

ANNUAL REPORT

OF THE

ATTORNEY-GENERAL'S

TO THE

GOVERNOR OF VIRGINIA,

FOR THE

YEAR 1901.

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RICHMOND:  
J. H. O'BANNON, SUPERINTENDENT OF PUBLIC PRINTING.  
1901.



# REPORT.

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COMMONWEALTH OF VIRGINIA,  
OFFICE OF THE ATTORNEY-GENERAL OF VIRGINIA,  
RICHMOND, December 31, 1901.

To His Excellency J. HOGE TYLER,  
Governor of Virginia:

SIR:

I have the honor to submit my report of the work of this office from November 1, 1900, to and inclusive of this day:

## UNITED STATES SUPREME COURT.

*Tennessee v. Virginia* This is a suit upon original jurisdiction to retrace and relocate the boundary line between the two States, parties to this proceeding. The court appointed a commission to retrace and re-run said line and that report of the work of this commission has not yet been made to the court.

## SUPREME COURT OF APPEALS OF VIRGINIA.

1. *Doyle v. Commonwealth*. Continued on motion of plaintiff. Now pending.
2. *Longley v. Commonwealth*. Submitted December 4, 1900. Affirmed.
3. *Gilligan v. Commonwealth*. Submitted January 8, 1901. Affirmed.
4. *Ellinger v. Commonwealth*. Continued on motion of plaintiff. Now pending.
5. *Montgomery v. Commonwealth*. Submitted January 28, 1901. Reversed.
6. *Davis v. Commonwealth*. Submitted March 5, 1901. Reversed.
7. *O'Boyle v. Commonwealth*. Submitted November 12, 1901. Affirmed.
8. *Horton v. Commonwealth*. Submitted March 6, 1901. Affirmed.
9. *Goldman v. Commonwealth*. Now pending.
10. *Andrews v. Commonwealth*. Now pending.

## CIRCUIT COURT OF THE CITY OF RICHMOND--PENDING ON COURT DOCKET.

## COMMON LAW.

1. *Commonwealth v. Jos. Mayo, Jr., late Treasurer, and als.*
2. *Commonwealth v. Jos. Mayo, Jr., late Treasurer, and als.*
3. *Commonwealth v. O. B. Thomas, Treasurer Fluvanna county, and als.*
4. *Commonwealth v. O. H. Ingles, Treasurer Henry county, and als.*
5. *Commonwealth v. C. H. Ingles, Treasurer Henry county, and als.*

## REPORT OF THE ATTORNEY-GENERAL.

6. Commonwealth v. C. H. Ingles, Treasurer Henry county, and als.
  7. Commonwealth v. Jno. F. Jones, Treasurer Craig county, and als.
  8. Commonwealth v. Jno. F. Jones, Treasurer Craig county, and als.
  9. Commonwealth v. Bennett Taylor, Clerk Albemarle county.
  10. Commonwealth v. Bennett Taylor, Clerk Albemarle county.
  11. Commonwealth v. C. H. Baughman, and als.
  12. Commonwealth v. Jno. H. Sears, Treasurer Mathews county.
  13. Commonwealth v. G. R. Barr, Treasurer Washington county.
  14. Commonwealth v. W. M. Gray and J. J. Giesler, Washington county.
  15. Commonwealth v. O. D. Foster and R. W. Adams.
  16. Commonwealth v. A. K. Phillips, and als, sureties Adams.
  17. Commonwealth v. Mary B. Randolph's Adm'r.
  18. Commonwealth v. C. R. Randolph.
  19. Commonwealth v. C. H. Ingles, Treasurer Henry county, and als.
  20. Commonwealth v. L. J. Reynolds, adm'r of Jno. R. Cabell.
  21. Commonwealth v. W. P. Tyree, Principal, and als.
  22. Commonwealth v. Board of Supervisors of Bedford county.
  23. Commonwealth v. Board of Supervisors of Russell county.
  24. Commonwealth v. H. L. Stone, &c.
- Commonwealth v. Perrin et als. Dismissed October 21, 1901. Amount recovered \$5,921.93.
- Commonwealth v. H. L. Stone et als. Judgment for \$4,934.92 on December 23, 1901.

