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Clerk, Supreme Court of Appeals
Richmond, Va.

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Record No. 6242

In the
Supreme Court of Appeals of Virginia
at Richmond

WILLIAM L. SHEPHEARD, SR., ETC.

v.

W. R. MOORE, COMMISSIONER OF REVENUE OF THE CITY OF NORFOLK, VIRGINIA, ET AL.

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK

RULE 5:12 BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 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.

HOWARD G. TURNER, Clerk.

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 6242

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 12th day of October, 1965.

WILLIAM L. SHEPHEARD, SR.,
who sues in behalf of himself and all other citizens of the City of Norfolk, Virginia similarly situated, Appellant,

against

W. R. MOORE,
Commissioner of Revenue of the City of Norfolk, Virginia, and ALEX H. BELL, Treasurer of the City of Norfolk, Virginia, Appellees.

From the Circuit Court of the City of Norfolk
Clyde H. Jacob, Judge

Upon the petition of William L. Shepheard, Sr., who sues in behalf of himself and all other citizens of the City of Norfolk, Virginia, similarly situated, an appeal is awarded him from a decree entered by the Circuit Court of the City of Norfolk on the 30th day of July, 1965, in a certain proceeding then therein depending wherein the said petitioner was plaintiff and W. R. Moore, Commissioner of Revenue, etc., and another 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

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page 1]

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BILL OF COMPLAINT FOR INJUNCTION

To the Honorable Clyde H. Jacob, Judge of the Court aforesaid:

Your complainant respectfully represents unto the Court as follows:

1. Your complainant is a resident, citizen and taxpayer of the City of Norfolk, in the State of Virginia, and has been for many years preceding the filing of this complaint.

2. The defendant, W. R. Moore, is the duly elected Commissioner of Revenue of the City of Norfolk, Virginia, and has the duty, among others imposed by law, of assessing the complainant and other citizens of the city of Nor-

page 2] folk, Virginia, similarly situated with an annual capitation tax of One Dollar and Fifty Cents ($1.50).

3. The defendant, Alex H. Bell, is the duly elected Treasurer of the City of Norfolk, Virginia, and has the duty, among others imposed by law, of collecting from your complainant and other citizens of the City of Norfolk, Virginia, similarly situated the aforesaid capitation tax.

4. That your complainant from time to time since reaching the age of twenty-one years has been assessed a One Dollar and Fifty Cent ($1.50) capitation tax by the Commissioner of Revenue of the City of Norfolk, Virginia, and from time to time the Treasurer of the City of Norfolk, Virginia, has collected from him the aforesaid capitation tax as assessed.

5. That the laws made and provided with respect to the said capitation tax require that One Dollar ($1.00) of the same be allocated to the support of the free public schools in the State of Virginia and that Fifty Cents ($.50) of said tax be returned as a contribution to the general funds of the City of Norfolk for the City of Norfolk for the support of governmental functions of said municipality.

6. That the benefits of the governmental functions that are supported by the capitation tax uniformly inure to all of the

citizens of the City of Norfolk, whether they pay this voluntary tax or not.

7. That Section 173 of the Constitution of Virginia requires the General Assembly of Virginia to levy a state capitation tax of One Dollar and Fifty Cents ($1.50) per year on every resident of the state twenty-one (21) years of
page 3] age or over, except those pensioned by this state for military service, or those who may be serving in the military service.

8. That Section 22 of the Constitution of Virginia prohibits the collection of the state poll or capitation tax by legal process until the same has become three (3) years past due, and by reason of the prohibition contained in Section 22 of the Constitution of Virginia an unconstitutional, unequal and non-uniform burden of a portion of the cost of local and state government, in violation of the equal protection and due process clauses of the 14th Amendment to the Constitution of the United States and Sections 11 and 168 of the Constitution of Virginia, is placed upon your complainant and all other citizens of the City of Norfolk, Virginia, similarly situated, who pay their capitation tax when due.

