

ANNUAL REPORT

OF THE

ATTORNEY-GENERAL

TO THE

GENERAL ASSEMBLY OF VIRGINIA,

FOR THE

YEAR ENDING SEPTEMBER 30, 1887.

---

RICHMOND:

A. R. MICOU, SUPERINTENDENT OF PUBLIC PRINTING.  
1887.



# REPORT.

---

COMMONWEALTH OF VIRGINIA,  
ATTORNEY-GENERAL'S OFFICE,  
RICHMOND, November 1st, 1887.

Governor FITZHUGH LEE :

SIR :

I have the honor to submit the following report, required by law, of the state and condition of the causes in which the Commonwealth is interested.

*Cases in the Supreme Court of the United States.*

The cases of Carper vs. Fitzgerald, and Royall vs. Virginia, were argued in the Supreme Court of the United States on the 18th day of March, 1887, and decided on the 28th day of March, 1887. Both of the cases involved the validity of the license laws of the State forbidding the receipt of coupons tendered in any other way than for identification and verification.

The appeal in case of Carper vs. Fitzgerald was dismissed, the court deciding that no appeal lies from the judgment of a circuit judge to the Supreme Court of the United States. In the case of Royall vs. Virginia the court decided that the case could not be distinguished from the case of Royall vs. Virginia, 116 U. S. 572, and that the tender of genuine coupons in payment of the license tax was a good tender without identification and verification, as required by amendment to the license laws of 1885-6.

It was believed that the provision allowing the identification and verification of the coupons without the prepayment of the license in money would meet the objection of the court in Royall vs. Virginia, 116 U. S. 572, and justify the act forbidding the receipt of coupons for licenses until they were verified, but the court adhered to its ruling in the case above mentioned.

*Cases pending in Supreme Court of the United States.*

D. B. Baldwin vs. Morton Marye and A. W. Harman. This is an appeal from the refusal of the Circuit Court of the United States for the Eastern District of Virginia to grant a writ of mandamus to compel Marye, auditor, and Harman, treasurer, to receive coupons from the plaintiff in payment of taxes due the State by him as late treasurer of Tazewell county. Under decisions of the court at the last term this case must be dismissed when it is reached on the docket.

George S. Vashon vs. S. C. Greenhow. This is a writ of error to a judgment of the Supreme Court of Virginia, deciding the act requiring the school tax to be assessed, collected and kept separate from other taxes, and to be paid in lawful money of the United States only, to be constitutional.

This case was pending when I made my report for 1886, and it was then stated that a motion would be made to advance the case to a speedy hearing. Subsequently it was decided to let the case take the regular course on the docket.

C. W. Newton et ux vs. The State of Virginia.

George Cornwall vs. The State of Virginia.

Nathaniel Burruss vs. The State of Virginia.

These cases are writs of error to judgments of the Supreme Court of Appeals of Virginia deciding the case forbidding the introduction of expert testimony, and the act requiring the production of the bond from which the coupon was clipped, to be constitutional. The cases will probably not be reached on the docket for three or four years.

*Cases decided in the Supreme Court of Appeals of Virginia.*

Newton vs. Commonwealth.

Burruss vs. Commonwealth.

These were coupon cases in which the judgments of the lower courts were affirmed. An appeal was then taken to the United States Court.

Puryear vs. Commonwealth. This was a case of murder in the first degree. On appeal from the circuit court of Prince George county, the judgment of the lower court was affirmed.

Anderson vs Commonwealth. A criminal case from the county court of Buckingham county. Reversed.

Bond vs. Commonwealth.

Bond vs. Commonwealth.

Criminal cases appealed from Bedford county. Both were affirmed.

Briggs vs. Commonwealth.

Brown vs. Commonwealth.

Both of these were criminal cases. The first was affirmed, and the last was reversed.

Allen et als. vs. Commonwealth. This case was an appeal from the decision of the circuit court of the city of Richmond, in which judgment was rendered against S. Brown Allen, late auditor of public accounts, and sureties, in favor of the Commonwealth, for money illegally paid out of the treasury. The judgment of the lower court was affirmed.