## CHANCERY CAUSES.

1. Commonwealth v. P. H. Huffman and als.
2. Commonwealth v. Sam'l M. Page.
3. Commonwealth v. J. W. Grantham.
4. Commonwealth v. Walter Millan.
5. Commonwealth v. Jas. Hilton's adm'r.
6. Commonwealth v. Martha Goode, &c.
7. Commonwealth v. Spencer D. Ivey, &c.
8. Commonwealth v. J. T. Young.
9. Commonwealth v. A. A. Chapman.
10. Commonwealth v. Robert S. Ryland and wife and als.
11. Commonwealth v. Geo. Dusner's Curator and Adm'r.
12. Commonwealth v. B. Vandegrift and als.

The litigation in the foregoing cases relates mainly to suits upon official bonds or supplemental proceedings in equity to secure satisfaction of judgments obtained thereupon. It is apprehended, however, that many of the suits or proceedings amount to but little, as the principal and sureties on the bonds sued upon are in many instances insolvent.

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

1. Commonwealth v. Tyler DeHart. Removed from the County Court of Floyd and pending at Danville.
2. The Douglas Company v. Commonwealth. See last report for status of these cases. The latter cause was decided in behalf of the Commonwealth, May, 1901.

## UNITED STATES CIRCUIT COURT 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. National Exchange Bank of Lynchburg v. Same. Decree for the defendant, December 30, 1901.

## OFFICIAL OPINIONS.

A few official opinions are selected and appended.

## EXAMINATION OF OFFICERS OF THE STATE MILITIA.

November 10, 1900.

Adjutant-General WM. NALLE,  
Richmond, Va.:

SIR:

Replying to your letter of the 31st ultimo, requesting my interpretation of the second paragraph of section 308 of an Act of the General Assembly, approved March 7, 1900, in regard to the examination of officers of the State militia, I beg to say:

1. That in my opinion every officer must be examined for every office to which he may be successively elected or appointed, the law pertaining to such examination being as follows:

"Each commissioned officer, whether of the field, line or staff, shall, within sixty days after his election or appointment, unless sooner ordered, report to a board of examiners, \* \* \* \* for examination as to his qualifications to perform the duties of the office to which he has been elected or appointed."

Therefore, if an officer, who passed an examination and receives from the Board of Examiners his certificate and commission, in a few days, weeks or months, is elected or appointed to another office, he must, in my opinion, again report to the Board for examination, and be again examined, notwithstanding the fact that the examination to which he is to be subjected is practically the same as previously passed by said officer for a similar office of inferior grade.

2. Even though the Board be satisfied as to the competency of the applicant, for the reason that he has successfully passed an examination for a similar office of inferior grade within a fixed time, yet said Board has no lawful authority to omit or dispense with such examination, and cannot make exceptions in individual cases. The character of the examination, the mode of conducting and grading it to be within the discretion of the Board when acting within the official rules and regulations; and in the exercise of this discretion consideration should be given to the fact that the applicant had before successfully passed a similar examination.

Very respectfully,

A. J. MONTAGUE,  
Attorney General.

## REPORT OF THE ATTORNEY-GENERAL.

## FEES FOR ENTERING A NOLLE PROSEQUI.

November 17, 1900.

C. W. ROBINSON, Esq.,  
*Newport News, Va.:*

MY DEAR SIR:

Referring to your letter of the 12th instant, I beg to say that prior to the Acts of 1897-98, there were no fees allowed a Commonwealth's Attorney for entering a *nolle prosequi* in misdemeanor cases. Therefore, the Act prescribing half fees is unavailing as to this particular fee, because the fee being nothing the half thereof is likewise nothing. Consequently, I am of opinion, and have so advised several other Commonwealth's Attorneys, that such a charge cannot be sustained.