9. By reason of the fact that no practical means of collecting the capitation tax from those residents of the City of Norfolk who do not desire to pay the same exists, the tax is, in fact, a voluntary tax and by reason thereof is unconstitutional, null and void and violates the aforesaid guarantees of the 14th Amendment to the Constitution of the United States, the due process clauses of Section 11 of the Constitution of Virginia and section 168 of the Constitution of Virginia, which provides, in part:

"* * * all taxes, whether State, local or municipal, shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws. * * *"

page 4] 10. That in the City of Norfolk, Virginia, the complainant and all other citizens similarly situated were deprived of the following contributions to the cost of local and state government by reason of the fact that citizens who were assessed with the capitation tax aggregating the amounts hereinafter set out chose not to pay the capitation tax and thereby make this contribution to local and state government, because of the unconstitutional character

of the tax there was no means to enforce such citizens to make said contributions:

1950 —	$102,244.28
1951 —	99,582.53
1952 —	99,415.58
1953 —	100,907.10
1954 —	95,496.98
1955 —	116,277.53
1956 —	107,041.73
1957 —	106,783.43
1958 —	102,272.63
1959 —	107,919.00
1960 —	101,647.50
1961 —	98,937.00
1962 —	98,604.00
1963 —	99,963.00
1964 —	105,286.50

said sums totalling $1,542,378.79 in uncollected capitation taxes.

11. Complainant further states that the said capitation tax is unconstitutional, illegal, null and void in that it violates the 14th Amendment to the Constitution of the United States and Sections 6, 11 and 168 of the Constitution of Virginia by placing an unequal and non-uniform portion of the cost of state government upon all those who wish to exercise their inalienable right to vote in state and local elections, including your complainant and all others similiarly situated.

page 5] 12. In support of complainant's allegation that the aforesaid capitation tax is a voluntary tax, he refers to and incorporates herein the sworn testimony of Judge C. H. Morrissett, Virginia State Tax Commissioner, a copy of which testimony is marked exhibit "A" and attached to this complaint, and a copy of the sworn testimony of Alex H. Bell, Treasurer of the City of Norfolk, Virginia, a copy of which is marked exhibit "B" and attached to this complaint.

13. Unless the defendant, W. R. Moore, Commissioner of Revenue of the City of Norfolk, Virginia, be enjoined from assessing the capitation tax which is the subject of this complaint and unless the defendant, Alex H. Bell, Treasurer of the City of Norfolk, Virginia, be enjoined from collecting the aforesaid capitation tax, your complainant and all other citizens of the City of Norfolk, Virginia, similarly situated, will be assessed

and as result of receiving an official notice of tax assessment will be caused to make unconstitutional, non-uniform and illegal payments to the cost of local and state government in violation of the rights guaranteed by the Constitution of the United States and as aforesaid.

14. The complainant states that he has no adequate remedy at law.

WHEREFORE, complainant prays:

(a) That the said W. R. Moore, Commissioner of Revenue of the City of Norfolk, Virginia, and Alex H. Bell, Treasurer of the City of Norfolk, Virginia, be made parties to this suit and compelled to answer the same;

(b) That proper process issue;

page 6] (c) That this Court decree that the Virginia capitation tax is unconstitutional, illegal, null and void and violates the rights guaranteed by the 14th Amendment to the Constitution of the United States to complainant and all others similarly situated;

(d) That the said W. R. Moore, Commissioner of the Revenue of the City of Norfolk, Virginia, and Alex H. Bell, Treasurer of the City of Norfolk, Virginia, and their respective agents, servants and employees be enjoined, both temporarily and permanently, from assessing and collecting said capitation tax;

(e) That complainant may be granted such further and general relief as to equity may seem meet and just.

WILLIAM L. SHEPHEARD, SR.,
who sues in behalf of himself and all other citizens of the City of Norfolk, Virginia, similarly situated.

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Filed in the Clerk's Office the 16 day of June, 1965
Writ Tax $1.50
Fee
Deposit 20.00
Total Paid $21.50

Teste:
W. R. HANCKEL, Clerk
OLIVE C. GLOCH, D.C.

* * * * *

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Filed 7-27-65
OLIVE C. GLOCH, D. C.