Commonwealth vs. Jones.  
Commonwealth vs. Brookes & Co.  
Commonwealth vs. Mallan & Bro.  
Commonwealth vs. Langley & Co.  
Commonwealth vs. Manning.  
Commonwealth vs. Morrison.  
Commonwealth vs. Cheatham & Co.  
Commonwealth vs. Offerdinger.  
Commonwealth vs. Guggenheimer & Co.  
Commonwealth vs. Scott.  
Commonwealth vs. Jackson.  
Commonwealth vs. Nowlin Bros.  
Commonwealth vs. Larkin.  
Commonwealth vs. Gilliam & Co.  
Commonwealth vs. Wall.  
Commonwealth vs. Winfree & Williams.  
Commonwealth vs. Mallan.  
Commonwealth vs. Hawkins.  
Commonwealth vs. Gregory.  
Commonwealth vs. Wooling & Co.  
Commonwealth vs. Harley.  
Commonwealth vs. Helbig.  
Commonwealth vs. Norvell, Wm.  
Commonwealth vs. Miller, Wm. H.  
Commonwealth vs. Perkins, J. W.  
Commonwealth vs. Ford.  
Commonwealth vs. Glass.  
Commonwealth vs. Bradshaw.  
Commonwealth vs. Magri.  
Commonwealth vs. Merchant, W. A.  
Commonwealth vs. Martin, Pat.  
Commonwealth vs. McCarron, Frank.  
Commonwealth vs. Matroni.  
Commonwealth vs. Smith, Stuart & Co.  
Commonwealth vs. Kegney.  
Commonwealth vs. Wall.  
Commonwealth vs. Matthews & Co.  
Commonwealth vs. Flood.  
Commonwealth vs. Burton & Co.  
Commonwealth vs. Plunkett.  
Commonwealth vs. Dunbar.  
Commonwealth vs. Reynolds, agent.  
Commonwealth vs. Lee & Co.  
Commonwealth vs. Fazzi.  
Commonwealth vs. Mallan.  
Commonwealth vs. Dillard & Johnson.  
Commonwealth vs. Parker.  
Commonwealth vs. Collins.  
Commonwealth vs. Merchant, J.  
Commonwealth vs. Butler.

Commonwealth vs. Byrne.  
 Commonwealth vs. McCarron, M.  
 Commonwealth vs. Norvell, Geo. W.  
 Commonwealth vs. Parsons.  
 Commonwealth vs. Stranger & Litchford.  
 Commonwealth vs. Cantieri.  
 Commonwealth vs. Jones.  
 Commonwealth vs. O'Brien, Thos.  
 Commonwealth vs. Callan, Pat.  
 Commonwealth vs. Weller.

The above were coupon cases decided on writs of error to the hustings court of the city of Lynchburg, obtained to judgments of that court holding the acts forbidding the expert testimony, and requiring the production of the bond, to be unconstitutional. The Supreme Court reversed all the cases and decided that the acts were constitutional.

Commonwealth vs. Maury. This case was decided on a writ of error to a judgment of the hustings court of the city of Richmond, holding the act requiring a special license tax from brokers engaged in the sale of coupons to be unconstitutional. The Supreme Court reversed the judgment of the hustings court and decided the act to be constitutional.

Mays vs. Commonwealth. This was a writ of error to a judgment of the hustings court of the city of Lynchburg in a criminal case, and was reversed.

#### *Cases Pending.*

Poindexter vs. Greenhow. This is an old coupon case submitted to the court before my term of office began, which has never been decided.

Commonwealth vs. Field.  
 Field vs. Marye, auditor.

These are cases on writ of error from the circuit court of the city of Richmond. The first was brought by the Commonwealth to recover certain fees alleged to have been illegally paid him, and the latter was brought by Mr. Field to recover certain moneys alleged to be due him by the State for his services as attorney, and for salary illegally withheld. They will be argued at the November term of this court.

Crawn vs. Commonwealth, No. 1.  
 Crawn vs. Commonwealth, No. 2.

