND, VA., MARCH 26, 1897.

Hon. J. T. LAWLESS,
Secretary of Commonwealth,
City:

DEAR SIR :

You ask me what duty is imposed upon you "by an act to take the sense of the people upon the call of a convention to revise and amend the Constitution," approved March 4, 1896, Acts 1895-'96, p. 797.

As I construe and understand this law, your duty is to provide the poll-books and receive the result of the election, when duly certified by the commissioner of elections, and deliver the same to the speaker of the House of Delegates on the first day of the next general or special session of the General Assembly.

HOW THE LAW TO BE EXECUTED.

The Constitution of Virginia, Art. III, section 2, "*Elective Franchise and Qualifications for office*," ordains that "all elections shall be by ballot."

The statute under consideration enacts, section 1: "Be it therefore enacted, That it shall be the duty of the officers authorized to conduct the elections within this Commonwealth on the 4th Thursday in May, 1897, at the polling-places in the counties, cities, and towns of the State, to open polls for the purpose of taking the sense of the people upon this question: "Shall there be a convention to revise the Constitution and amend the same?" And all persons qualified to vote for the members of the General Assembly shall be permitted to vote thereon. The polls to be opened shall contain two columns, and shall be headed on the one side of the poll-book thus: "Shall there be a convention to revise the Constitution and amend the same? Convention—No convention."

Section 19 of the amended ballot law, Acts, 1895-'6, p. 769, approved the same day, namely, March 4, 1896, orders:

"And when the election is to be held to ascertain the sense of the *qualified* voters of this State, or of any county, city, town or district, or district of any county upon any question submitted to them by law, it shall be the duty of the electoral boards of the county or city or of the county in which said town or district is, as the case may be, to have the words printed upon the ticket directed by the law submitting said question, but in all other respects said elections shall conform to the provisions of this act."

The "electoral boards of the various counties and cities of the State must provide the ballots to be used, and this will be done by having printed upon the

ballots to be prepared for the approaching May elections, in separate lines, the words,

Convention.

No Convention.

When the voter prepares his ballot on election day as he wills and prefers, will strike out one of these words, and thereby vote upon the question submitted by the Legislature, his ballot be received, then canvassed, counted, certified and returned by the judges of election in the manner and form prescribed by and set out in "sections 2 and 3" of this law.

Very respectfully,

R. TAYLOR SCOTT,
Attorney-General.

WARRENTON, VA., MAY 17, 1897.

Capt. R. S. PARKS,
Luray, Va. :

MY DEAR SIR :

Your letter of the 12th instant forwarded from Richmond came to me yesterday, Sunday.

I have given careful study and my very best consideration to the amended ballot law, Acts 1895-'96, p. 763, and my views are expressed and formulated in the "circular" letter of instructions sent by Secretary of the Commonwealth to the electoral boards throughout the State.

That electors in Virginia are required to vote by ballot, and its form so prescribed that this ballot is secret, and the form of elections that specified in and prescribed by law are, I think, "legal axioms."

The "election law" allows "*two forms*" viz. :

(a) That formulated in the general law cited above :

(b) That permitted by "section 20," *the exception*, when no political party nominates candidates for county or corporation offices.

In the *former* the ballot must be prepared by the electoral board of the city or county : in the *latter* the elector must prepare his own ticket or ballot, which in the words of the statute "shall be a white paper ticket, and containing on the face or inside of it, written or printed, or partly written and partly printed, the names of the persons for whom the elector intends to vote, and designating the office to which each person so named is intended by him to be chosen."

The "poll-book" is the record of the names of electors who vote at the precinct, and by this poll the ballot-box is proved and verified and this the single purpose, use, and object of the "poll-book." At the May election, which will take place on the 27th instant, the Legislature has required and ordered that the sense of the qualified voters of the cities, towns, and counties shall be taken "upon the call of a convention to revise and amend the Constitution," prescribed the form of "poll-book," the duty of judges of election and form of certifying returns : It follows, I think, that there must be *two* poll-books and *one* ballot and *one* ballot-box. (Acts 1895-'96, c. 726, p. 797).