ANSWER

NOW COMES W. R. Moore, Commissioner of Revenue for the City of Norfolk, Virginia and Alex H. Bell, Treasurer for the City of Norfolk, Virginia, and in answer to the Bill of Complainant for Injunction, state as follows:

1. Said defendants are not advised as to the truth or falsity of the allegations contained in Paragraph 1 of the Bill of Complaint for Injunction.
2. Said defendants admit the allegations contained in Paragraph 2 of the Bill of Complaint for Injunction.
3. Said defendants admit the allegations contained in Paragraph 3 of the Bill of Complaint for Injunction insofar as it is alleged that Alex S. Bell is the duly elected Treasurer of the City of Norfolk, Virginia and has the duty, among others imposed by law, of collecting capitation taxes assessed against citizens of the City of Norfolk, Virginia, but deny the remaining allegations in said paragraph, if any.
4. Said defendants are not advised as to the truth or falsity of the allegations contained in Paragraph 4 of the Bill of Complaint for Injunction. They, therefore, neither admit nor deny those allegations but demand strict proof thereof.
5. The said defendants admit the allegations contained in Paragraph 5 of the Bill of Complaint for Injunction.
6. The said defendants admit the allegations contained in Paragraph 6 of the Bill of Complaint for Injunction.

page 79] 7. The said defendants admit that Section 173 of the Constitution of Virginia requires the General Assembly of Virginia to levy a State Capitation Tax on every resident of the State not less than twenty-one years of age, except those pensioned by this State for Military Services, but deny that the Constitution requires the capitation tax to be $1.50 per year as alleged in the Bill of Complaint for Injunction, in that said Constitution requires a levy of not exceeding $1.50 per annum.

8. The said defendants admit that Section 22 of the Constitution of Virginia prohibits collection of the State Poll or Capitation Tax by legal process until the same has become three years past due, but deny the remaining allegations in said paragraph.

9. Said defendants deny the allegations of Paragraph 9 of the Bill of Complaint for injunction.

10. Said defendants admit that the figures set forth in Paragraph 10 of the Bill of Complaint for Injunction represent the assessed and uncollected capitation taxes for the City of Norfolk for years 1950 through 1964, inclusive, but allege and aver that those figures also represent delinquent State Capitation Taxes which the State Tax Commissioner has declared worthless in accordance with the provisions of Section 58-996 of the Code of Virginia of 1950, as amended. The remaining allegations of said paragraph are denied.

11. Said defendants deny the allegations contained in Paragraph 11 of the Bill of Complaint for Injunction.

12. Said defendants admit that Exhibit A attached to the Bill of Complaint for Injunction is the sworn testimony of Judge C. H. Morrisett, Virginia State Tax Commissioner and Alex H. Bell, Treasurer of the City of Norfolk, Virginia.

page 80] 13. The said defendants deny the allegations contained in Paragraph 13 of the Bill of Complaint for injunction.

WHEREFORE, these defendants respectfully ask this Honorable Court that the Bill of Complaint for Injunction be denied and that they be dismissed with their costs in this behalf expended.

Respectfully Submitted,
JOSEPH H. CAMPBELL, Assistant Commonwealth's Attorney for the City of Norfolk, Virginia

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ORDER

THIS CAUSE came on to be heard on the Complaint filed herein to declare the capitation tax unconstitutional and to enjoin the defendant, W. R. Moore, Commissioner of Revenue of the City of Norfolk, from assessing said tax, and the defendant Alex H. Bell, Treasurer of the City of Norfolk, from collecting the same, the Answer and Responsive Pleadings filed thereto by the defendants, and the Court having heard argu-

ment and having considered the testimony and exhibits presented; and

The Court being of the opinion that the One Dollar and Fifty Cent ($1.50) capitation tax assessed by the defendant, W.R. Moore, Commissioner of the Revenue of the City of Norfolk, and collected by the defendant, Alex H. Bell, Treasurer of the City of Norfolk, pursuant to statutes made and provided therefor, does not violate Section 168 of the Constitution of Virginia and the Fourteenth Amendment to the Constitution of the United States, the Court doth

ADJUDGE, ORDER AND DECREE that the complainant's Bill of Complaint for Injunction against the
page 82] defendants herein be dismissed and removed from the docket of this Court to which the complainant duly noted its exception.

