

2-H 1-18-87 2831 192-118 (2)

Record No. **3739**

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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**SADIE Q. CEROLI AND SUSIE Q. TILMAN**

v.

**CITY OF CLIFTON FORGE**

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FROM THE CIRCUIT COURT FOR THE CITY OF CLIFTON FORGE

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**RULE 5:12—BRIEFS.**

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

M. B. WATTS, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

192 VA 118

## RULE 5:12—BRIEFS

**§1. Form and Contents of Appellant's Brief.** The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

**§2. Form and Contents of Appellee's Brief.** The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

**§3. Reply Brief.** The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

**§4. Time of Filing.** As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) The opening brief of the appellant shall be filed in the clerk's office within twenty-one days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. The brief of the appellee shall be filed in the clerk's office not less than twenty-one days, and the reply brief of the appellant not less than two days, before the first day of the session at which the case is to be heard.

(b) Unless the appellant's brief is filed at least forty-two days before the beginning of the next session of the Court, the case, in the absence of stipulation of counsel, will not be called at that session of the Court; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) Counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

**§5. Number of Copies.** Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

**§6. Size and Type.** Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

**§7. Effect of Noncompliance.** If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

CLERK  
SUPREME COURT OF APPEALS



RICHMOND, VIRGINIA

IN THE  
**Supreme Court of Appeals of Virginia**

AT RICHMOND.

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**Record No. 3739**

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VIRGINIA:

In the Supreme Court of Appeals held at the Court-Library Building in the City of Richmond on Wednesday the 3rd day of May, 1950.

SADIE Q. CEROLI AND SUSIE Q. TILMAN, Appellants,

*against*

CITY OF CLIFTON FORGE, Appellee.

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From Circuit Court of the City of Clifton Forge.

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Upon the petition of Sadie Q. Ceroli and Susie Q. Tilman an appeal is awarded them from a decree entered by the Circuit Court of the city of Clifton Forge on the 1st day of February, 1950, in a certain chancery cause then therein depending wherein the said petitioners were plaintiffs and the City of Clifton Forge was defendant, upon the petitioners, or some one for them, entering into bond with sufficient security in the clerk's office of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

\* \* \* \* \*

**RECORD**

page 2 } Virginia,

In the Circuit Court for the City of Clifton Forge.

Sadie Q. Ceroli and Susie Q. Tilman, Complainants

v.

The City of Clifton Forge, a Municipal Corporation, Defendants

**BILL.**

To the Honorable Earl L. Abbott, Judge :

The bill of complaint of Sadie Q. Ceroli and Susie Q. Tilman, complainants, filed in the Circuit Court for the City of Clifton Forge, Virginia, against the City of Clifton Forge, Virginia, a municipal corporation, respectfully showeth unto Your Honor :

(1) That William E. Quine died testate in the city of Clifton Forge, Virginia, on the . . . . day of January, 1909, and by his last will and testament, dated December 18, 1908, and recorded in Will Book 1, Page 15, devised his property, consisting of an improved lot on McCormick Boulevard in said city, shown and designated on the map of the Clifton Forge Company as Lot number Six (6), Block number Three (3), Section number One (1), to his widow, Mary E. Quine, for life with remainder in fee simple to your complainants. That subsequent to the death of the said William E. Quine, his said widow intermarried with one James H. Hatcher and thereafter lived and continued to occupy and rent the said property until the 19th day of January, 1949, when she died.

(2) That during the lifetime of the said Mrs. Mary E. Hatcher, formerly Mary E. Quine, and while she was occupying said property and renting a portion of the same, receiving the rents and profits therefrom, the said Mrs. Mary E. Hatcher failed to pay taxes due and owing to the City of Clifton Forge, Virginia, and the said City of Clifton Forge, Vir-

ginia, negligently failed and refuse to collect said  
page 3 } taxes. The said City of Clifton Forge, Virginia  
now claims a lien against the said real estate for the  
taxes assessed thereon during the lifetime of the life tenant,  
seeking now to establish the same against the remainder of  
your complainants. The said City has made demand on your  
complainants for the payment of said taxes, which your com-  
plainants are advised do not constitute a lien on said prop-  
erty nor an obligation on the party of your complainants who  
had no use of the said property during the lifetime of the  
said Mary E. Hatcher and received none of the benefits, rents,  
or profits therefrom. That, therefore, an actual controversy  
exists between your complainants and the said defendant, the  
City of Clifton Forge, Virginia.

