

ANNUAL REPORT

OF THE

ATTORNEY-GENERAL

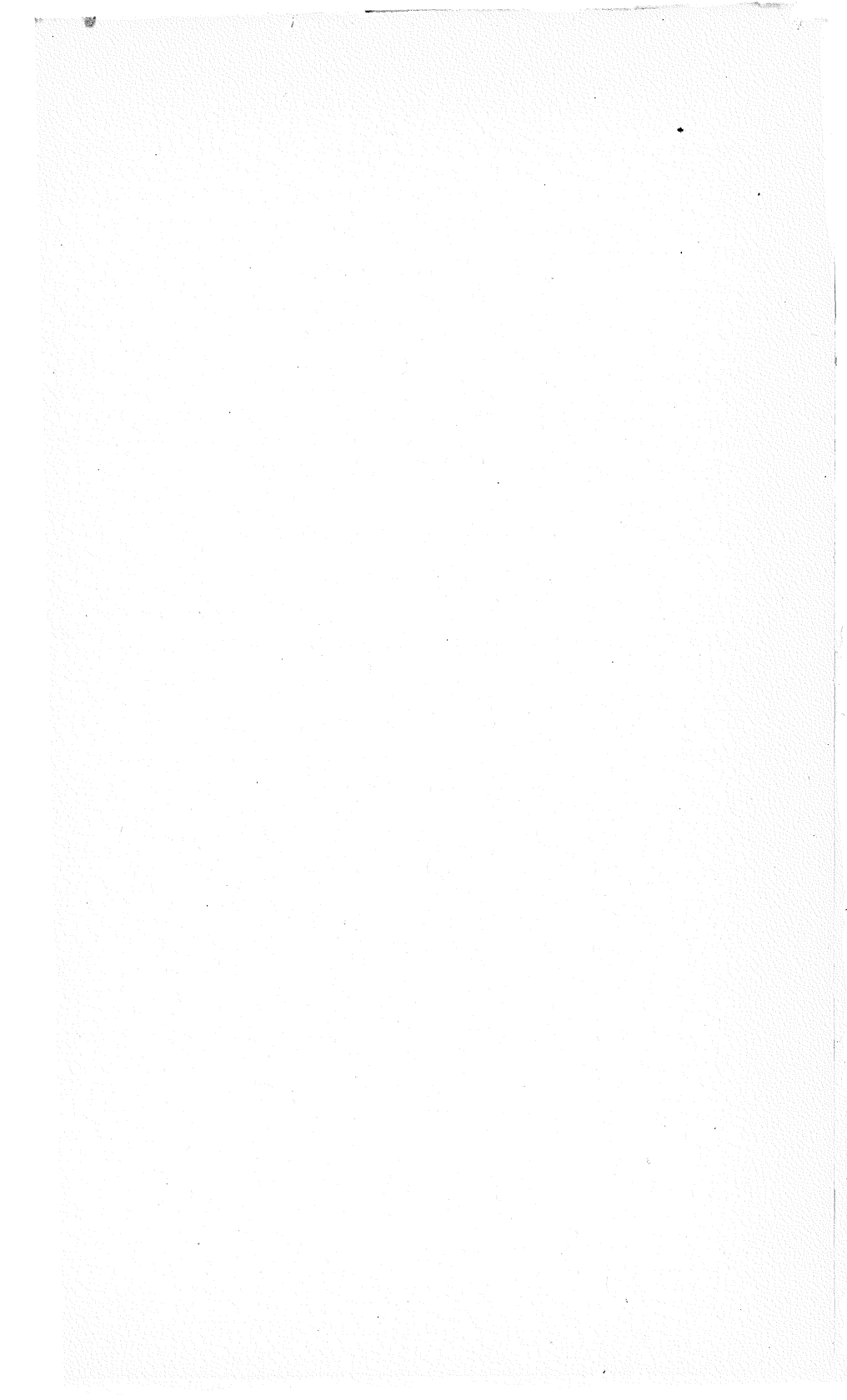
TO THE

GENERAL ASSEMBLY OF VIRGINIA,

FOR THE

YEAR ENDING SEPTEMBER 30, 1888.