Enter: July 30, '65

CHJ

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Dep.
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JUDGE C. H. MORRISSETT,
being first duly sworn in behalf of the Petitioner testified as follows:

DIRECT EXAMINATION

By Mr. Howell:

Q. Judge Morrissett, for the record, state your full name.

A. Carlisle Havilock Morrissett.

Q. And your position with the State of Virginia?

A. State Tax Commissioner.

Q. How long have you held that position?

A. Since April, 1926.

Q. And prior to that time would you tell us what position you held with the State?

A. From 1919 to 1926 I was the Director of the Legislative Reference Bureau; from 1914 to 1919 I was employed by the Code Commission of 1914 to assist in the revision of the general laws of Virginia.

Judge C. H. Morrissett

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Q. Judge, would you tell us the general scope of your duties as Tax Commissioner?

A. The general duties; in fact, all duties of the State Tax Commissioner are prescribed by the Statutes of Virginia. The Tax Commissioner is the Chief Executive Officer of the Department of Taxation; he is charged with any number of statutory duties. In some cases of taxes his office assesses and collects, and in others the Tax Commissioner has general supervision over the Commissioners of the Revenue insofar as their state duties are concerned.

Q. Now you are familiar with the capitation tax as assessed in Virginia?

A. I am.

Q. Has that been a state tax ever since you became Tax Commissioner in 1926?

A. It has been on the books since that time and was on the books before that time.

Q. The tax dates back to 1909, approximately, or 1910?

Dep.
page 4]

A. The State Capitation Tax was required by the Constitution of 1902 which provided that the General Assembly must levy a state taxation of, and not exceeding, $1.50; $1.00 of which would apply to the aid of free public schools and 50¢ returnable to the locality and redirected for such governmental purposes as the local authorities would provide.

Q. Judge, who assesses that tax on behalf of the State?

A. The Commissioners of the Revenue of the Counties and Cities of the State.

Q. Are they doing it as agencies of your Department?

A. No, sir, not as agents of the Department of Taxation. They derive their powers directly from the Statutes.

Q. Whose duty is it to prescribe assessment methods for them?

A. The Department of Taxation prescribes forms for the assessment of the State Capitation Tax, the forms provide for

the procedure; for example, the form for the return of tangible personal property for local taxation, the form prescribed by the State as the standard form, has always had on it a place in which a person would indicate whether or not he believed he was assessable with the State Capitation Tax.

Dep. page 5]

Q. Who is subject to the tax in the State of Virginia?

A. Every person twenty-one years of age and over, except those pensioned by the State for Military Services and except persons in the Armed Forces of the United States; persons becoming of age after January 1st of a year are not assessable with the State Capitation Tax for that year but may, by registering in time, vote in the November election provided such person is twenty-one years of age on the date of the election.

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Q. I don't think it is particularly relevant to our inquiry but I was quite intrigued by your observation in that respect. Judge, does residency have any bearing on the person being subject to an assessment, if he is twenty-one years of age and residing in Virginia on the first of any particular year? Is he assessable with the tax even though he may not have been here but six or seven months?

Dep. page 6]

A. He is assessable if domiciled in Virginia on January 1st.

Q. Regardless of how long he had been domiciled here?

A. That is right, on January 1st; that is the date as to which the assessment relates or of which it speaks.

Q. Judge, has your Department, during your tenure of office, at any time made an examination to see how many people twenty-one years of age, residing in Virginia, were not being assessed with the Capitation Tax?

A. The Department of Taxation, so far as I know, has never made any study of that particular question.

Q. Is it mandatory that everyone twenty-one years of age who is domiciled in Virginia as of January 1st be assessed, with the two exceptions you mentioned?

A. Except those exempt by the Constitution or By-laws.

Q. Has the Department of Taxation ever issued any specific instructions to the Commissioners of Revenue relating to the assessment of a Capitation Tax so as to establish a uniform system of assessment?

Dep. page 7]

A. No specific instructions have been issued to

Commissioners of the Revenue on the ground that the law has been and is so plain as to speak for itself.

Q. Judge Morrissett, as Tax Commissioner of the State of Virginia, if you find that a local Commissioner of Revenue is not complying with the law concerning assessment of any tax, but specifically the Capitation Tax, do you have the power to direct him to carry out his duties in that respect?

A. I have the power to instruct him to carry out his State duties.

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page 13]

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Q. Judge Morrissett, have you had an opportunity to examine Exhibit A which was attached to the Petition for Writ of *Mandamus* that has been filed in the Supreme Court of Appeals to ascertain whether the total is accurate and whether the figures, with the exception of this one error; except for Henrico County; has your staff had an opportunity to check this?