These are writs of error to judgment in favor of the Commonwealth against appellant and others as sureties of the late treasurer of Rockingham county. Offers of compromise and payment have been made by the sureties, under the act of the General Assembly authorizing the auditor, with the approval and ratification of the attorney-general and judge of the circuit court of the city of Richmond, to make settlement of claims due the State. Unless settled in this way the cases will be heard during the terms at Richmond.

Commonwealth vs. Lucas. This is a writ of error to a judgment of the corporation court of Alexandria, adverse to the Commonwealth, upon a prosecution for selling coupons without a license.

Commonwealth vs. Plunkett.

Commonwealth vs. Krise.

Commonwealth vs. Larkin.

These are writs of error to judgments of the hustings court of the city of Lynchburg, holding the act requiring a special license tax for the privilege of selling coupons to be unconstitutional. They will be tried at the next term of the court.

Waller & Boggs vs. Commonwealth.

Anderson vs. Commonwealth.

Coleman vs. Commonwealth.

These are cases upon writs of error to the judgment of lower courts convicting the appellants of felony. They will be tried during the terms at Richmond.

Savage vs. Commonwealth, No. 1.

Savage vs. Commonwealth, No. 2.

These are writs of error to judgments of the lower court convicting appellant of misdemeanor.

Crump vs. Commonwealth. This is a writ error to the judgment of the hustings court of the city of Richmond, convicting the appellant of a misdemeanor in what is known as the boycott case. The case will be argued during the sitting of the court at Richmond.

*Circuit Court of the City of Richmond—Cases decided at Common Law.*

Commonwealth vs. Ingles et als., No. 1.

Commonwealth vs. Ingles et als., No. 2.

Commonwealth vs. Ingles et als., No. 3.

Commonwealth vs. Jones et als., No. 1.

Commonwealth vs. Jones et als., No. 2.

Commonwealth vs. Critz et als.

Commonwealth vs. Leaville et als.

Commonwealth vs. Barr et als.

These suits were brought against defaulting treasurers and their sureties to recover money due the State. Judgment for the Commonwealth in all of them.

Commonwealth vs. The Atlantic & Danville Railroad Co. This suit was dismissed by order of the Board of Public Works.

Commonwealth vs. The Wheeler & Wilson Sewing Machine Co. This suit was brought to recover taxes due from defendant company, for which coupons had been tendered. Said company paid the taxes in money, and suit was dismissed.

Commonwealth vs. Baltimore & Ohio Railroad Co. This suit was brought to recover taxes due from said company, for which coupons had been tendered. It was removed by order of the court to the Circuit Court of the United States for the Eastern District of Virginia.

*Circuit Court of the City of Richmond—Cases pending at Common Law.*

Commonwealth vs. Burger et als., No. 1.

Commonwealth vs. Burger et als., No. 2.

Commonwealth vs. Carroll et als.

Commonwealth vs. Mayo et als.

Commonwealth vs. Thomas et als.

Commonwealth vs. Givens et als.

Commonwealth vs. Gray et als.

Commonwealth vs. Sears et als.

Commonwealth vs. Harrison et als.

Commonwealth vs. Ingles' sureties.

The above are suits brought against defaulting treasurers and their sureties, to recover money due the State. Matured and ready for trial.

Commonwealth vs. Austin et als., No. 1.

Commonwealth vs. Austin et als., No. 2.

Commonwealth vs. Austin et als., No. 3.

Commonwealth vs. Austin et als., No. 4.

Commonwealth vs. McCartney et als.

Commonwealth vs. Taylor et als.

Commonwealth vs. Miller et als.

These are suits brought against clerks of courts to force them to report to the auditor of public accounts, and to pay into the treasury the money due the State. Matured and ready for trial.

Commonwealth vs. Tyler.

The object of this suit is to recover money illegally drawn out of the treasury on account of clothing for prisoners confined in the jail of the city of Richmond. Matured and ready for trial.

Commonwealth vs. Baughman Brothers and sureties.

This is a suit to recover money due on a forfeited bond. Matured and ready for trial.