(3) Your complainants, who are both residing outside the  
city of Clifton Forge, Virginia, residing in Manassas, Vir-  
ginia, and Swoope, Virginia, respectively, desire to sell the  
said property and dispose of the same. However, no pros-  
pective purchaser has been found who would take the prop-  
erty unless and until the question of the City's right to claim  
a lien for taxes has been adjudicated. Therefore, your com-  
plainants are prejudiced in their ownership of said property  
and in their efforts to sell the same so long as the defendant  
claims to have a lien thereon for delinquent taxes.

Wherefore, your complainants file this, their bill in chan-  
cery, where such matters are properly cognizable, and pray  
that the City of Clifton Forge, Virginia, may be made a party  
defendant thereto and required to answer the same, but not  
under oath, answer under oath being hereby expressly waived;  
that the court may declare under the provisions of Section  
6140a of the Code of Virginia (Michie 1942) whether or not  
the City of Clifton Forge has a lien on the real estate afore-  
said for taxes which accrued during the lifetime of Mary E.

Hatcher; and if said taxes are declared not a lien  
page 4 } on the real estate aforesaid, that the Clerk of this  
Court be ordered so to endorse the delinquent tax  
records in his office showing the same to be not a lien on said  
lot and its improvements; and that your complainants may  
have all such other, further and general relief as the nature  
of their case may require or as to equity shall seem meet.

As in duty bound, they will ever pray, etc.

SADIE Q. CEROLI  
By Counsel  
SUSIE Q. TILMAN  
By Counsel

GOODWIN AND GOODE, p. q.

(On back)

Filed Oct. 12, 1949.

CARTER B. GALLAGHER,  
Clerk.

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\* \* \* \* \*

ANSWER.

The answer of The City of Clifton Forge, a municipal corporation, to a bill of complaint filed against it in the Circuit Court for the City of Clifton Forge, Virginia, by Sadie Q. Ceroli and Susie Q. Tilman, complainants.

This respondent reserving to itself the benefit of all just exceptions to the said bill of complaint, for answer thereto, or to so much thereof as it is advised that it is material it should answer, answers and says:

1. This respondent admits part of the allegations of paragraph (1) of said bill but denies that said Mary E. Hatcher lived in said property continuously from the date of the death of said William E. Quine until January 19th, 1949, when she died.

2. It calls for strict proof of the allegations in paragraph (2) of said bill and does not admit any of the allegations thereof and says that it does claim a lien on said real estate for the taxes assessed thereon during the lifetime of said life tenant and says that said property is liable therefor as well as said remaindermen, and further says that said real estate was sold for the taxes thereon and delinquent thereon prior to such sale, which was held on Dec. 14th, 1936, and at said

sale the City of Clifton Forge, Va., became and was the purchaser of said real estate for said taxes, and as such purchaser took absolute title to said real estate, and is now the actual or beneficial owner thereof. That during the life of said Mary E. Hatcher, the life tenant, the said complainants paid the taxes on said real estate for the years of 1945 and 1946 and agreed to pay the other unpaid taxes thereon and by such payment and additional promise to pay the remaining unpaid taxes on said real estate are bound for such payment, which constitutes an agreement to pay same and a binding one upon said complainants and an expressed or implied acknowledgment of the lien of the defendant on said real estate for the taxes thereon, in addition to the lawful lien which the defendant claims it is entitled to and upon said real estate for said taxes; and that commencing with and since 1944 the said real estate has been assessed for taxation in the names of Mary, Sadie and Susie Quine.

3. This respondent denies all of the other allegations of said bill and calls for strict proof thereof.

THE CITY OF CLIFTON FORGE A  
MUNICIPAL CORPORATION,  
By J. W. C. JOHNSON, Counsel.

