

3384
198 VA 727

Record No. 4616

In the
Supreme Court of Appeals of Virginia
at Richmond

L. N. HILTON

v.

B. HOBERT AMBURGY, ET AL.

FROM THE CIRCUIT COURT OF DICKENSON COUNTY

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.

H. G. TURNER, Clerk.

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

198VA727

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) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five 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. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of said fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; 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) With the consent of the Chief Justice or the Court, 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.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 4616

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 13th day of June, 1956.

L. N. HILTON, Plaintiff in Error,
against

B. HOBERT AMBURGY, ET AL., Defendants in Error.

From the Circuit Court of Dickenson County.

Upon the petition of L. N. Hilton a writ of error is awarded him to a judgment rendered by the Circuit Court of Dickenson County on the 12th day of March, 1956, in a certain proceeding then therein depending wherein the said petitioner was plaintiff and B. Hobert Amburgy, and others, were defendants; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said Circuit Court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *

To the Sergeant of the City of Richmond.

Greeting:

Whereas, On the 27th day of February, 1956, a writ of *feri facias* was sued out of the Clerk's Office of the Circuit Court of the County of Dickenson by L. N. Hilton to the Sergeant of the City of Richmond directed, returnable to the 3rd Monday in May, 1956, in favor of the said L. N. Hilton against B. H. Amburgey for \$1579.23, with legal interest thereon from the 7th day of Dec., 1942, till paid, and \$112.95 costs; subject to a credit of \$174.21, Aug. 20, 1946 and a suggestion having been filed in the Clerk's Office aforesaid, by the said L. N. Hilton, that by reason of the lien of his said writ of *feri facias* there is a liability on Commonwealth of Virginia and Dickenson County.

Therefore, we command you that you summon the said B. H. Amburgey, Commonwealth of Virginia and Dickenson County to appear before the Judge of our Circuit Court of the County of Dickenson at the courthouse thereof, on the first day of the next regular term of our said Court (being the 12th day of March next), to answer the said suggestion. And have then there this writ.

Witness, C. P. Mullins, Clerk of our said Court, at the courthouse, the 28th day of February, 1956, and in the 180 year of the Commonwealth.

C. P. MULLINS, Clerk.
By HERBERT J. RASNICK, D. C.

(on back)

Executed in the City of Richmond, Virginia, this 1 day of March, 1956, by delivering a true copy of the within summons in writing to S. C. Day, Comptroller, State of Va., in person.

FRANK A. CAVEDO,
Sergeant City of Richmond, Va.
By C. W. LESTER,
Deputy Sergeant.

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* * * * *

To James Elkins, Deputy for B. H. Amburgey, Sheriff of Dickenson Co.

Greeting:

Whereas, On the 27th day of February, 1956, a writ of *feri facias* was sued out of the Clerk's Office of the Circuit Court of the County of Dickenson by L. N. Hilton to James Elkins, Deputy for B. H. Amburgey, Sheriff of Dickenson Co. directed, returnable to the 3rd Monday in May, 1956, in favor of the said L. N. Hilton against B. H. Amburgey for \$1579.23, with legal interest thereon from the 7th day of Dec., 1942, till paid, and \$112.95 costs; subject to a credit of \$174.21 Aug. 20, 1946 and a suggestion having been filed in the Clerk's Office aforesaid, by the said L. N. Hilton, that by reason of the lien of his said writ of *feri facias* there is a liability on Commonwealth of Virginia and Dickenson County.

Therefore, we command you that you summon the said B. H. Amburgey, Commonwealth of Virginia and Dickenson County to appear before the Judge of our Circuit Court of the County of Dickenson at the courthouse thereof, on the first day of the next regular term of our said Court (being the 12th day of March next), to answer the said suggestion. And have then there this writ.

Witness, C. P. Mullins, Clerk of our said Court, at the courthouse, the 28th day of February, 1956, and in the 180 year of the Commonwealth.