Parsons vs. The Commonwealth.

Brown, Davis & Co. vs. Greenhow.



Saunders & Son vs. Greenhow.  
 Chaffin & Co. vs. Greenhow.  
 Straus vs. Greenhow.  
 Warren & Quarles vs. Greenhow.  
 Christian & White vs. Greenhow.  
 Corbin Warwick & Co. vs. Greenhow.  
 Ford, trustee, vs. Greenhow.  
 Robinson, Trad'g, &c. vs. Greenhow.  
 Bernicchi vs. Greenhow.  
 Green & Blackwell vs. Greenhow.  
 Muse & Watkins vs. Greenhow.  
 H. Brunheld & Co. vs. Greenhow.  
 Bliley vs. Greenhow.  
 Anderson & Ligon vs. Greenhow.  
 Glazebrook vs. Greenhow.  
 R. L. Parrish vs. Greenhow.  
 Leveitt vs. Greenhow.  
 Stonebraker & Co. vs. Greenhow.  
 Webb & Son vs. Greenhow.  
 Stern & Co. vs. Greenhow.  
 Smith & Perkins vs. Greenhow.

These are coupon suits brought to recover money paid under protest by the plaintiffs, and aggregate about \$2,000. They are matured and ready for trial.

*Chancery cases in the Circuit Court of the City of Richmond.*

Washington and Lee University vs. State of Virginia. The object of this suit was to obtain bonds in lieu of lost bonds given to the plaintiff by Mr. Peabody which were in a vessel lost at sea. Commissioner's report affirmed, and decree entered against the State December, 1881.

Commonwealth vs. Grantham. The object of this suit was to subject certain property conveyed by defendants to one O'Brien, to satisfy a judgment obtained against said Grantham. Docketed in 1874, and set down for hearing.

Commonwealth vs. Millan. This suit was brought in 1872 for the purpose of clearing up the title to certain lands belonging to Walter Millan, sheriff of Fairfax, and to subject them to a judgment obtained against said Millan in 1867. The bill was taken for confessed at June rules, 1872, and set down for hearing.

Commonwealth vs. Hilton's administrator. This suit was brought in 1877, for the purpose of forcing I. C. O'Neal, sheriff of Alexandria county, to give an account of the estate of Hilton, deceased, who was supposed to have died without heirs or next of kin, O'Neal having been appointed administrator of said Hilton. The bill was taken for confessed, and account rendered. The case is now practically disposed of.

Commonwealth vs. Brown Allen et als. The object of this suit was to enjoin Allen and the other members of the Board of Sinking Fund Commis-

sioners from carrying out the contract made with the Kendall Bank Note Company for printing certain bonds of the State. Suit was brought April, 1882. Injunction was granted, and the suit is now practically disposed of.

Richmond and Petersburg Railroad Company vs. S. Brown Allen et als. This suit was brought July, 1883, to obtain an injunction restraining S. Brown Allen, auditor of public accounts, and John E. Hamilton from levying upon and selling certain property belonging to said railroad company for taxes. Injunction was granted and subsequently made perpetual.

Commonwealth vs. Huffman et als. This was a suit brought in 1872 against Huffman, sheriff, and his sureties, to subject certain lands to a judgment formerly obtained against them for money due the State. In 1875 the case was compromised as to the sureties owning the real estate, and remains pending as to the rest.

Commonwealth vs. Samuel R. Page, escheator. This was a suit to recover certain property, which, by virtue of his office, came into the defendant's hands. Decree entered for the Commonwealth in 1873, and suspended to give time to defendant to take an appeal.

Farmers Bank vs. Alexandria Canal Company. This suit was brought in 1871 to obtain payment of certain bonds of the defendant company held by the plaintiff. One of these bonds was guaranteed by the State of Virginia. It is now in the hands of a commissioner.

Thomas J. Starke vs. Attorney-General of Virginia. This is a case in which the State has no interest.