(On back)

Filed: Nov. 29th, 1949.

CARTER B. GALLAGHER,  
Clerk.

\* \* \* \* \*

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\* \* \* \* \*

OPINION.

This is a proceeding under the Declaratory Judgment statute, Section 8-578 of the Code of 1950, to determine whether the City of Clifton Forge has a lien for taxes on the real estate owned by the complainants which accrued during the lifetime of Mary E. Hatcher.



William E. Quine died testate on December 25, 1908, and by his last will and testament dated December 18, 1908, and duly admitted to probate, he devised all his property, consisting of a house and lot situated on McCormick, Boulevard in the City of Clifton Forge, to his widow, Mary E. Quine, for life, with remainder in fee to his two daughters, Susie Quine and Sadie Quine, the complainants herein.

Subsequent to the death of the testator, his widow married James H. Hatcher, and thereafter lived in and continued to occupy the property until her death in January, 1949. The two daughters likewise married and are now Sadie Q. Ceroli and Susie Q. Tilman.

From the years 1930 to 1943, both inclusive the property was assessed in the name of the William E. Quine Estate. For the years 1944 to 1949, both inclusive, the property was assessed in the names of Mary E. Hatcher, Sadie  
page 10 } Quine and Susie Quine. During the period of 1930 to 1949 the taxes were not paid except for the years 1945 and 1946. It is conceded that from the death of William E. Quine in 1908 until the widow's death in 1949, the widow's interest in the property was a life interest only with the remainder in fee in the complainants.

The city now claims a lien against the property for the taxes remaining unpaid since the year 1930 which amounts to the approximate sum of \$1,900.00. The complaints contend that the unpaid taxes are not a lien against the property and should have been collected from the life tenant during her lifetime, and that the same now constitute a cloud on the title of the property. The property was sold for taxes due the city and delinquent thereon at a sale held by the city treasurer on December 14, 1936, and at the sale, which was duly reported as provided by law, the city became the purchaser and owner and took absolute title to the property, with the right of the complainants to redeem.

To this the complainants contend that under the provisions of Section 58-1064 and 58-1065 of the Code of 1950 (Michies Code of 1942, Section 2488) the sale by the city treasurer for city taxes, did not, during the tenancy of the life tenant, affect or divest the title of the remainderman. By this they contend that all the city treasurer could sell was the interest of the life tenant and that the sale could not divest the remainderman of their interest since no taxes could be assessed against them.

The city did not proceed under the state law but under the provisions of its city charter adopted March 14, page 11 } 1918, Acts of the General Assembly, 1918, Page 372. By Section 26 of the charter it is provided in part: "There shall be a lien on real estate for the city taxes as assessed thereon from the commencement of the year for which they were assessed. \* \* \*" The remainder of the section provides the manner of payment and the sale for non-payment, and "may cause a good and sufficient deed to be made to the purchaser."

Sections 27 through Section 34 provide for the manner of sale, notice, redemption, sale to the city, and deed to the purchaser. An examination of these charter provisions show that the city made such taxes a lien against the *res* without regard to individual ownership and that such lien is good against the estate of a remainderman, although he is not personally liable for the taxes.

The rule is the contrary where state taxes are involved. *Tabb v. Commonwealth*, 98 Va. 47, 34 S. E. 946; *Lowery v. City of Norfolk*, 179 Va. 495. And contrary where the city charter seeks to follow the state law. The distinction is clearly shown in *Lowery v. City of Norfolk*, *supra*. See also *Powers v. Richmond*, 122 Va. 328, 94 S. E. 803.

This latter decision dealt with the charter provisions of the City of Richmond, as did the Lowery case. A comparison of the charter provisions of the City of Richmond with those of the City of Clifton Forge show that the provisions dealing with sale for delinquent taxes, above mentioned are substantially the same. Therefore, the construction given the Richmond charter provisions should apply to those of the City of Clifton Forge. It would in fact appear that the City of Clifton Forge attempted to follow as near as possible page 12 } the charter provisions of the City of Richmond in order to expressly make the lien for city taxes against the *res* and which would survive the death of the life tenant. Upon careful consideration this is as it should be and the remainderman has ample procedure to protect his interest if the taxes are not paid.