The election in your (Page) county will be held under "section 20" of the amended ballot law, therefore "*electors*" and not the "*electoral board*" must provide ballots. Upon this ballot the elector may print or write "Convention"—

"No Convention"; the former should he favor the call and the latter if opposed. I send with this letter the form of the ticket as *I* would prepare it.

It is neither necessary nor proper that judges of election should know how the elector votes upon the Convention question: His name when he presents his ticket is put by the clerks upon *both* poll-books, and this proof positive that he voted, and is his secret! When the ballot-box is opened all information the law allows will be had. For example, the box opened and its contents counted, there is found in it 500 ballots; of this number 100 ballots counted for, 200 ballots against the call of a Convention, necessarily it follows that 200 electors did not vote upon this question, and to these facts the judges of election must certify and make return.

The failure of these 200 electors to vote upon the question submitted does not and cannot affect the election.

I can see and have not thus far had suggested to me any difficulty in executing the election law under the interpretation and construction I have given it, and I have found no one who in the law can point to authority given for *but one ballot and one ballot-box*.

Yours very truly and respectfully,
R. TAYLOR SCOTT,
Attorney-General.

TICKET.

MAY ELECTION, 1897.

Supervisor ———— District.

[*Here write or print name of person voted for.*]

Justices of the Peace ———— District.

[*Here write or print names of persons voted for.*]

Constable ———— District.

[*Here write or print name of person voted for.*]

Overseer of the Poor ———— District.

[*Here write or print name of person voted for.*]

"*Convention.*"

[*Here write or print. If the elector favors the call.*]

"*No Convention.*"

[*Here write or print. If the elector opposes the call.*]

WARRENTON, VA., MAY 24, 1897.

A. J. TAVENER,
Attorney at Law,
Winchester, Va. :

DEAR SIR :

On my return Saturday last from Fredericksburg, where I was most of the past week, I received, forwarded from my Richmond office, your letter of the 20th instant.

To your inquiry, I answer that the amended ballot law provides two forms for elections, namely :

(a) That formulated by the general law.

(b) That permitted and prescribed by section 20, which is the exception when no political party nominates candidates for county or corporation offices.

In the *former*, the ballot is prepared by the electoral board of the city or county. In the *latter* by the elector. In the words of the statute, this ballot "shall be a white paper ticket, and containing on the face or inside of it, written or printed, or partly written and partly printed, the names of the persons for whom the elector intends to vote, and designating the office to which each person so named is intended by him to be chosen."

The "poll-book" is the record of the names of electors who vote at the precinct, and by this poll the ballot-box is proved and verified, and this its purpose and object.

The Legislature has directed that a poll be opened at the May election, to be held Thursday next, to ascertain the sense of the qualified voters of the cities, towns, and counties, "upon the call of a convention to revise and amend the constitution," prescribed the form of the "poll-book," the duty of judges of election, and form of certifying the return. Hence there must be two "poll-books" and but one "ballot-box." (Acts 1895-'96, p. 797.)

The election in your city will be held, I infer, though not so stated in your letter, under "section 20" of the amended ballot law. Upon the ballot he prepares the elector will write or have printed the words "Convention," "No Convention"; the former should he favor the call, the latter if opposed.

It is neither proper nor necessary that the judges of election should know how the elector votes upon this question. The elector's name, when he votes, is placed upon *both* "poll-books" by the clerks, and this proof positive that he voted at his precinct. *How!* is his secret.

When the ballot-box is opened and counted, *all* information the law allows will be had. For example, the box opened and ballots counted, there are 500 ballots, and the "poll-book" verifies the count. Of this number 100 ballots are "*For*" and 200 ballots "*Against*" the call of a convention; necessarily it follows that 200 electors did not vote, and thus must the judges of election certify and make return. The failure of these 200 electors to vote upon the question submitted to them does not and cannot affect the election. It was their privilege and right, and the secret of each elector is preserved. Who the 200 electors were will never be known unless they disclose their secret.

Yours respectfully,

R. TAYLOR SCOTT,
Attorney-General.

WARRENTON, VA., SEPTEMBER 8, 1896.