*Cases decided at Law in the Circuit Court of the United States for the Eastern District of Virginia.*

J. F. Ross vs. John E. Bland et als.  
 J. F. Ross, trustee, vs. John E. Bland et als.  
 McKenzie vs. Edmonds et als.  
 Cook vs. Edmonds et als.  
 Deyerlie and wife vs. Brand et als.  
 Tuggle vs. Wilson et als.  
 Neilson vs. Givens.  
 Burgess vs. Booth et als.  
 Neville vs. Lane et als.  
 Neville vs. McIntosh et als.  
 M. D. Neville vs. McIntosh et als.  
 Newman vs. Horn et als.  
 J. M. Benton vs. J. L. McIntosh et als.  
 C. E. Mount vs. J. L. McIntosh et als.  
 J. M. Mount vs. J. L. McIntosh et als.  
 J. E. Mount vs. J. L. McIntosh et als.  
 J. W. Bowen vs. J. R. Peebles et als.  
 R. R. Mason vs. C. W. Woolfork et als.

Susan R. Walton vs. E. G. Edmunds et als.

J. W. Middleton vs. E. G. Edmunds et als.

Ed. P. Turner vs E. G. Edmunds et als.

These are actions for trespass in levying after tender, and in each case the plaintiff recovered back the taxes paid with costs.

There are now pending in this court the cases of—

Royall vs. Potts et als.

Cooper vs. Potts et als.

These are actions brought against members of a grand jury, which was impanelled and sworn in the hustings court of the city of Richmond, for finding an indictment against Royall and Cooper for violating the criminal laws of the State.

Couch, treasurer, vs. Marye et als. This is an application for a writ of mandamus to compel the auditor and treasurer to receive from Couch, as treasurer of Petersburg, certain coupons which he alleges he received from tax-payers.

*Cases decided in Chancery in the Circuit Court of the United States for the Eastern District of Virginia.*

Herman Stump, trustee, vs. Morton Marye et als. This was an injunction suit instituted for the purpose of enjoining and restraining the defendants, as members of the board of indemnity, from paying certain judgments recovered against them and county treasurers in trespass suits for levying upon tax-payers after tender of coupons. The court granted a preliminary injunction, but upon the hearing it was dissolved and the bill dismissed.

Cooper et als. vs. Mayre et als.

Cooper et als. vs. S. B. Witt et als.

James River Steamboat Co. vs. Mayre et als.

Cooper et als. vs. J. B. McCabe et als.

These were suits brought to restrain the auditor, attorney-general, county treasurers, and attorneys for the Commonwealth, from instituting the suits required to be brought under the provisions of the act entitled, "An act to provide for the recovery, by motion, of taxes and certain debts due the Commonwealth, for the payment of which, papers purporting to be genuine coupons of the Commonwealth, have been tendered." Approved May 12th, 1887.

The court granted the preliminary injunctions, and, upon the hearing, sustained them.

Believing that the court had no jurisdiction to grant the injunction, I determined to violate it as soon as the process was served, and instituted a suit against the Wheeler & Wilson Sewing Machine Company, and one against the Baltimore & Ohio Railroad Company, to recover taxes due the State.

Mr. John Scott, Commonwealth's Attorney for Fauquier county, and Mr. J. B. McCabe, Commonwealth's Attorney for Loudoun county, pursued the same course.

When it became known to the court that the injunctions had been violated, Messrs Scott and McCabe and myself were summoned to show cause why we should not be fined and imprisoned for our contempt, and upon the hearing, the following orders were entered against us, viz :

"In re Rufus A. Ayers.

"This matter came on this day to be heard upon the rule heretofore issued against Rufus A. Ayers, Attorney-General of the State of Virginia, to show cause why he should not be attached for contempt in disobeying the restraining order heretofore granted in the suit of Cooper et als. vs. Mayre et als., on the 6th day of June, 1887, and his answer thereto.

"On consideration whereof the court is of the opinion, and doth order and adjudge, that the said Rufus A. Ayers is guilty of contempt, in his disobedience of said order, and that he do forthwith dismiss the suit of the Commonwealth vs. The Baltimore & Ohio Railroad Company, instituted by him in the circuit court of the city of Richmond; and that for his said contempt, he be fined the sum of \$500, and stand committed in the custody of the marshal of this court until the same be paid, and he purge himself of his contempt by dismissing said suit last herein mentioned.