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1888.



REPORT.

COMMONWEALTH OF VIRGINIA,
ATTORNEY-GENERAL'S OFFICE,
RICHMOND, November 1, 1888.

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 only cases which have been decided by the Supreme Court of the United States since the date of my last report are the three writs of habeas corpus granted by that court to judgments of the Circuit Court of the United States for the Eastern District of Virginia, in the cases of—

Ex parte Ayres.

Ex parte Scott.

Ex parte McCabe.

The questions at issue were fully stated in my last report.

The Supreme Court held that the Circuit Court of the United States had no jurisdiction of the chancery cause in which the contempt proceedings were taken, and that the orders of that court imposing the fines and making the commitments were without authority of law and void. The petitioners were discharged on the 5th day of December, 1887. The opinion of the court will be found in 123d U. S. Reports, page 443.

Cases Pending in the 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. No action has been taken since November 1, 1887.

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, and no action has been taken since my last report.

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 two years.

Cases Decided in the Supreme Court of Appeals of Virginia.

Poindexter vs. Greenhow. This was an old coupon case submitted to the court before my term of office began, and at the last term of the court, at Richmond, was decided in favor of the Commonwealth, and the motion for writ denied.

Commonwealth vs. Field.

Field vs. Marye, Auditor.

These were cases on writs 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. The first case was reversed, the court holding the defendant liable for the moneys received for fees, and giving judgment accordingly. The second case was also decided for the Commonwealth, and the judgment of the lower court affirmed.

Crawn vs. Commonwealth, No. 1.

Crawn vs. Commonwealth, No. 2.

These were writs of error to judgments in favor of the Commonwealth against appellant and others as sureties of the late treasurer of Rockingham county. Offers of compromise and payment were made by the other 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. But the appellant, Crawn, declined to compromise, and the appeals were tried at the last term of the court and decided in favor of the Commonwealth.

Commonwealth vs. Lucas. This was a writ of error to a judgment of the Corporation Court of the city of Alexandria, adverse to the Commonwealth, upon a prosecution for selling coupons without a license. The judgment was affirmed.

Commonwealth vs. Plunkett.
Commonwealth vs. Krise.
Commonwealth vs. Larkin.

These were 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. The judgment of the Hustings Court of the city of Lynchburg was reversed in each case.

Waller & Boggs vs. Commonwealth. Reversed.
Anderson vs. Commonwealth. Reversed.
Coleman vs. Commonwealth. Affirmed.
Sutton vs. Commonwealth. Affirmed.

These were cases upon writs of error to the judgments of lower courts convicting the appellants of felony, and were either affirmed or reversed, as per marginal note to each case.

Savage vs. Commonwealth, No. 1.
Savage vs. Commonwealth, No. 2.

These were writs of error to judgments of the lower court convicting appellant of misdemeanor, and the judgment in each case was reversed.

Crump vs. Commonwealth. This was a writ of 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 was argued at the last term here, and the judgment affirmed.

Cases Pending in the Supreme Court of Appeals of Virginia.

Laube vs. Commonwealth.
Cooper vs. Commonwealth.
Ellett vs. Commonwealth.
McGahey vs. Commonwealth.
Bryan vs. Commonwealth.

These are writs of error to judgments of the circuit courts in coupon cases, involving the constitutionality of the acts of the General Assembly requiring the production of the bond to prove coupons genuine, forbidding the introduction of expert testimony in such cases, and the act requiring suits to be brought against tax-payers who have tendered coupons.

They will all be tried at the next term of the court here.