MESSRS. R. R. CAMPBELL AND C. M. WHITE :

GENTLEMEN :

I have considered the matters submitted to me and make reply as follows, viz. :

By statute law, Code 1887, section 12, amended Acts 1887-'88, page 16, *each* magisterial district of the county, and *each* ward in the city, unless the county or

ward be divided into more election districts than one, and when thus subdivided *each* subdivision of the magisterial district and *each* subdivision of the city ward becomes and is made an "election district." The voter must be registered in the election district in which he resides and "*residence*" is "the crucial test" of the right to be registered. Once placed upon the register in the district of his residence the voter must remain thus registered until he changes his residence, and without change of residence there can be no transfer of the voter. [Sec. 80, Code of Va. 1887, p. 94, Amended Acts 1889-'90 p. 189.]

To your "first question" I answer, applying these principles, *voters* can only register in the election district in which they reside.

To your "*second*": That once registered, the voter cannot be transferred without he changes his residence from one voting place to another. As I read and construe the law "voting place" and "election district" mean the same locality.

To your "third," I construe (as stated above) "election district" and "voting place" or "precinct" to be one and the same place.

To your "4th question": New Baltimore being a subdivision of "Centre magisterial district," set apart as a "voting place" or "precinct," is an "election district." Where the boundaries of the subdivided and new districts are not defined voters may elect "the voting place," and thus chosen becomes their "election district" or "voting place."

Very respectfully yours,

R. TAYLOR SCOTT.

WARRENTON, VA, APRIL 23, 1897.

Mr. W. McD. LEE,

Dem. County Chairman,

Lancaster County, Va., Irrington.

DEAR SIR:

Your letter of the 17th instant forwarded from my Richmond office came to me by yesterday's mail.

I enclose you a letter written last September, which gives my opinion as to the meaning of "election district" which was accepted by the two gentlemen to whom it was addressed. There is no limitation by the statute laws upon the time of residence within "voting precincts" but the "precinct" is part and parcel of the "county," and the law requires a residence of three months in the county in which the citizen offers to vote.

When one of the judges of election is absent, and the two present cannot agree upon the third, I do not think a member of the electoral board has the right or power to decide between them; but there is no restriction or limitation upon the mode or manner of adjusting such difference.

Yours very respectfully,

R. TAYLOR SCOTT.

WARRENTON, VA., APRIL 22, 1897.

Mr. W. C. SANDBRIDGE,

Secretary of Electoral Board,

Amherst County:

DEAR SIR:

Your letter of the 14th inst. forwarded from Richmond has just been received. When the election of county officers is held as required by the

amended ballot law, Acts 1895-'96, p. 763, and *not* pursuant to and under section 20 of this law, the electoral board should prepare the ticket, and enter the names of all the candidates upon separate lines. Also print "*convention*," "no convention."

I do not think more than these words necessary or proper upon the ticket.

The other will appear upon the poll-book prepared for the election and recordation of this vote. I enclose copy of a letter addressed to Mr. Jno. P. Lee, secretary of the electoral board of Franklin county, that you and your board may have benefit of my ruling upon the various questions by him propounded.

Yours very respectfully,

R. TAYLOR SCOTT,
Attorney-General.

WARRENTON, VA., APRIL 21, 1897.

Mr. JOHN P. LEE.

*Secretary, &c., Electoral Board,
Rocky Mount, Franklin county, Va.:*

DEAR SIR:

Your letter of the 12th instant forwarded from my Richmond office reached me on the 18th instant.

You propound to me the following questions, viz.:

First. Do the elections for district officers come under section 20 of the Parker Act, providing how elections shall be conducted for county officers where no political party nominates candidates?

As I construe the amended ballot law, Acts 1895-'96, c. 700, p. 763, when no political party nominates candidates for county or corporation offices its general provisions do not apply, and the election should be held as provided in *section 20* of this law.

Second. If so, what constitutes nominations by a political party?

Will the fact that a lot of men who are known to be local leaders of a political party get together and determine who they will support, be sufficient?

The various political parties in this State are organized bodies of men, have their State and county committees, hold conventions, precinct, town, county, city, and district meetings, and are governed by rules and regulations formally adopted.

Through and by these agencies parties speak and make known to the public their principles and action. To be the nomination of a "political party," I think the nominee should be selected in the manner, and according to the rules, regulations, and usage of the party to which he belongs, and if not thus chosen, he is not the nominee of a "political party."

