

3008
194-727

Record No. 4021

In the
Supreme Court of Appeals of Virginia
at Richmond

COMMONWEALTH OF VIRGINIA

v.

HARVEY M. JONES

FROM THE CHANCERY COURT OF THE CITY OF RICHMOND.

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.

194 VA 727

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
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JUN 21 1952
RICHMOND, VIRGINIA

IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 4021

VIRGINIA:

In the Supreme Court of Appeals held at the Court-Library Building in the City of Richmond on Thursday the 17th day of April, 1952.

COMMONWEALTH OF VIRGINIA, Plaintiff in Error,

against

HARVEY M. JONES, Defendant in Error.

From the Chancery Court of City of Richmond.

Upon the petition of Commonwealth of Virginia a writ of error is awarded her to a judgment rendered by the Chancery Court of the city of Richmond on the 31st day of November, 1951, in a certain proceeding for correction of erroneous assessment of taxes, wherein Harvey M. Jones was plaintiff and the Commonwealth of Virginia was defendant.

RECORD

Virginia:

In the Chancery Court of the City of Richmond.

In the Matter of Application of Harvey M. Jones, Trading as Jones and Gooding to correct Erroneous Assessment for 1950 Retail Merchant's License for State of Virginia.

To the Honorable Brockenbrough Lamb, Judge:

Your applicant, Harvey M. Jones, trading and doing business at 3158 West Cary Street, Richmond, Virginia, under the style of Jones and Gooding, respectfully represents:

1. That for several years prior to January 12, 1949, he and George R. Gooding as co-partners owned and operated the retail merchants business at the above address, handling electrical appliances, under the name of Jones and Gooding, and under license issued for the conduct of said business by the Commonwealth of Virginia for each year thereof.

2. That just prior to April 29, 1948, George R. Gooding became incapacitated and was unable to take any part in the conduct and management of the business, following which all of the duties thereof were performed by your applicant.

3. That on April 29, 1948, Elizabeth H. Gooding, wife of George R. Gooding, qualified in this Court as guardian for George R. Gooding and with her verbal consent your applicant continued to operate and manage said business until December 16, 1948, without the active aid of George R. Gooding or his guardian.

4. That by agreement in writing between your applicant and said guardian, dated December 16, 1948, your applicant further assumed the sole management and control of said business, for the benefit of the partnership, however, and continued to conduct the same.

5. That George R. Gooding died January 12, 1949, after which an audit was had and your applicant purchased the interest of George R. Gooding from Elizabeth H. Gooding, Executrix and sole beneficiary under the last will and testament of George R. Gooding, deceased, pursuant to a contract therefor, between them, settlement being made March 21,

1949, such interest including all rights of said parties in and to the license for that year, said license being assignable and transferable.

6. That a certificate was duly recorded in the Clerk's Office of this Court on March 24, 1949, showing the purchase by your applicant of the interest of the estate of George R. Gooding in said business and that your applicant has since continued to conduct the same under the name of Jones and Gooding.

7. That in January, 1950, a license was issued to your applicant for the conduct of said business under the name of Jones and Gooding, for the year 1950, the license tax for said year being based upon sales amounting to \$236,927.00 made during the entire year of 1949, part of which time George R. Gooding was living and had an interest in said business and part of which time your applicant was the sole owner thereof, which tax was paid.

8. That on or about June 8, 1951, the Department of Taxation of the Commonwealth of Virginia made an assessment for an additional tax of \$206.84 against your applicant or said business for the year of 1950, based on sales made over and above the gross sales reported for 1949. The page 3 } sales made during the entire year of 1949 amounted to \$236,927.00, which was reported for the 1950 license assessment, whereas the sales made during the year of 1950 amounted to \$340,349.52, the additional tax of \$206.84 being based on the difference between the gross sales for 1950 and 1949, or \$103,422.52.

9. That your applicant contends that the basis for his license tax for the year of 1950 should have been the amount of gross sales for the entire year of 1949, the tax thereon amounting to \$489.84 for which the license for 1950 was issued and paid and that the assessment for the additional tax of \$206.84 for 1950 was erroneous.