Couch, treasurer, vs. Morton Marye, auditor. This was an application to the Circuit Court of the city of Richmond for a mandamus to compel the Auditor to pay certain fees due the Treasurer upon sales of delinquent lands. The Circuit Court refused to grant the writ, and the said Couch obtained a writ of error from the Supreme Court of Appeals, where the case is pending, and will be tried at the next term.

Redd et als. vs. Commonwealth. This is a writ of error to a judgment of the Circuit Court of the city of Richmond, rendered against the defendants as sureties of a defaulting treasurer, and will be tried during the session of the court at Richmond.

Commonwealth vs. Latham, Judge. This is a petition for writ of prohibition to restrain the judge of the Hustings Court of the city of Lynchburg from proceeding to try and decide certain chancery causes pending in his court against the Commonwealth, in which injunctions have been granted against the Commonwealth in violation of the statute which confers exclusive jurisdiction upon the Circuit Court of the city of Richmond in all such cases. The case is matured, ready for trial, and will be heard at the next term in Richmond..

Burroughs vs. Commonwealth. This is a writ of error to a judgment of the Hustings Court of the city of Lynchburg, imposing a fine upon plaintiff in error for contempt of court, and will be heard at the next term.

Watson vs. Commonwealth.

Hausefleck vs. Commonwealth.

Williams vs. Commonwealth.

Vaughan vs. Commonwealth.

These are writs of error granted to judgments of the lower courts where convictions have been had in trials for felony.

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. Sears et als.

Commonwealth vs. Ingles' Sureties.

Commonwealth vs. Jones et als.

Commonwealth vs. Barr et als.

Commonwealth vs. Cocke et als.

Commonwealth vs. Henderlite et als.

The above are suits brought against defaulting treasurers and their sureties to recover money due the State. In some of the cases the money due has been paid in full, and they will be dismissed at the next term of the court. The rest have matured and are ready for trial.

Commonwealth vs. Austin et als. (Four cases.)

Commonwealth vs. McCartney et als.

Commonwealth vs. Taylor et als.

Commonwealth vs. Miller et als.

Commonwealth vs. Kimberly 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.

Judgments Rendered in the Circuit Court of Richmond since September 30, 1887.

Commonwealth vs. Jas. W. Preston, administrator, of surety of Barr.
 Commonwealth vs. J. A. Campbell, " " "
 Commonwealth vs. Miller, treasurer, et als.
 Commonwealth vs. Howell, treasurer, et als.
 Commonwealth vs. Blair, treasurer, et als.
 Commonwealth vs. Pitzer, treasurer, et als., No. 1.
 Commonwealth vs. Pitzer, treasurer, et als., No. 2.
 Commonwealth vs. Sears, treasurer, et als.

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

Parsons vs. Commonwealth.
 Brown, Davis & Co. vs. Greenhow.
 Saunders & Son vs. Greenhow.
 Straus vs. Greenhow.
 Warren & Quarles vs. Greenhow.
 Christian & White vs. Greenhow.
 Corbin Warwick & Co. vs. Greenhow.
 Ford, trustee, vs. Greenhow.
 Robinson, trading, &c., vs. Greenhow.
 Bernicchi vs. Greenhow.
 Green & Blackwell vs. Greenhow.
 Smith & Perkins vs. Greenhow.

These are coupon suits brought to recover money paid under protest by the plaintiffs. They are matured and ready for trial.

Commonwealth vs. Virginia Steamboat Company. This is a coupon suit. Matured and ready for trial.

Chancery Cases in the Circuit Court of the City of Richmond.

Commonwealth vs. Grantham. The object of this suit was to subject property of defendant to satisfy a judgment.

Commonwealth vs. Millan. The object of this suit was to clear the title and subject certain land of the defendant to the payment of a judgment.

Commonwealth vs. Hilton's administrator. This case is practically disposed of.

R. & P. R. R. Co. vs. S. Brown Allen et als. This was a suit for an injunction, which was granted and made perpetual.

Commonwealth vs. Huffman et als. This was a suit to subject certain property of defendants to the payment of a judgment.