C. P. MULLINS, Clerk.
By HERBERT J. RASNICK, D. C.

(on back)

I executed the within process on the within B. H. Amburgey, Sheriff Dickenson County, Va. & G. R. Phillips, Attorney For The Commonwealth by delivering a true copy thereof in writing to them in person in Dickenson County of Virginia on this 3 day of March, 1956.

.....
Sheriff of Dickenson County of Va.
By JAMES ELKINS,
Deputy Sheriff of Dickenson County.

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* * * * *

To James Elkins, Deputy for B. H. Amburgey, Sheriff of Dickenson County, Greeting:

We Command You, That of the goods and chattels of B. H. Amburgey, in your bailiwick, you cause to be made (\$1579.23) with interest at the rate of six per centum per annum, from the 7 day of Dec., 1942, until paid, which L. N. Hilton late in our Circuit Court of the County of Dickenson has recovered against the said B. H. Amburgey as well for debt as interest thereon on an instrument, waiving not waiving homestead exemption; also One Hundred Eleven Dollars and Forty-Five cents which to the said L. N. Hilton in the same Court were adjudged for his cost by him about his suit in that behalf expended, subject to a credit of \$174.21, Aug. 20, 1946. whereof the said B. H. Amburgey convict as appears to us of record. And how you shall have executed this writ make known at the rules to be holden in the Clerk's Office of our said Circuit Court on the 3rd Monday in May next. And have then there this writ.

Witness, C. P. Mullins, Clerk of our said Court, at the Court House, the 27th day of February, 1956, and in the 180 year of the Commonwealth.

C. P. MULLINS, Clerk.
By HERBERT J. RASNICK, D. C.

(on back)

Executed this 2nd day of March, 1956 by levying on one 1956 model Ford Fordor Sedan, license No. 982-274, and leaving said automobile in the possession of B. H. Amburgey.

JAMES ELKINS,
Deputy Sheriff.

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Received and filed, this the 12 day of March, 1956.

HERBERT J. RASNICK, Dep. Clerk.

ANSWER OF GARNISHEE.

This day came Dickenson County, garnishee herein, by Glyn R. Phillips, Commonwealth's Attorney, and in answer to the summons in garnishment heretofore served upon him and says:

That upon and from the date of service of said summons to date of this answer it was and has become indebted to defendant in the sum of \$187.56.

That it is not indebted to the defendant in any other sum and does not have in its possession or under its control any other property or estate of said defendant.

Wherefore, having fully answered, said garnishee prays to be hence dismissed with its reasonable costs in this behalf incurred.

This March 12, 1956.

GLYN R. PHILLIPS,
Commonwealth's Attorney.

* * * * *

page 7 } At a Circuit Court began and held for Dickenson County, Virginia, on Monday, the 12th day of March in the year of our Lord One Thousand Nine Hundred fifty-six, and in the one hundred Eightieth year of the Commonwealth.

Present: The Honorable F. W. Smith, Judge, Presiding.

L. N. HILTON,

Plaintiff,

vs.

B. HOBERT AMBURGEY, ET ALS,

Defendants.

GARNISHMENT.

This day this case came on to be heard upon the garnishee summons, properly executed on all the defendants, and the answer of Glyn R. Phillips, Commonwealth's Attorney for Dickenson County, and the answer of M. Duty, Secretary to the Comptroller of Virginia, and the motion to quash said garnishee summons filed by the principal defendant B. Hobert Amburgey.

After hearing the evidence introduced in open court and it appearing that the money in controversy is the official salary of the principal defendant, B. Hobert Amburgey, the duly elected and qualified sheriff of Dickenson County, Virginia, and the court being of the opinion that the sheriff is a constitutional officer and as such his salary is not subject to execution or garnishment, it is therefore ordered that the said garnishment notice be dismissed at the cost of the plaintiff.

The court not being advised on the motion to quash the execution takes time to consider.

(Signed) F. W. SMITH, Judge.

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Received and filed, the 23 day of April, 1956.

HERBERT J. RASNICK, Dep. Clerk.

BILL OF EXCEPTION.