Yours very truly,

A. J. MONTAGUE,  
*Attorney-General.*

## DISTILLATION, MANUFACTURE AND SALE OF LIQUORS.

November 17, 1900.

Mr. R. S. BRENT,  
*Heathsville, Va.:*

DEAR SIR:

Replying to your letter of the 15th instant, I beg to say that I am of opinion that it is lawful for a distiller or manufacturer to distill and manufacture liquors within a local option district, provided no sale or delivery is made therein of such liquors. In other words, the statute simply provides that the sale and delivery of liquors or ardent spirits shall not be made within the district. It does not allow the manufacturer, nor does a license to manufacture so authorize, to sell and deliver in such local option district; but it is competent for such distiller or manufacturer to make sale and delivery of such liquor outside of such local option district. See section 587 of the Code, and Acts of the Extra Session of 1887, page 434.

Very respectfully,

A. J. MONTAGUE,  
*Attorney-General.*

## FOURTH-CLASS POSTMASTER AND JUSTICE OF THE PEACE.

Mr. DENNIS W. DELANEY,  
*Hoadly, Va.:*

DEAR SIR:

Replying to your letter of the 19th instant, I beg to say that the Act of the General Assembly, approved February 14, 1900, authorizes fourth-class postmasters to hold the office of justice of the peace.

If elected, it will be your duty to take your oath of office before an officer authorized to administer oaths, which in your case would be the county judge or some neighboring justice.

Yours very truly,

A. J. MONTAGUE,  
*Attorney-General.*

## DELINQUENT LAND.

*November 26, 1900.*

Col. MORTON MARYE,

*Auditor of Public Accounts, Richmond, Va. :*

SIR:

In the matter of the reference of the letters of F. W. Richardson, Esquire, Clerk of Court, of the 18th and 19th of October, respectively, I am of opinion that—

(1) If a person prior to the new law, enacted March 8, 1900, filed his application for the purchase of a delinquent tract of land under the former law (Act of 1897-98), and has complied with all the requirements of the latter act, I think that a party who offers to redeem the land would have to pay the \$5.00 penalty prescribed by the act of 1897-98.

(2) If the applicant, either under the old or new law, fails to pay the clerk the amount of his purchase in five days after the expiration of four months from the service of the application (which the laws expressly require), I think the land can be redeemed without the payment of any penalty.

Respectfully,

A. J. MONTAGUE,

*Attorney-General.*

## AUTHORITY OF COLLECTORS OF REVENUE TO CARRY CONCEALED WEAPONS.

*December 13, 1901.*

Mr. M. BOTTS LEWIS,

*Harrisonburg, Va. :*

DEAR SIR:

Replying to your letter of the 8th inst., I beg to say that while in the actual discharge of your duty as Deputy Collector of Internal Revenue you are authorized to carry concealed weapons, for the statute seems expressly to authorize Collectors of Revenue to carry concealed weapons while in the discharge of their duties.

See section 3780 of the Code, as amended by Act approved March 4, 1896 (Acts, 1895-96, p. 826).

Very respectfully,

A. J. MONTAGUE,

*Attorney-General.*

## TOTAL LENGTH OF SERVICE.

*December 20, 1901.*

Adjutant-General W. NALLE,

*Richmond, Va. :*

SIR:

Replying to your inquiry as to what is meant by total length of service, in the second line of section 30, Reg. Va. Vols. (14), I beg to say that I am of opinion that such service means military and not official service. Therefore, in deciding the relative precedence between commissioned officers consideration should be taken not only of the length of the official, but the private military service as well, of such officers, if such private service has been performed.

Such seems the meaning of the language, and such is the reason of the construction, for otherwise it would be impossible to determine the relative precedence of corporals, if they were commissioned on the same day. The standard of such

precedence must be one that can be applied to the whole list of officers given in the grades mentioned under section 29, which would not be the case if official service alone be contemplated by said regulation.