The court is therefore of the opinion that the charter provisions of the city prevail over the state law as regards the city taxes; that the unpaid taxes constitute a lien against the property of the complainants; and that the bill of the complainants be dismissed at their cost.

A decree may be prepared for entry in accordance with the view as herein expressed.

This opinion is hereby made a part of the record in this proceeding.

This the 27th day of January, 1950.

EARL L. ABBOTT,  
Judge.

To:

MR J. C. GOODWIN,  
Attorney for the Complainants.

MR. J. W. C. JOHNSON,  
Attorney for the Defendant.  
page 13 }

. . . . .

#### DECREE.

This cause came on to be heard upon the bill of the complainants, the answer of the defendant thereto and the reply of the complainants to said answer of the defendant, upon evidence heard *ore tenus* by the Court on the part of the complainants and the defendant, and was argued by counsel.

And the Court having taken time to consider its opinion in this cause doth adjudge, order and decree that the defendant, the City of Clifton Forge, Virginia, under the charter provisions of the said City, is entitled to and has valid lien against and upon Lot No. SIX (6), in Block No. THREE (3), Section No. ONE (1), as shown on the Map of the lands of the Clifton Forge Company, together with all improvements thereon, all of which are located in the City of Clifton Forge, Virginia, for the unpaid taxes thereon due the said City of Clifton Forge, Virginia, for the years of 1930 to and including the year of 1949, excluding the years 1945 and 1946 the taxes of which years of 1945 and 1946 having been paid, and that said real estate was sold for the taxes due said City and delinquent thereon at a sale held by the city treasurer of said City on December 14, 1936, and at the said sale, which was duly reported as provided by law, the said City became the purchaser and owner and took absolute title to the said real estate, with the right in the complainants to redeem same; that the opinion of this Court in this cause dated January 27th, 1950, be and it is hereby made a part of the record in

this proceeding and that the bill of the complainants be dismissed at their cost; to which action and judgment of the Court the complainants by counsel, excepted.

I have seen the above decree.

J. W. C. JOHNSON  
J. C. GOODWIN

(On back)

Decree.

Enter: Feb. 1, 1950.

E. I. A., Judge.

\* \* \* \* \*

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**NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.**

To The City of Clifton Forge:

Pursuant to amendment of Rule 21 of the Rules of the Supreme Court of Appeals of Virginia, notice is hereby given of appeal from the final judgment and decree of the Circuit Court for the City of Clifton Forge, Virginia, entered in the above styled cause on the 1st day of February, 1950, and the following assignments of error are hereby made.

(1) The Court erred in holding that the City of Clifton Forge, Virginia, under the charter provisions of said City is entitled to and has a valid lien against and upon Lot number Six (6), in Block number Three (3), Section number One (1), as shown on the map of the lands of the Clifton Forge Company for the unpaid taxes thereon due the said City of Clifton Forge, Virginia, for the years of 1930 to and including the year 1949, excluding the years 1945 and 1946.

(2) The Court erred in holding that the said City became the purchaser and owner and took absolute title to the real

## Supreme Court of Appeals of Virginia

estate with the right in the complainants to redeem same at the purported sale for delinquent taxes held by the Treasurer of said City on December 14, 1936.

Respectfully,

SADIE Q. CEROLI  
By Counsel  
SUSIE Q. TILMAN,  
By Counsel

GOODWIN AND GOODE, p. q.  
By J. C. GOODWIN.

page 16 } I hereby certify that a true copy of the above notice of appeal and assignments of error has been delivered to J. W. C. Johnson, City Attorney for the City of Clifton Forge, Virginia, and counsel for said City in the above cause.

J. C. GOODWIN,  
Counsel for the Complainants

(On back)

Filed March 25, 1950.

CARTER B. GALLAGHER  
Clerk

A Copy—Teste:

M. B. WATTS, C. C.

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