

4/20  
198 Va. 733

# Record No. 4630

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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**GEORGE M. HOGAN**

v.

**COUNTY OF NORFOLK**

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FROM THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

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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.

H. G. TURNER, Clerk.

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

198VA733

## 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.

CLERK  
SUPREME COURT OF APPEALS

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RICHMOND, VIRGINIA

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

AT RICHMOND

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**Record No. 4630**

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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.

GEORGE M. HOGAN, Plaintiff in error,

*against*

COUNTY OF NORFOLK, Defendant in error.

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From the Circuit Court of the City of Portsmouth

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Upon the petition of George M. Hogan a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of the City of Portsmouth on the 5th day of January, 1956, in a certain motion for judgment then therein depending wherein the County of Norfolk was plaintiff and the petitioner was defendant; 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 six hundred dollars, with condition as the law directs.

\* \* \* \* \*

**RECORD**

Virginia:

In the Civil and Police Court of the City of Portsmouth.

**NOTICE OF MOTION FOR JUDGMENT.**

To Mr. George M. Hogan  
1903 Holladay Street  
Portsmouth, Virginia

Take notice that on October 1, 1954 at 11:00 A. M., or as soon thereafter as counsel may be heard, the undersigned will move the Civil and Police Justice Court at the courtroom thereof in Portsmouth, Virginia, for judgment against you for the sum of \$590.72, with interest thereon from until paid, and costs, due for assessment of personal property taxes levied by Complainant County.

Respectfully,

COUNTY OF NORFOLK, VIRGINIA  
By GORDON F. MARSH  
Counsel.

Date: September 16, 1954.

\* \* \* \* \*

(on back)

We the jury find for the plaintiff, for the amount of \$390.72.

C. H. DELOATCH  
Foreman.

Executed Sep. 17, 1954. In the City of Portsmouth, Virginia by calling at the usual place of abode of the defendant Mr. George M. Hogan and not finding him there, I delivered

a copy hereof in writing to his wife at said usual place of abode and gave her information of its purport, she being a member of his family and above the age of sixteen.

CHAS. L. CAIN  
High Constable

J. B. EARLY  
Deputy High Constable

page 2 } Virginia:

In the Civil and Police Court, City of Portsmouth.

Norfolk County

*v.*

Geo. Hogan

Geo. Hogan makes oath that he has substantial defenses to the above action and the amount being in excess of \$300.00, desires to remove same to the Circuit Court for the City of Portsmouth, Virginia. Dated October 8, 1954.

G. M. HOGAN.

Subscribed and sworn to before me this 8 day October 1954.

SAMUEL GOLDBLATT Commr. in Chany.  
Circuit Court Norfolk County Va.

page 3 }

\* \* \* \* \*

In the Circuit Court of the City of Portsmouth, on the 27th day of April, 1955.

REMOVED WARRANT.

At this day came the parties by their Attorneys and thereupon, came a jury, to-wit: Morris Katz, Chester H. Felton, Sebastain Miranda, Jr., J. Durwood James, Denton A. Gibbs, Charles H. DeLoatch, and George J. Lufsey, who being duly sworn the truth to speak, upon the issue joined and having fully heard the evidence and argument of counsel, retired to

their room to consult of their verdict and after sometime returned into Court, having found the following verdict: "We the jury find for the plaintiff for the amount of \$390.72. C. H. Deloatch, Foreman."; whereupon, the defendant, by counsel, moved the court to set aside the verdict and grant him a new trial on the grounds that the said verdict was contrary to the law and evidence, which motion is continued.

\* \* \* \* \*

page 4 }                    INSTRUCTION NO. 1.

The Court instructs the jury that the situs for the assessment and taxation of the tangible personal property such as taxi-cabs shall in all Cases be the County, in which such property may be physically located on the first day of the tax year.

G. 4-27-55.

F. E. K.

Ex. noted.

page 5 }                    INSTRUCTION NO. 2.

The Court instructs the jury that it is the duty of the Commissioner of Revenue to assess all property which has its *situs* in his County on the first of January of each year and is physically located there.

G. 4-27-55.

F. E. K.

Ex. noted.

page 6 }                    INSTRUCTION NO. 3.

The Court instructs the jury that if any taxpayer liable to file a return of any property subject to taxation neglects or refuses to file the same for any year within the time required, the Commissioner of Revenue shall, from the best information he can obtain, enter the fair market value of such property and assess the same as if it had been reported to him.

G. 4-27-55.

F. E. K.

Ex. noted.

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INSTRUCTION NO. 4.

The Court instructs the jury that the purchasing of a taxi-cab license does not alter in any respect affect the liability of George Hogan for personal property taxes.

G. 4-27-55.

F. E. K.

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The Court instructs the jury that the burden is upon the County of Norfolk to establish by a preponderance of the evidence that the defendant is indebted to it in the amount, sued for and unless they so establish the claim it is your duty to find for the defendant.

G. 4-27-55.

F. E. K.

page 10 }

The Court instructs the jury that tangible personal property taxes may be assessed against a taxpayer only where his place of residence is and not with regard to where the same may temporarily be located.

Refused 4-27-55.

F. E. K.

Ex. noted.

page 12 }

\* \* \* \* \*

In the Circuit Court of the City of Portsmouth, on the 5th day of January, 1956.

REMOVED WARRANT.