Very respectfully,

A. J. MONTAGUE,  
*Attorney-General.*

RIGHT OF TREASURER TO COLLECT AND DISTRAIN FOR TAXES.

January 3, 1901.

WM. A. ROSE, *Esquire*,  
*Commonwealth's Attorney, King George, Va. :*

DEAR SIR:

Replying to your letter of the 22d ultimo, I beg to say that the Act approved March 2, 1900, for the relief of Mr. Ninde, the Treasurer of your county, expressly gives the Treasurer the right to collect and distrain for the taxes, regardless of whether or not the same have been paid to the Commonwealth; and also that said Treasurer is fully authorized to go into another county to collect, or to empower said Treasurer of said county to collect, or empower said Treasurer of said county to collect the said taxes, regardless of whether or not they have been paid to the State. I beg to cite you the case of *Repass v. Moore*, 10 Sup. Ct. Rep., 341, decided June 21, 1900, as laying down the general doctrine, to which, however, the said act seems to be a special exception, and gives the Treasurer full authority to make his taxes, regardless of whether or not they have been paid to the State, as above suggested.

Yours very truly,

A. J. MONTAGUE,  
*Attorney-General.*

RIGHT TO VOTE.

January 10, 1901.

Mr. WM. G. DAVIS,  
*Secretary of Phoebus Democratic Club, Phoebus, Va. :*

DEAR SIR:

Replying to your letter of the 8th instant, I beg to say that a retired officer or soldier has a full right to vote at any election, general or local, in this State: provided, such soldier, seaman or marine is a resident of this State, and not merely stationed here. In other words, if he is a *bona fide* resident he can vote as any other citizen.

Yours very truly,

A. J. MONTAGUE,  
*Attorney-General.*

ASSESSMENT OF PROPERTY.

January 11, 1901.

Col. MORTON MARTE,  
*Auditor of Public Accounts :*

SIR:

Replying to your letter of even date, I beg to say that personal property, other than bonds, notes, or other evidences of debt, must be assessed at its full



value, regardless of any indebtedness of the owner, and whether same is secured by said property or not.

Yours very truly,

A. J. MONTAGUE,  
*Attorney General.*

LICENSE.

January 10, 1901.

ANDRES G. HUTCHINSON, *Esq.*,  
*Herndon, Va.:*

DEAR SIR:

I beg to say that a druggist cannot sell liquor, even upon a druggist's prescription, unless under a retail liquor license.

Of course extracts and medical compounds of liquor can be sold, but liquor pure and simple cannot be sold under a prescription unless the druggist has taken out license, as above.

Yours very truly,

A. J. MONTAGUE,  
*Attorney General.*

THE SHARES OF STOCK OF A FOREIGN CORPORATION IN THE HANDS OF RESIDENT  
INDIVIDUAL SHAREHOLDERS, ARE TAXABLE.

April 20, 1901.

Col. MORTON MARYE,  
*Auditor of Public Accounts:*

SIR:

Replying to your letter of the 20th ultimo, in connection with which we have had personal conferences, I beg to reply that I am of opinion as follows:

1. That the shares of stock of a foreign corporation in the hands of resident individual shareholders are taxable under the laws of this State, whether such foreign corporation does business in the State or not.

2. The property of foreign corporations which do business, wholly or partially, in this State, is taxable so far as such property is within the State and embraced within the classifications or schedules of our tax laws.

3. In the case mentioned of the American Tobacco Company, I would say that its factories, warehouses, tobacco, articles used in the manufacture thereof, and money and credits used in business, are taxable, as well as the shares of stock in the hands of individual residents.

The factories and warehouses are real estate and are so taxable. The tobacco owned by said concern is taxable under the 16th section of Schedule B, and perhaps elsewhere under the tax laws. And its money and credits are taxable under section 17 of Schedule B, and under section 8 of Schedule C.

Very respectfully,

A. J. MONTAGUE,  
*Attorney-General.*

Respectfully submitted,

A. J. MONTAGUE,  
*Attorney-General.*