Third. If this be done in one or two districts of a county, will such districts hold their election under the provisions of the Parker Act and the remaining districts of the county under "section 20" of that Act, and what will be the duty of the electoral board in furnishing tickets in such cases?

I construe "section 20" of the amended ballot law to apply to the county as a whole and not to its subdivisions into magisterial districts.

My opinion when a political party nominates candidates for county or district offices, it matters not in what magisterial district, then the election should be held as ordered and elected by the general law and not under "section 20."

Fourth. Does the fact that voters will be called upon to vote for or against a

Constitutional Convention make it necessary for the electoral board to furnish ballots and the election in May next to be carried on under the general provisions of the Parker Act notwithstanding there may be no nominations?

It does not, when the election is held as required by "section 20" of the amended ballot law, the voter prepares his own ballot and upon this ballot can vote his sentiments as to the call of a Convention, by having printed or by writing thereon one or the other of these words, namely: "Convention," "No Convention."

Yours very respectfully,

R. TAYLOR SCOTT,
Attorney-General.

WARRENTON, VA., APRIL 22, 1897.

Mr. WILLIAM E. ALLEN,
Corington, Va. :

DEAR SIR :

"*County officers*," as used in the amended ballot law, Acts 1895-'96, page 763, as I read and construe it, includes district county offices. They are part and parcel of county organization, and though jurisdiction be limited and prescribed to the specified districts, the officer *is a county officer*, and recognized and obeyed throughout the county.

How elections are to be held when both parties nominate, and how when no such nominations are made, you will find answered in my letter to Mr. Lee, secretary of the electoral board of Franklin county, copy of which I enclose herein.

Yours very respectfully,

R. TAYLOR SCOTT,
Attorney-General.

FOX ISLAND OR ISLANDS.

The committee appointed as provided by the joint resolution to be found in chapter 704, Acts 1895-'96, p. 773, through Major James N. Stubbs, presented their report to this office in November, 1896. Their conclusions were:

"*First.* That the property rights of the Commonwealth are being infringed upon by William Ellinger, Esq.

"*Second.* That proceedings should be instituted forthwith, in the proper court by the Attorney-General of Virginia, to protect the interests of the Commonwealth."

At the request of this office, Your Excellency ordered this report to be printed. Upon receipt of the printed copy, and after a careful examination thereof, the following letter was written you:

RICHMOND, VA., DECEMBER 17, 1896.

Gov. CHAS. T. O'FERRALL,
Richmond, Va.

MY DEAR GOVERNOR:

I am in receipt of the printed report of the General Assembly's special joint committee, as to the survey of Fox Island, or Islands, made under the act approved February 26, 1894 (Acts 1893-'94, chap. 399, p. 469), and must prepare for my part of this work.

My present purpose is, in the name of the Commonwealth, by you, her Executive, to present a bill in equity to Judge Wellford against William Ellinger, alleging deceit and fraud practiced upon the Commonwealth in the passage of the act aforesaid; that the plat and survey under which he claims was not made pursuant to the law as enacted; that the low water lines thereby defined are not the lines required and authorized; that to no part of the area which Ellinger purports to exchange with the Commonwealth had he at any time before the day of said alleged exchange, namely: June 27, 1895, title or possession; that it was not in the power of the Legislature to enact the law, therefore said law and all proceedings, grants, surveys, plats, etc., had thereunder, were null and void: ask that said acts, plats, surveys, grants, etc., be cancelled and annulled and Ellinger enjoined and restrained from exercising any control over the property of the Commonwealth, now in his possession, received under said act, and such other relief as shall be regarded proper and necessary in the premises.

To sustain such a bill and overturn the plat, etc., made by Civil Engineer W. G. Hodgkins, will require the direct evidence of skilled witnesses of Mr. Hodgkins' profession, therefore I ask that you make efforts to secure such evidence before further action by me.

I also enclose the form of a letter to be addressed by you to such persons as you may select, and in this connection suggest Capt. Baylor, Prof. Robt. A. Marr, of the V. M. I., who has had large experience in this kind of work and is a bright young man, and such others as your larger acquaintance and better information may enable you to appeal to. As this matter affects the whole Commonwealth the best expert talent in our university and colleges should be at your disposal, I think,

Truly and respectfully yours,

R. TAYLOR SCOTT,

Attorney-General.