Be it remembered and the Court doth certify that on calling of the above entitled case on the 12th day of March, 1956, the defendant, B. Hobert Amburgy, appeared and moved the Court to quash the garnishment and the return because the money sought to be garnished was the salary due him, and to become due to him, as the sheriff of Dickenson County, and for that reason, the same was not subject to garnishment; and it was agreed by the plaintiff and the defendant, Amburgy, that the said defendant, B. Hobert Amburgy, was the sheriff for Dickenson County, qualified for a term of four years commencing January 1, 1956; that the monies intended to be reached by this garnishment proceeding from the state and county was his salary as said sheriff; that the salary as said sheriff has been fixed at \$5,200.00 a year, one-third of which is to be paid by Dickenson County and two-thirds thereof by the state; and it further appeared, by the answers filed by the garnishees, there was \$187.56 due from the County as of March 12, 1956, and \$311.51 from the State. And the Court being of opinion that said sheriff's salary being that of a constitutional officer the said funds and any other to so become due before the return of the *fi. fa.* (third Monday in

May 1956) now in the hands of the deputy sheriff, and sought to be reached by this garnishment, is not subject to garnishment, and did therefore quash said garnishment summons and held the sheriff's salary, due and to become due was not subject to the lien of a *fi. fa.* or garnishment, and dismissed the proceeding therein, as shown by its final judgment; to which action and decision of the Court, in so holding, the plaintiff then and there excepted; and now to save to himself the benefit of said exception here tenders this his bill of exception and prays that the same may be signed, sealed, and made a part of the record in this cause; and it appearing to the Judge of said Circuit Court of Dickenson page 14 } County, who presided and decided said case, that the attorney for the defendant, B. Hobert Amburgy, J. Lindsay Almond, Jr., Attorney General for the Commonwealth of Virginia, and Glenn R. Phillips, Attorney for the Commonwealth for Dickenson County, has had reasonable notice of the time and place when this bill of exception would be presented for his signature, it is accordingly so done on this 23rd day of April, 1956.

F. W. SMITH, Judge. (Seal)

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MOTION OF APPEAL AND ASSIGNMENT OF ERROR.

To: B. Hobert Amburgy, Commonwealth of Virginia and Dickenson County:

You are hereby notified that I intend to appeal, and do hereby appeal to the Supreme Court of Appeals of Virginia from the final judgment rendered by the Circuit Court of Dickenson County, Virginia, in the above entitled case then therein pending on the 12th day of March, 1956, in your favor, whereby a garnishment proceeding in my favor against you, and Dickenson County and the Commonwealth of Virginia were summoned and answered as garnishees; and I will present to the said Supreme Court of Appeals a petition for a writ of error to the said Circuit Court of Dickenson County in said case as provided by law, in which petition I will assign as errors committed by said Circuit Court at the trial of said case upon which I will rely for a reversal of said judgment the following:

ASSIGNMENT OF ERROR.

The said Circuit Court erred on the trial of said garnishment in quashing same and in holding the salary of the defendant, B. Hobert Amburgy, as sheriff of Dickenson County, not subject to the lien of a *fi. fa.* in my favor, and in refusing to grant a judgment against the garnishees in my favor; instead of granting me a judgment for the amount the garnishees admitted to be due on said salary, and holding said sheriff's salary subject to the lien of the *fi. fa.* and garnishment.

L. N. HILTON

By S. H. & GEO. C. SUTHERLAND,
Attorneys,
Clintwood, Virginia.

I do certify that on the 1st day of May, 1956, I mailed to Hansel Fleming, attorney for B. Hobert Amburgey, Hon. J. Lindsey Almond, Jr., Attorney General of Virginia and Glynn R. Phillips, Commonwealth Attorney for Dickenson County, a copy of the above notice of Appeal and Assignment of Error.

S. H. SUTHERLAND.

Received and filed, this the 1 day of May, 1956.

C. P. MULLINS, Clerk.

A Copy—Teste:

H. G. TURNER, Clerk.

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