A. Our Division of Research and Statistics has examined the total figures but so far as I know has not examined each locality.

Q. The total figure was found to be right?

A. But there is no reason to doubt the substantial accuracy in the broken down figures inasmuch as the total seems to prove very well.

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By Mr. Howell:

Q. Judge Morrissett, that figure represents Capitation Taxes that were assessed by the Commissioners of the Revenue throughout the State as shown on Exhibit A of the Petition for *Mandamus* but which have not been collected?

Judge C. H. Morrissett

A. Which were not collected as of June 30th following the tax assessment year. The figures do not disclose amounts subsequently collected.

Q. Do you have any records that would indicate what portion of this ten million has ever been collected?

A. The Comptroller's report will give the information with respect to subsequent collections but our reports do not give those figures.

Q. Do you have any reason to believe that any substantial amount of this $10,700,000 was later collected?

A. If I had to hazard a guess I would say that an amount substantial, according to my way of thinking, would be involved, but not any great amount of money.

Q. Less than half a million dollars?

A. Yes.

Q. As a calculated guess what figure would you say?

Dep. page 15]

A. I would guess less than $100,000.00 a year. That would be my guess on it because the first year not many of those are collected but we must bear in mind that in those delinquents are a great many people who have come into the offices of the Commissioners of Revenue and have had themselves assessed and knew whether they had been assessed or not for the three years last past in order that they might register to vote. There is a duplication to that extent. That is pointed out, I may say, in a letter that I wrote Mr. Howell on January 6, 1964.

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Dep. page 16]

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Q. Is it not your duty to collect the taxes that are due and payable?

A. There is no duty imposed on the State Tax Commissioner to collect the State capitation tax.

Q. Who has that duty?

Dep. page 17]

A. That duty is set out in great detail in the letter which took me some hours to write back in January, 1964. The subject matter is extremely technical.

Q. I want you to take full time, Judge Morrissett, to elabo-

rate on it but here we have a universal tax due and payable by several million people; does anyone in Virginia have the duty of collecting it? If so, all I want to know—

A. "Due and payable" and "due and collectible" are different things. The Constitution, in Section 22, provides that the collection of the State capitation tax assessed against anyone shall not be enforced by legal process until the same has become three years past due.

Q. When the capitation tax becomes four years old and on into eternity after that, there is no Statute of Limitations prescribed, is there, any Statute of Limitations applicable to the capitation tax in the tax laws of Virginia?

A. There is none.

Q. So the tax that is initially due and payable, we toll the legal collection of it for a period of three years but after it becomes four years old, and each year, as I say, into eternity, it can be collected in any way that is required by the State Officials?

Dep. page 18]

A. I should say any way desired by the General Assembly of Virginia because State Officials have only such authority as is conferred upon them by the Statutes.

Q. Is there any law that prohibits the collection of this tax; I mean after it becomes four years old?

A. There is no law prohibiting the State Tax Commissioner from collecting the tax but there is no law authorizing him to do so.

Q. Do you have to have affirmative authority in order to discharge the duty of collecting taxes?

A. I have to put my finger on authority for everything that I do.

Q. Don't you have a general duty to collect taxes?

A. No, no general duty. You must go to the specific Statute in order to ascertain the duties of the Tax Commissioner with respect to the collection of taxes.

Q. All right, sir, do you feel that you are powerless to direct your Delinquent Tax Collector to take action to collect the capitation tax? Do you feel that would be an unconstitutional act or illegal act on your part?

A. I believe it would be presumptuous to do so.

Q. My question is do you consider you would be violating the law to prevent collecting these capitation taxes? I am not talking about being presumptuous.

Judge C. H. Morrissett

A. Well, I would not do it because I would fear that my action would be challenged as being beyond the law.

Dep. page 19]

Q. It would be challenged by whom, Judge?

A. By anyone who would see fit to do so.

Q. So it is your statement, as the highest Tax Official in the State of Virginia, that you have no authority to collect a capitation tax when it becomes four years of age or older?