DEAR SIR :

I wish you to examine for me the act passed by the General Assembly of Virginia herein enclosed, entitled "An act to define, &c., &c., by straight lines, the low-water-mark lines of the riparian owner of the shores of Fox Island or Fox Islands, in the county of Accomac, in the State of Virginia." Acts 1893-'94, chap. 399, p. 439, in connection with the map or plat, the last to be found in the appendix of the report of a special joint committee appointed under joint resolution approved March 4, 1896, also enclosed herein; said report the evidence found therein, the deed to William Ellinger from Crocket and wife (p. 7), the Commonwealth's grant to Sacker Nelson (pp. 6 and 7), "Exhibit B. T. G., Jr.," of said last-mentioned report, and then reply to the following question :

Is the plat and survey made by W. C. Hodgkins made in conformity with and as prescribed by the act aforesaid, to wit: The act approved February 26, 1894, entitled: "An act to define and establish by straight lines the low-water-mark lines for the riparian owner of the shores of Fox Island or Fox Islands, in the county of Accomac, in the State of Virginia," and William Ellinger's title deeds to said island or islands ?

And if not, then point out in detail and specifically said plat and survey's inaccuracies, mistakes, errors, and imperfections.

Yours, &c.,

I have called Your Excellency's attention to this matter, but have never had any reply. On this account no action has as yet been taken.

BOUNDARY LINE BETWEEN VIRGINIA AND TENNESSEE.

Thus far, nothing has been effected towards opening this case and remarking the line, although letters received from my able associates, Hon. R. A. Ayers and Judge W. F. Rhea, evidence the fact that they have not abated their efforts but are endeavoring to get the proper papers signed by the Tennessee counsel for the purpose of having a consent decree entered appointing a commission to mark and correctly define the line of 1803.

John A. Walker	}	<i>Circuit Court of Fluvanna county.</i>
<i>versus</i> Rivanna Navigation Co.		
State stock in this company. Its rights ?		

FEBRUARY 23, 1897.

To the Hon. Board of Public Works,
Richmond, Va. :

GENTLEMEN :

The letter of your secretary, Mr. C. Lee Moore, of the 5th instant, came to me some days ago, and I deferred my reply until it was in my power to examine into the case referred to by Mr. A. J. Taylor in his letter of January 27th past, addressed to your board.

I find from the papers in said case pending in the circuit court of Fluvanna county, styled "*John A. Walker v. Rivanna Navigation Company*," etc., that it is a lien creditor's suit against the company to subject the company's franchises, property, etc., to sale, and to apply the proceeds to payment of the lien debts due by the company. From the Master Commissioner's report returned September 21, 1896, it appears it has no personalty, and that the company's real estate holdings are of two kinds, viz.: (1) by purchase and (2) by condemnation. Of the former, in area, 20.45 acres, of which 2.75 acres lie in Albemarle and 17.70 acres in Fluvanna county; of the latter, 34.55 lie in Albemarle and 17.70 acres in Fluvanna county—making total holding of real estate 126.82 acres, valued in fee simple at \$20 per acre.

The first lien thereon is a debt to Albemarle county, evidenced by deed of trust dated July 1, 1872, which conveys all the defendant company's works, rights, and revenues to secure a debt of \$20,000. On this debt the accrued interest up to the date of the report—24 years 3 months and 20 days—at 10 per centum per annum, \$54,711.10, aggregating the sum total of \$74,711.10. A decree for sale was made September 22, 1896, John B. Moon and A. A. Gray the commissioners of sale, and the sale advertised for the 25th of this month.

It is manifest the company is hopelessly insolvent, and its stock without possible value, and that held by the State of Virginia *worthless*.

The act authorizing the State to take stock in this company will be found in Acts 1881-'32, c. CLXI. p. 246.

The rights of purchasers at the sale are determined by "section 1233," Code of Virginia 1887, which enacts "such sale and conveyance shall pass to the purchaser at the sale not only the works and property of the company as they were at the time of making the deed of trust, * * * but any works which the company may—after that time and before the sale—have constructed, and all

other property of which it may be possessed at the time of the sale other than debts due to it."