Your applicant therefore prays that he may be allowed to file this, his application; and that the Attorney for the Commonwealth or some attorney designated by the State Tax Commissioner may be required to defend this application pursuant to Section 58-1135 of the Code of Virginia of 1950.

HARVEY M. JONES TRADING AS
JONES AND GOODING

By counsel .

ROBERT C. LYNE, p. q.

* * * * *

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STIPULATION OF FACTS.

Counsel for the petitioner, Harvey M. Jones, and for the defendant, Commonwealth of Virginia, hereby stipulate and agree that the following constitute all of the facts in this proceeding and are to be considered by the Court in lieu of the introduction of evidence by either of the parties hereto;

1. That the petitioner, Harvey M. Jones, is a retail merchant trading and doing business at 3158 West Cary Street, Richmond, Virginia, under the style of Jones and Gooding;

2. That for several years prior to January 12, 1949, he and George R. Gooding as co-partners owned and operated the retail merchants business at the above address, handling electrical appliances, under the name of Jones and Gooding, and under license issued for the conduct of said business by the Commonwealth of Virginia for each year thereof;

page 7 } 3. That just prior to April 29, 1948, George R. Gooding became incapacitated and was unable to take any part in the conduct and management of the business, following which all of the duties thereof were performed by the petitioner;

4. That on April 29, 1948, Elizabeth H. Gooding, wife of George R. Gooding, qualified in this Court as guardian for George R. Gooding, and with her verbal consent the petitioner continued to operate and manage said business until December 16, 1948, without the active aid of George R. Gooding or his guardian;

5. That by agreement in writing between the petitioner and said guardian, dated December 16, 1948, the petitioner further assumed the sole management and control of said business, for the benefit of the partnership, however, and continued to conduct the same;

6. That George R. Gooding died January 12, 1949, after which an audit was had and the petitioner purchased the interest of George R. Gooding from Elizabeth H. Gooding, Executrix and sole beneficiary under the last will and testament of George R. Gooding, deceased, pursuant to a contract therefor, between them, settlement being made March 21, 1949, such interest including all rights of said parties in and to the license for that year, said license being assignable and transferable;

7. That a certificate was duly recorded in the Clerk's Office of this Court on March 24, 1949, showing the purchase by the petitioner of the interest of the estate of George R. Gooding in said business and that the petitioner has since continued to conduct the same under the name of Jones and Gooding;

8. That in January, 1950, a license was issued to page 8 } the petitioner for the conduct of said business under the name of Jones and Gooding, for the year 1950, the license tax for said year being based upon sales amounting to \$236,927.00 made during the entire year of 1949, part of which time George R. Gooding was living and had an interest in said business and part of which time the petitioner was the sole owner thereof, which tax was paid;

9. That on or about June 8, 1951, the Department of Taxation of the Commonwealth of Virginia made an assessment for an additional tax of \$206.84 against the petitioner or said business for the year of 1950, based on sales made over and above the gross sales reported for 1949. The sales made during the entire year of 1949 amounted to \$236,927.00, which was reported for the 1950 license assessment, whereas the sales made during the year of 1950 amounted to \$340,349.52, the additional tax of \$206.84 being based on the difference between the gross sales for 1950 and 1949, or \$103,422.52;

10. That the gross sales for 1948 amounted to \$248,362.32; and

11. That the uniform ruling of the State Department of Taxation has been that a corporation succeeding a partnership, a partnership succeeding a corporation, a partnership succeeding a proprietorship, or a proprietorship succeeding a partnership becomes a beginner for license and other tax purposes.

ROBERT C. LYNE,
Counsel for Harvey M. Jones
HENRY T. WICKHAM,
Assistant Attorney General
Commonwealth of Virginia

October 23, 1951.

* * * * *
* * * * *

ORDER.

This matter came on this day to be heard on the application of Harvey M. Jones, trading as Jones and Gooding, to have corrected an erroneous assessment of additional retail merchant's license taxes assessed against him on June 8, 1951, by the Commonwealth of Virginia, for the year of 1950, amounting to \$206.84, the application having been filed in the Clerk's Office of this court on September 6, 1951, due notice thereof having been served on C. H. Morrissett, State Tax Commissioner, and upon the testimony presented to the Court *ore tenus* on the 24th day of October, 1951, and was argued by Counsel.