A. I say I have no duty to collect the State capitation tax, that the matter of collecting delinquent State capitation taxes is something that lies in the discretion of the General Assembly, that in order for the State capitation taxes, delinquent State capitation taxes to be collected, great machinery, extensive machinery would have to be set up by the General Assembly and that machinery would need ample financing. This is not in response to the question, but I would like to say that the collection of the State Capitation Tax throughout Virginia could not be handled from a central office in Richmond. Local collectors would be necessary, as a practical matter.

Q. Judge, I asked you if you had any authority to collect this ten million dollars which has accumulated during this particular ten-year period and you said you had no duty. I want to be specific now and ask you if you have sufficient authority. I don't know if there is any difference between duty and authority but to avoid any argument, do you have any authority to collect this ten million dollars?

Dep. page 20]

A. Not sufficient authority. The only authority that could be invoked would be a general authority to bring actions at law for the collection of taxes but on that point you could not collect the capitation taxes that way.

Q. Why not, Judge?

A. Because of the amount of work involved and cost.

Q. Do you mean that the cost of enforcement exceeds the amount of revenue involved?

A. I do.

Q. In your opinion is the capitation tax a revenue tax?

A. It produces revenue to the extent that it produces revenue as a revenue measure. To the extent that it is a legislation of suffrage, it is a suffrage measure.

Q. To what extent, Judge, does it regulate suffrage?

A. It regulates it to the extent mentioned by the Virginia Supreme Court of Appeals in the case of *Campbell* against *Goode,* 172 Va. 463. That simply means that under the existing

Judge C. H. Morrissett

Constitution a person must pay a State capitation tax for the period required before he may register to vote.

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page 23]

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By Mr. Howell:

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Q. Judge, from your testimony is it fair to conclude that this is a voluntary tax? If a person doesn't want to pay it he doesn't have to pay it?

A. That is correct.

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page 27]

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Q. So, again, you feel that the collection of the capitation tax is impracticable?

A. I do.

Q. Judge, when did you first notice that the average annual unpaid capitation tax that had been assessed was in the neighborhood of a million dollars a year?

A. I do not recall the particular year.

Q. Was it before the bringing of this suit?

A. I have known of the figures throughout my tenure of office.

Q. How long, roughly speaking, has it been in the million dollar category?

A. I do not have before me any figure prior to 1950. I suppose it was sometime prior to 1950 that it reached the million dollar figure.

Dep.
page 28]

Q. That is a rather impressive figure even in this day and time, isn't it?

A. Yes, it is a substantial amount.

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page 29]

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Q. Judge, in view of your wide knowledge in the field of taxation, do you know of any tax in the United States other than a capitation tax that is voluntary with respect to its payment, any tax levied by governmental authorities on either local, state or national level, which is voluntary with respect to its payment?

Dep.
page 30]

A. I know of none. The Virginia State capitation tax is *sui generis*.

Q. Judge, just one more question along that line and you might not be able to answer it but in the field of taxation is it not a *sine qua non* of any tax that it be collectible from a practical standpoint?

A. That is a good general statement.

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page 37]

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By Mr. Harris:

Q. Would you read the list into evidence in the event the letter is not admitted, and read the heading at the top of the list.

A. "State Capitation Taxes Assessed in and for the Tax Assessment Year Indicated and Reported Delinquent by the Local Treasurers as of June 30 of the Following Year.

"(5% penalty not included.)"

A. (Continuing) "Tax Assessment Year" is the first column and "Amount Delinquent" is the second column.

Mr. Howell: To conserve the record, why not have the reporter copy the list of figures?

Mr. Harris: That is agreeable with me.

Alex H. Bell

Dep. page 38] (The following is the list of figures read by the deponent in response to the previous question propounded by counsel for the defendants:)

Tax Assessment Year	Amount Delinquent
1950	$ 1,001,114.44
1951	996,282.49
1952	1,024,201.42
1953	1,026,319.14
1954	1,010,838.37
1955	1,016,331.68
1956	1,006,067.84
1957	1,053,823.39
1958	1,035,162.55
1959	1,043,149.58
Total	$10,213,290.90

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Dep. page 2]

ALEX H. BELL,
called as a witness on behalf of the petitioners, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Howell:

Q. Mr. Bell, state your full name.

A. Alex H. Bell.

Q. And what public office do you hold in the City of Norfolk, Mr Bell?

A. City treasurer.

Q. And how many years have you been the city treasurer?

A. Eighteen years.

Q. Among your duties as city treasurer is that of collecting taxes, state capitation taxes and personal property and real estate taxes and state income taxes from the citizens of Norfolk. Is that right, sir?