"HUGH L. BOND, *Circuit Judge.*"

"In re J. B. McCabe.

"This matter came on this day to be heard upon the rule heretofore issued against J. B. McCabe, Commonwealth's Attorney for the county of Loudoun, to show cause why he should not be attached for contempt in disobeying the restraining order of this court, heretofore granted in the suit of Cooper et als. vs. Mayre et als., now pending in this court, and his answer thereto.

"On consideration whereof the court is of opinion, and doth order and adjudge, that the said J. B. McCabe is guilty of contempt, in his disobedience of said order, and that he do forthwith dismiss all the suits under act of May 12th, 1887, now pending in the circuit court of Loudoun county.

"And the court doth further order and adjudge that the said J. B. McCabe, for his said contempt, be fined the sum of \$100; that he be taken into the custody of the marshal of this court and by him held until the said fine be paid, and he purge himself of said contempt by dismissing the suits brought or prosecuted in violation of the restraining order of this court, and that he pay the costs of these proceedings.

"HUGH L. BOND, *Circuit Judge.*"

"In re John Scott.

"The respondent in this case seems to the court, from his answer to the rule, to be so hopelessly blinded by the ancient doctrine of State sovereignty, that he does not seem to know that on an illustrious day in her history Virginia gave her adhesion to the constitution of the United States.

"To punish a man under these circumstances, as the court ought to punish a man of the ideas prevalent since the adoption of the constitution, would be manifestly unjust, and would be as unjust as it would be to punish a blind man equally with one who can see.

"The court doth therefore adjudge, order and decree that for his contempt of this court, said John Scott do pay a fine of ten dollars and dismiss the cases which he has brought in the circuit court of Fauquier county, Virginia, in violation of the restraining order, heretofore made in the cause of Cooper et als. vs. Marye et als., on the 6th day of June, 1887; and further, that he enter satisfaction of the judgments heretofore obtained by him against the defendants in said causes, and that he stand committed to the custody of the marshal of this court until this order is obeyed and the fine hereby imposed upon him is paid.

"And it is further ordered, that said John Scott do pay the costs of these proceedings.

"HUGH L. BOND, *Circuit Judge.*"

We each declined to pay the fine or comply with the requirements of the order, and were committed to jail. We thereupon applied by petition to the Supreme Court of the United States for writs of habeas corpus, which were granted, and we were enlarged upon our own recognizances in the sum of \$1,000, and the hearing postponed until the 14th of November, when the cases will be fully argued by counsel employed by the State.

The Circuit Court of the United States has released several parties on writs of habeas corpus for violating the license laws, and the State has been powerless to prevent it under the decision of the Supreme Court of the United States in *Royall vs. Virginia*, 121 U. S. 102.

*Parsons vs. The State of Virginia.* This was a suit brought against the State in the circuit court of the city of Richmond under the provisions of sections 1 and 2 of chapter 44, Code of Virginia, edition of 1873, to obtain judgment for the amount of certain coupons held by the plaintiff. After the institution of the suit it was removed to the Circuit Court of the United States. Motion to remand to the State has been made and argued, and the court has the cause under advisement.

*C. Gatewood vs. The State of Virginia.* This is a suit brought originally in this court by a non-resident, claiming the jurisdiction of the court under the provisions of sections one and two, chapter forty-four, Code of Virginia, edition 1873, to recover judgment for the amount of about \$30,000 in coupons held by him. A motion to dismiss for want of jurisdiction has been made and argued, and the court has the case under advisement.

These cases were argued and submitted to the court about eighteen months ago, but have never been decided.

The county treasurers and attorneys for the Commonwealth throughout the State have, with very few exceptions, shown a commendable desire to enforce the act of May 12, 1887, and numerous suits have been instituted which only wait the determination of the habeas corpus cases to be vigorously prosecuted.

Very respectfully,

R. A. AYERS,  
*Attorney-General.*