And the Court doth certify that Henry T. Wickham, Assistant Attorney General for the Commonwealth of Virginia, who was designated by the State Tax Commissioner for the purpose, did appear at the hearing of this matter and defended the assessment; that the Commissioner of Revenue did appear at the hearing and was examined as a witness; that the facts stipulated and proved are as follows: That for several years prior to January 12, 1949, Harvey M. Jones and George R. Gooding as co-partners owned and operated a retail merchants business in the City of Richmond; that just
 page 11 } prior to April 29, 1948, George R. Gooding became incapacitated and was unable to take part in the conduct of the business; that on April 29, 1948, Elizabeth H. Gooding, wife of George R. Gooding, qualified in this court as guardian for George R. Gooding and with her consent Harvey M. Jones continued the business as a co-partnership; that George R. Gooding died January 12, 1949, testate, and his wife qualified in this court as executrix under his will; that Harvey M. Jones purchased the interest of George R. Gooding in the business, including all rights in and to the license for 1949, from Elizabeth H. Gooding, Executrix and sole beneficiary under the will of George R. Gooding, pursuant to a contract between them, settlement therefor and transfer thereof having been made March 21, 1949; that on March 24, 1949, a certificate was recorded by Harvey M. Jones in the Clerk's office of this court noting the purchase of the interest of George R. Gooding by Harvey M. Jones who continued to conduct the business as under the style of Jones and Gooding, and evidencing the change in ownership; that a license was issued by the Commonwealth of Virginia to Harvey M. Jones for 1950 based upon gross sales made in the business for the entire year of 1949 amounting to \$236,927.00 for which the license tax was paid; that the gross sales made by the busi-

ness during 1950 amounted to \$349,349.52; that the additional tax assessed against Harvey M. Jones for 1950, was made by the Department of Taxation of the Commonwealth of Virginia and was based upon the excess of the gross sales for that year over gross sales made by the business during the entire year of 1949, and that such additional tax of \$206.84 has not been paid.

page 12 } On consideration whereof the court being of opinion that the license tax of Harvey M. Jones for the year 1950 should have been based upon the gross sales made by the business during the entire year of 1949 only, as was done at the beginning of the year of 1950, and not for the year of 1950, and the court being satisfied that Harvey M. Jones is erroneously charged with the additional license tax of \$206.84 for the year of 1950, and assessed against him June 8, 1951, and that such erroneous assessment was not caused by the wilful failure or refusal of Harvey M. Jones to furnish the tax-assessing authority with the necessary information as required by law, doth adjudge order and decree that such assessment be corrected and vacated by the proper authorities of the Commonwealth of Virginia and that Harvey M. Jones be exonerated from the payment thereof.

It is further ordered that a copy of this order be certified by the Clerk of this Court to the State Tax Commissioner and a like copy thereof delivered to the State Comptroller.

(On back)

ORDER.

Enter Octo. 31. 1951.

B. L.

page 14 }

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

The Commonwealth of Virginia, by Counsel, hereby gives her Notice of Appeal from the final order of the Chancery Court of the City of Richmond entered in the above styled matter on the 31st day of October, 1951, exonerating the Ap-

Supreme Court of Appeals of Virginia.

plicant, Harvey M. Jones, from payment of a tax of \$206.84, said sum being the amount assessed by the Department of Taxation as an additional Retail Merchant's license tax for the year 1950.

The Commonwealth assigns as error the following:

1. The Court erred in holding that the Retail Merchant's license issued to Harvey M. Jones for 1950 should have been based upon the gross sales made by the business during the entire year of 1949; and

2. The Court erred in holding that the Applicant was continuing in business within the meaning of section 58-257 of the Code.

COMMONWEALTH OF VIRGINIA,
By HENRY T. WICKHAM,
Assistant Attorney General
Supreme Court Building

* * * * *

A Copy—Teste:

M. B. WATTS, C. C.