A. Collect all the taxes.

Alex H. Bell

Q. At my request have you compiled the total sum of capitation taxes assessed for the years 1960 through 1964 for the City of Norfolk?

A. Yes.

Dep. page 3] Q. Would you, Mr. Bell, starting give us the total sum that was assessed for 1960 capitation taxes in the City of Norfolk?

A. $185,227.50.

Q. And of that sum what was the total amount that your office collected in capitation taxes?

A. Through May 1, '65—

Q. No, just for 1960.

A. Oh, for 1960.

Q. For 1960.

A. $83,580.00.

Q. All right, sir. Now I'm going to take this year by year, first asking for the total amount assessed in Norfolk and then for the total amount collected, so if you will tell me now for 1961 the total amount that was assessed?

A. $182,100.00.

Q. And how much—

A. Collected $83,163.00.

Q. And the year 1962 the amount assessed?

A. $181,125.00.

Q. And the amount collected in capitation taxes for that year?

A. $82,521.00.

Q. 1963, Mr. Bell?

Dep. page 4] A. $181,026.00.

Q. And how much was collected in capitation taxes that year?

A. $81,063.00.

Q. All right, sir. We now reach the year 1964, and if you will tell us through what period of time these figures are—

A. '64 the collection is up to May 1, 1965.

Q. And how much had we assessed—well, first, how much did we assess for 1964?

A. $185,242.50.

Q. And how much—

A. Collected $79,956.00.

Alex H. Bell

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Dep.
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By Mr. Howell:

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Q. Has your office ever made an effort to enforce the collection of any capitation taxes in the City of Norfolk during your tenure of office?

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A. No, we have not.

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Q. All right, sir. Now, that's how he pays it. Why—you said you have never attempted to enforce collection. Why have you as an official charged with the responsibility of collecting taxes, why have you found it necessary to effectuate this policy of not attempting to enforce collection?

A. Well, — my answer to that is the fact that when the man comes to our window with the tax bill—

Q. What do your deputies say to him?

A. Well, the first thing the taxpayer will do is to put the tax slip in the window and say, "I want to pay this." And if the taxpayer would—I mean if the cashier would run this in the validating machine for the full amount, both including personal property and poll tax, he would tell the taxpayer the amount of money he owed. He'd say, "Oh, I don't want to pay both taxes. I only want to pay the poll tax," or in numerous—

Q. I only want to pay what?

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A. Poll tax.

Q. May not want to pay the personal property tax?

A. That's right. Poll tax is on the right side. Or he may say, "I want to pay the personal property." With this perforated bill we have we tear this in half and leave the unpaid tax bill in the file and present him with his copy and our office copy is kept by the office.

Dep. page 9]

Q. All right, sir. Now, Mr. Bell, have your deputies been instructed to make any inquiry of the taxpayer when he puts the tax statement down at the window?

A. Yes, they do. In other words, it happened so many times the man would pay—if you don't ask the taxpayer, the man will run it through his machine for the full tax, both taxes, and then the man says, well, I don't want to pay this tax or the other tax; I want to pay so and so. Then we have got to stop, hold up the window, the young lady's got to make a new bill, which will be perforated and split in half and put back in the file. Therefore, it is essential for us to ask the taxpayer when he hands in the bill, "Are you paying the whole bill, both personal property and poll tax?" And he will say, "No, no, I just want to pay poll tax" or "I just want to pay personal property tax."

Q. Now, if he doesn't pay his personal property tax what is eventually done to effect collection of the personal property tax?

A. If personal property tax is not paid in the year it is due in November, in February we turn it over to our delinquent tax section, who immediately writes letters to the tax payer that he is delinquent in tax.

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Q. Have you ever written a letter to anyone to pay his poll tax?

A. No, I never have.

Q. Have you ever gone to court to enforce the collection of poll tax?

A. Too expensive.

Q. Then, who in Norfolk pays the capitation tax or poll tax, Mr. Bell? Only those who want to voluntarily pay it?

A. I should say so, yes, or those who want to vote.

Q. Mr. Bell, what have you found regarding the ability —your ability as treasurer of the City of Norfolk to ef-

fectively enforce the collection of the capitation tax?