Upon such conveyance to the purchaser the said company shall *ipso facto* be dissolved, and the said purchaser shall forthwith be a corporation by any name which may be set forth in the said conveyance, or in any writing signed by him, and recorded in the court in which the conveyance shall be recorded.

The rights and liabilities of the purchaser are given in the succeeding section of the Code, and every such sale must be after ninety days' notice in one or more newspapers published in this city, and after ninety days' notice served on your board by the commissioners of sale. (Code 1887, sec 1236). The decree in this case does not conform to these requirements of statute law, therefore the sale, if made, will effect nothing and be invalid. The board's attention is directed to the additional requirement that such sales shall be attended by the board or its authorized agent.

Very respectfully,

R. TAYLOR SCOTT,
Attorney-General.

LIBRARY.

As an appendix to this report, I give a list of the books now in this office. I have now a good working library, but this should be one of the best in the State. I call especial attention to the fact that the contingent fund of this office was, by the appropriation bill of the last General Assembly, reduced from \$300 to \$100. I think it was done by mistake. This sum is palpably insufficient for the needs of this office. The telephone up to the past year has cost almost this sum, and nothing is left for the purchase of books, stamps, stationery, and other contingencies. The reduction without notice to this office caught us in debt and we are still there. I have been a regular subscriber to the Virginia and the United States Reports, the American and English Encyclopædia of Law, and Pleading and Practice, The American Digests, and various other works that are necessary. I suggest that the Legislature set apart a sum to be invested by the Attorney-General in books, or else make the contingent fund \$300, as it was prior to the appropriation bill of 1895-'96.

EXAMINER OF RECORDS.

(Acts, 1895-'96, p. 773, chap. 705.) I have given many opinions upon this law of like nature with the following :

WARRENTON, APRIL 23, 1897.

Mr. C. S. TOWLES,

Examiner of Records, 9th Judicial Circuit.

DEAR SIR:

Your letter of the 16th instant forwarded from Richmond came to me yesterday; in it you ask me the following questions, namely :

"Suppose 'A,' executes a bond payable to 'B,' and also a deed of trust to 'C,' to secure the bond due 'B,' value of bond, \$1,000. Suppose the bond is taxable, shall I, as examiner of records, report the same for taxation?"

This is "a private debt," and though secured by a deed of trust is not under the control of your court nor of a fiduciary appointed by such court or by a deed or will. If "B" fails to report such bond for taxation as required by law, then

he falls under the penalty imposed, for such failure he cannot recover upon it in law or equity in the courts of the Commonwealth, nor can he enforce the lien of his deed of trust. (Acts 1889-'90, p. 201—subdivision "first" of section 8, p. 200.)

Again: "Suppose 'G' sues 'F' on note for \$600, or open account for a like sum, shall I, as examiner of records, report same for taxation?"

As I understand the statute, with such matters you have no concern.

Your enquiry is confined and limited in the words of the law to "all moneys, bonds, notes, and other evidences of debt under the control of courts in your (said) circuit, or fiduciaries appointed by such courts, or by any deed or will subject to taxation under the laws of this State."

Very respectfully yours,

R. TAYLOR SCOTT.

Your Excellency will see from the foregoing that the Commonwealth's docket in all the courts is in good shape. Most of the cases that are now pending will, I hope, be disposed of during my term.

I desire to return my especial thanks to you and all the other heads of the various departments of the State and their assistants for the uniform courtesy extended me.

Respectfully,

R. CARTER SCOTT,

Attorney-General.

RICHMOND, VA., *November 22, 1897.*

APPENDIX.

LIST OF BOOKS PURCHASED FOR OFFICE BY R. TAYLOR SCOTT, ATTORNEY-GENERAL.