At this day came again the parties by their Attorneys and the court having fully heard the motion of the defendant, heretofore entered herein, to set aside the verdict of the jury heretofore rendered herein and grant him a new trial on the grounds that the said verdict is contrary to the law and evidence, doth overrule the same; it is therefore considered by the Court that the plaintiff recover of the defendant the sum of Three Hundred and Ninety Dollars and Seventy-two cents (\$390.72) with interest thereon to be computed after the rate of Six per cent per annum from the 27th day of April, 1955, till paid, and its costs by it about its suit in this behalf expended.

And the said defendant in Mercy, &c.

But at the instance of the defendant, who desires to present



a petition for a writ of error and *supersedeas* to the judgment entered in this case, execution hereof is suspended for a period of Ninety (90) days from the date of the judgment, when the said defendant or someone for him, shall give bond before the Clerk of this Court, with surety approved by said Clerk, in the penalty of Six Hundred Dollars (\$600.00) payable to the said plaintiff, in this case, with a condition reciting said judgment and the intention of the said defendant to present such petition and providing for the payment of all such damages as any person may sustain by reason of such suspension in case a *supersedeas* to such judgment should not be allowed and be effectual within the time above specified.

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

NOTICE OF APPEAL.

Defendant hereby notes his appeal in the above styled case.

ASSIGNMENTS OF ERROR.

Defendant finds the following errors :

1. That the Court erred in not setting aside the verdict of the jury as contrary to the law and evidence.
2. That the court erred in entering judgment on the verdict in that same was contrary to the law and the evidence.
3. That the court erred in granting instructions numbers 1, 2 and 3.
4. That the court erred in refusing to grant the unnumbered instruction instructing the court as follows: "The court instructs the jury that tangible personal property taxes may be assessed against the taxpayer only where his place of residence is and not with regard to where the same may be temporarily located."

GEORGE M. HOGAN  
By SAMUEL GOLDBLATT  
Of counsel.

GOLDBLATT & LIPKIN, p. d.  
407 Bank of Commerce Bldg.  
Norfolk, Virginia.

Filed March 6, 1956

K. A. B., JR., Clk.

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\* \* \* \* \*

**AGREED STATEMENT OF FACTS.**

The County of Norfolk, Virginia, is a subdivision of the Commonwealth of Virginia and instituted suit by notice of motion for judgment against George M. Hogan, 1903 Holiday Street, Portsmouth, Virginia, in the Civil and Police Court of the City of Portsmouth for the sum of \$590.72 with interest thereon until paid and costs alleged to have been due for assessment of personal property taxes levied by said County, which said motion was returnable to said court October 1st, 1954. Thereafter and before the return day thereof, said motion, pursuant to statutes in such cases made and provided and upon the affidavit of George M. Hogan that he had substantial defense to said motion for judgment, was removed for trial to the Circuit Court of the City of Portsmouth, Virginia. Pending the trial of said motion for judgment, said claim was reduced by a payment thereon in the amount of \$200.00 to \$390.72. Trial was had in the Circuit Court of the City of Portsmouth before Honorable Floyd E. Kellam and a jury on April 27th, 1955, and a verdict rendered against said George M. Hogan for the sum of \$390.72.

A motion for a new trial was duly made and overruled on January 5th, 1956.

The suit arose over a claim by said County of Norfolk, Virginia, for personal property taxes based on assessments made pursuant to Section 58-838 Code of Virginia 1950 levied by them as follows:

Jan. 1, 1948—Entry No. 2496

Geo. M. Hogan

Geo. Wash. Highway—Assessment: \$10,000; Tax \$240.00

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Jan. 1, 1949—Entry No. 1039

Geo. M. Hogan

Geo. Wash. Highway—Assessment: \$2,400; Tax \$48.00

Jan. 1, 1950—Entry No. 976

Geo. M. Hogan

Geo. Wash. Highway—Assessment: \$2,400; Tax \$48.00

## Supreme Court of Appeals of Virginia

Jan. 1, 1951—Entry No. 1097

Geo. M. Hogan

Geo. Wash. Highway—Assessment: \$2,400; Tax \$48.00

Jan. 1, 1952—Entry No. 1180

Geo. M. Hogan

Geo. Wash. Highway—Assessment: \$2,400; Tax \$48.00

Jan. 1, 1953—Supplemental assessment dated 9/15/1954

Geo. M. Hogan—Assessment: \$950; Tax \$19.47

The said sums plus interest and penalties amounted to the amount sued for at the time of said suit.

The Witnesses for the County of Norfolk, Virginia, stated that the assessments were on certain passenger automobiles belonging to said George M. Hogan and were operated by said George M. Hogan on January 1st of each of said years as taxicabs in Norfolk County, Virginia.

George M. Hogan admitted that on the 1st of January of each of the years for which the assessments were made that he did operate taxicabs in Norfolk County, Virginia. George M. Hogan on the 1st of January of each of said years was a resident of the City of Portsmouth, Virginia, living at 1903 Holiday Street, Portsmouth, Virginia.

The foregoing is certified to be a true statement of the facts as given in evidence in this case.

3-6-56.

F. E. KELLAM

Judge of the Circuit Court of the  
City of Portsmouth, Virginia.

SAMUEL GOLDBLATT

Counsel for Defendant.

GORDON F. MARSH

Counsel for Plaintiff.

Filed March 6, 1956.

K. A. B., JR.  
Cik.

\* \* \* \* \*  
A Copy—Teste:

H. G. TURNER, Clerk.

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