A. I have never enforced it.

Q. And why not?

A. It is just the procedure of the office long before I went in there, and I understand it is practically the procedure throughout the state.

Q. But I mean—

Dep. page 11] A. The tax is too low to make any concerted effort to collect.

Q. In other words, in your opinion it would cost you more to collect it than you would get in revenue?

A. Absolutely.

Q. Now, what is done with the statement of capitation taxes that have not been paid after the year in which they are due and payable? What is the mechanics?

A. Well, we hold these—our tax bills for three years. In other words, the election this year is based on 1962, '63, and '64. Now, since May 1st was the deadline for payment of the '64 taxes we keep those for about two years. We will drop them off one at a time. Say, 1961 we will hold approximately about a couple of years and then we destroy the bills.

Q. You destroy it or do you file them away?

A. We file them away for two years.

Q. File them away for two years?

A. We haven't got room to keep all of them.

Q. And then because of storage limitations you just burn it or do something?

Dep. page 12] A. That's right. If a man came in and wanted to pay it we go back to our records and let him pay it if he wants to pay it, but I haven't had occasion for anybody to do that.

Q. Suppose a taxpayer came in and wanted to pay his capitation taxes for the years 1950, 1951, and 1952. What would your office say to him?

A. Well, we would say that the account is delinquent and has been turned over to the state. In other words, we make up a delinquent list each year.

Q. You wouldn't take the money from him?

A. We wouldn't have the bills. I don't see how we could.

Alex H. Bell

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Q. To your knowledge has the State of Virginia ever sued a local taxpayer for capitation taxes?

A. Not that I know of.

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Q. Has the state ever sued a Norfolk taxpayer to your knowledge for failure to pay state income taxes?

A. Oh, yes.

Q. And what are the mechanics for enforcing the collection of a personal property tax, Mr. Bell? I want to get that straight.

A. Well, when we turn the bills over to our delinquent section they immediately send out a form letter that the tax is delinquent. Then we follow it with one or two notices. Then we file a tax lien against the man's salary. If he is working for the government where we can't file these liens, we send a list to the government of the employes' names in the various departments, like supply department, Air Force, and so on, that these people are delinquent, and then the government steps in and tells them they have got to pay their taxes, which has been extremely helpful to us.

Q. Mr. Bell, have you ever turned over to the collector of delinquent taxes in Norfolk a capitation tax after it was three years old to ask him to send a letter?

A. No.

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Q. I gather from your testimony that your experience has led you to believe that you cannot effectively enforce the capitation tax, so you have not turned these lists over to the delinquent tax collector?

A. That's correct.

Mr. Howell: All right, answer Mr. Harris's questions.

CROSS-EXAMINATION

By Mr. Harris:

Q. Mr. Bell, I believe the reason you said that you could

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not effectively enforce the collection of the capitation tax or taxes was because it was too expensive; that the money that you would receive from collection just would not come anywhere near meeting the expense of collection. Is that true?

A. That's right.

Q. I believe you also testified that as soon as the capitation tax on a particular bill or half of a bill that you have referred to is over three years past due and then the deadline passes which would have made this payment of this tax have any significance as far as an election is concerned, you then make some arrangement to get rid of the records and so that you never have bills any later than three years past due on your premises, supposedly? Is that right?

Dep. page 18] A. Well, I say five years, because we keep them for two years.

Q. Now, in connection with Mr. Howell's question with reference to suppose one of these persons whose bill had been either disposed of or destroyed should come in and voluntarily pay the tax, I believe you said that this had never happened in your experience?

A. And never will, if you want to put it that way.

Q. You said if it did happen you suppose that you would consult with Mr. Morrisette to find out what he wanted to do?

A. If a man came, if his conscience hurt him.

Q. The only reason you would consult with Mr. Morrisette would be because you didn't have a bill?

A. That's right.

Q. Wouldn't it be possible for you just to make up another bill like some of the other treasurers and make up a new bill?

A. I suppose I could, but I have never been called on.

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A Copy—Teste:

H. G. TURNER, Clerk

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