	No. Vols.
Washington's Reports, vols. 1 and 2	1
Virginia Cases, vols. 1 and 2	1
Henning & Munford's Reports	4
Munford's Reports	6
Virginia Reports, 1870-'71	1
Virginia Reports (Hansborough, &c.)	9
Davis' Criminal Law	2
East's Crown Law	2
Hawkins' Pleas	2
Russell on Crimes	2
Bishop's Statutory Crimes	1
Bishop on Criminal Procedure	2
Bishop's New Criminal Law	2
Story on the Constitution	2
Cooley's Constitutional Limitations (6th ed.)	1
International Law (Vattel)	1
Federalist and the other Constitutional Papers	2
Journal of Constitutional Convention	2
American and English Encyclopedia of Law	31
Supplement to Revised Statutes of the United States	1
Code of Virginia, 1887	1
Dillon's Removal of Causes	1
Public Officers (Throop)	1
Encyclopædia of Pleading and Practice (not completed)	9
Bouvier's Law Dictionary	2
Merrill on Mandamus	1
Dillon's Municipal Corporations	2
The Law of Corporations (Boone)	1
Foster's Federal Practice	1
United States Supreme Court Reports	11
Digest United States Supreme Court Reports	3
Revised Code of Virginia, 1812	1
Henning's Justice	1
Boundry Line Between Virginia and Maryland	1

	No. Vols.
American Digests	8
United States Circuit Court of Appeals Reports	10
Digest of the United States Circuit Court of Appeals Reports	1
Drake on Attachments	1
Daniel on Attachments	1
Chitty's Pleading	3
Cobbey on Chattel Mortgages	2
Jarmon on Wills	3
Story on Agency	1
Allibone's Quotations	3
Bartlett's Familiar Quotations	1
Charters and Constitutions	2
Fell's Law of Guaranty and Suretyship	1
Law of Insurance (Beach)	2
Virginia Law Journal, 1890-'91 and '92	3
Lomax Digest ('3d vol. to complete set)	1
Danforth's United States Supreme Court Digest, vol. 2	1
Virginia Law Register (unbound)	1
Virginia Laws (in force January 1, 1758)	1

LIST OF BOOKS IN OFFICE OF ATTORNEY-GENERAL OF VIRGINIA,
NOVEMBER 22, 1897.

	No. Vols.
Washington's Reports, vols. 1 and 2	1
Virginia Cases, vols. 1 and 2	1
Henning and Munford's Reports	4
Munford's Report	6
Virginia Reports, 1870-'71	1
Randolph's Reports	6
Leigh's Reports	12
Robinson's Reports	2
Grattan's Reports	33
Virginia Reports, vols. 75 to 93	19
Davis' Criminal Law	2
Robinson's Practise	3
Virginia Criminal Digest and Procedure	1
Mathew's Criminal Digest	1
Criminal Procedure, 1878	1
East's Crown Law	2
Hawkins' Pleas	2
Russell on Crimes	2
Chitty's Criminal Law	4
Commentaries on American Law	1
Wharton's Criminal Law	2
Wharton's Criminal Evidence	1
Wharton's Criminal Pleading and Practise	1
Bishop's Statutory Crimes	1
Bishop's New Criminal Law	2

	No. Vols.
Bishop on Criminal Procedure	2
Phillips on Evidence	4
Liability of Officers and Agents of Corporations	1
Public Officers (Throop)	1
Burroughs on Public Securities	1
Burroughs on Taxation	1
Encyclopædia of Pleading and Practise, vols. 1 to 9 (not completed) . .	9
Starkie on Evidence	3
Best on Evidence	2
Wills on Circumstantial Evidence	1
Privileged Communications (Hagman	1
Abbott's Trial Evidence	1
Adjudged Words and Phrases	1
Rapalje and Lawrence's Law Dictionary	2
Bouvier's Law Dictionary	2
Merrill on Mandamus	1
Broom's Legal Maxims	1
Dillon's Municipal Corporations	2
The Law of Corporations (Boone)	1
Foster's Federal Practise	1
Royall's Virginia Digest (1 to 21, Grattan)	1
United States Supreme Court Reports, vols. 1 to 166	41
Digest United States Supreme Court Reports	3
Danforth's United States Supreme Court Digests	2
Index to the United States Supreme Court Reports	1
Story on the Constitution	2
Desty's Federal Constitution	1
Potter's Dwarrris on Statutes and Constitution	1
Bump's Notes of Constitutional Decisions	1
Constitutional Law (Pomeroy)	1
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