Commonwealth vs. Page, escheator. This was a suit to recover certain property which came into defendant's hand by virtue of his office.

Farmers Bank vs. Alexandria Canal Company. Decree entered in this suit March 3, 1887, on commissioner's report.

Chancery Cases Ended in the Circuit Court of Richmond since September 30, 1887.

Washington and Lee University vs. State of Virginia.

Commonwealth vs. S. Brown Allen et als.

Thomas J. Starke vs. Attorney-General of Virginia.

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

No cases have been tried at law since my last report, and the following cases are pending:

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.

Freidman vs. Healey, No. 1.

Freidman vs. Healey, No. 2.

These are actions brought against the defendant, sheriff of Middlesex county, to recover damages for an alleged unlawful arrest and imprisonment after tender of coupons for license tax as a peddler.

Beattie vs. Taylor.

Ellett vs. Greenhow.

Cooper vs. Winston.

These are suits brought against treasurers to recover damages for refusal to receive coupons for taxes where suits have subsequently been instituted under the act of May 12, 1887, to obtain judgments against the tax-payers. The plaintiffs averring the act of the Treasurer refusing to receive the coupons as the cause of damages sustained by suit and judgment.

These cases have been matured, are ready for trial, and will be tried during the next term of the court here.

Commonwealth vs. B. & O. R. R. Co. This is a suit brought originally in the Circuit Court of the city of Richmond to recover judgment against the company for taxes due the State, the company having tendered coupons in payment. The defendant company being a non-resident, removed the case to the Federal Court, where it will be tried during the next term.

Cooper et als. vs. Marye et als.

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

James River Steamboat Company vs. Marye 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 12, 1887. The court granted the preliminary injunctions, and upon the hearing sustained them; but after the decision of the Supreme Court of the United States in *Ex parte Ayers*, these cases were dismissed.

James P. Cooper vs. Lewis P. Winston, sheriff. This is an injunction suit against the sheriff of the city of Richmond to restrain him from levying certain executions in his hands upon judgments of the Circuit Court of the city of Richmond against tax-payers who had tendered coupons, and been sued under the act of May 12, 1887.

No tender of coupons were made in payment of the amount of the executions, but the plaintiff bases his grounds for relief upon a charge that the court, by giving effect to alleged unconstitutional acts of the General Assembly, had deprived the tax-payers of the power to make any defence. This case is identical in principle with the case of *Cooper vs. Marye et als.*, of which the Supreme Court of the United States decided the United States Circuit Court had no jurisdiction. A preliminary injunction was granted, which the sheriff violated, and he has been summoned to show cause why he shall not be fined and attached for contempt. The case will be tried during the next term of the court, and the sheriff will answer the summons for contempt of court.

D. K. Stewart vs. J. W. Southward, sheriff. This is a suit in equity, instituted for the purpose of enjoining the defendant, as sheriff of Henrico county, from making the return required by the act of May 12, 1887, upon an execution issued on a judgment in favor of the Commonwealth. The complainant tendered coupons in payment of his taxes, and suit was instituted against him under the said act, and judgment entered in favor of the Commonwealth. An execution was issued upon this judgment, when the complainant again tendered coupons, which were

refused by the sheriff, and the object of the suit is to enjoin the sheriff from making return that coupons were tendered, and require him to receive the coupons. This case will also be tried at the next term of the court.

Some time since you requested me to investigate the question of the boundary line between this State and the State of Tennessee, with the view of instituting proceedings under the "Senate joint resolution to authorize the Governor to take such proceedings as may be necessary to fix the boundary line between Virginia and Tennessee." In connection with Hon. William F. Rhea, I have prosecuted this investigation as far as the other duties of my office have permitted, but at this time am not prepared to advise the institution of legal proceedings. I will hereafter make this the subject of a special report, in which I will review all the legislation, and endeavor to arrive at the legal status of the question.

Very respectfully,

R. A. AYERS,
Attorney-General.