815 Va. 281
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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 740054

C. WAVERLY PARKER,

Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Appellee.

APPENDIX

C. WAVERLY PARKER
Stanardsville, Virginia
Pro se

PETITION

To the Honorable David F. Berry, Judge of Said Court:

Your petitioner, David C. Dickey, Attorney for the Comonwealth of the County of Greene, who petitions that the relation of Houston Collier, Justice of the Peace of Greene County, an interested person, respectfully represents at the General Assembly of the Commonwealth of Virginia by an Act approved April 7, 1972 which went into force July 1, 1972 and which was entitled

> An Act To Amend And Reenact §§ 8-266, 14.1-90, 15.1-38, 15.1-41, 15.1-48, 15.1-50, 15.1-51, 15.1-620, 15.1-659, 15.1-740, 15.1-753, 17-74, 19.1-20, 22-149, 58-511, 58-1048 and 58-1091, as severally amended, of the Code of Virginia; and to repeal Article 6 of Chapter 2 of Title 15.1, containing sections numbered 15.1-91 through 15.1-102, and § 15.1-713 of the Code of Virginia; so as to remove from the Code of Virginia all references to the office, no longer required, of the county surveyor.

did amend Section 19.1-20 of the Code of Virginia in such a manner as follows

> Who are conservators of the peace; powers and duties.—Every judge throughout the State and every justice of the peace, *and* commissioner in chancery, ~~and county surveyor~~ while in the performance of the duties of his office within his county or corporation shall be a conservator of the peace, and may require from persons not of good fame security for their good behavior for a term not exceeding one year. Every conservator of the peace shall arrest without a warrant for felonies committed in his presence, or upon reasonable suspicion of felony, and for breaches of the peace and all misdemeanors of whatever character committed in his presence.

That notwithstanding the plain language of this section which clearly states as amended, that Commissioners in Chancery are not conservators of the peace unless they are both in the performance of their official duties and within the borders of their county or corporation, that C. Waverly Parker a Commissioner in Chancery of this court not at the time acting in his official capacity did on July 28, 1973 lay hands

upon one Scott W. Lamb and did purport to arrest the said Scott W. Lamb for the offense of being drunk in public, claiming at the time to be acting as a conservator of the peace, and apparently relying upon the language of Article 4 Section 12 of the Constitution of Virginia, for his authority in this matter, Whereupon the said Scott W. Lamb was brought before Houston Collier to be bonded in accordance with statutes otherwise applicable. Wherefore your petitioner prays that a writ of *quo warranto* may be awarded and prosecuted in the name of the Commonwealth of Virginia, against the said C. Waverly Parker, to inquire into and determine by what warrant or authority the said C. Waverly Parker did lay hands upon and purport to arrest the said Scott W. Lamb the action hereinbefore complained of, and that the said action complained of be declared forfeited, null and void.

/s/ David C. Dickey
Attorney for the Commonwealth
Greene County, Virginia
Petitioner at the relation of
Houston Collier

Filed 31 July, 1973

WRIT OF QUO WARRANTO

Commonwealth of Virginia,
To the Sheriff of Greene County—Greeting:

Whereas a petition in the name of David C. Dickey, Commonwealth's attorney for the county of Greene, who petitions at the relation of Houston Collier, Justice of the Peace and an interested person, has been presented to our Circuit Court of Greene County, praying that a writ of *quo warranto* be awarded against C. Waverly Parker upon the grounds and for the causes set forth in said petition; and whereas, in the opinion of the said Circuit Court, the reasons so stated in said petition are sufficient in law; and whereas, the said Houston Collier, the relator, has given bond as required by law:

Now, therefore, you are hereby commanded, in the name of the state of Virginia, to summon C. Waverly Parker to appear at the next term of the Circuit Court of Greene County, to show by what warrant or authority of law he did lay hands upon and purport to arrest the said Scott W. Lamb.

Witness the signature of David F. Berry, judge of our said court, attested by Lelia D. Bickers, clerk of our said court, at the courthouse thereof, in the county of Greene, the 16th day of September, 1973, and in the 197th year of the Commonwealth.

/s/ DAVID F. BERRY
Judge

Attest: /s/ LELIA D. BICKERS

LETTER ON THE STATIONERY OF THE TENTH JUDICIAL CIRCUIT

April 11, 1973

David C. Dickey, Esquire
Attorney for the Commonwealth
Stanardsville
Greene County, Virginia 22973

Re: *Section 19.1-20, Code of Virginia, as Amended*

Dear Mr. Dickey:

Thank you for your letter of April 9, 1973, in which you pointed out that the 1972 amendment to § 19.1-20 of the Code retained the words, "while in the performance of the duties of his office within his county or corporation" when the words, "and county surveyor" were deleted. You suggest that this retention was inadvertent.

My recollection is that it was the purpose of the amendment of this section to limit the "police" or "conservator of the peace" powers of a commissioner in chancery to the time when he was actually performing his duties as such. This, of course, was a change in the law which limited their powers at the same time and for the same reason that the county surveyors were deleted. However, I am only calling on my memory of something that was discussed at least a year ago.

I am forwarding a copy of your letter to the Honorable M. Ray Doubles, who is presently engrossed in the preparation of a recodification of Titles 18.1 and 19.1, and I feel sure that your suggestion will be given every consideration.

Thank you for bringing this to our attention.

Very cordially yours,

/s/ John Wingo Knowles

cc: Honorable M. Ray Doubles
Honorable A. L. Philpott
Honorable Wildman S. Kincheloe, Jr.

Filed September 17, 1973

Lelia D. Bickers
Clerk

ORDER

This matter came on this day to be heard upon the writ of *quo warranto* hereinbefore awarded; and upon the demurrer to such writ and the allegations of the petition therefor which the defendant C. Waverly Parker, one of the Commissioners in Chancery of this Court, did this day make in open court; and was argued by the Attorney for the Commonwealth and the said C. Waverly Parker, *pro se.*

Upon consideration whereof the Court did overrule the demurrer, the defendant objecting and excepting to this for the reasons hereinafter stated, and did extend to the defendant leave to answer; but the defendant elected to stand upon his demurrer, admitting the facts well-pled in the petition for such writ.

Upon consideration whereof the Court doth hereby find that the defendant C. Waverly Parker ought not to have acted in the manner alleged in the writ under color of his office as Commissioner in Chancery of this Court, wherefore be it hereby finally Ordered and Adjudged that the said C. Waverly Parker is Guilty as charged in the writ, that he shall not again so act, and that the Commonwealth shall recover of him the costs incurred in this prosecution, including an attorney's fee of $10.00.

The defendant objected to the judgment of the Court, upon the proposition that his demurrer ought to have been sustained, and that such should have been done because: (1) Chapter 549 of the Acts of 1972 ought not to have been construed by the Court so to amend section 19.1-20 of the Code of Virginia such that commissioners in chancery are no longer conservators of the peace unless otherwise acting as commissioners in their county or corporation; and (2) that such Act, insofar as it afforded a basis for such construction, was unconstitutional by violating section 12 of Article 4 of the Constitution of this Commonwealth, in that it failed to express in its title any object respecting commissioners in chancery; but the Court thought otherwise.

And then came the defendant, being aggrieved by the judgment of the Court, and, noting his intention to apply for a writ of error and *supersedeas* thereto, filed with the Court a bond as provided for in the first paragraph of section 8-465 of the Code of Virginia with surety hereby approved by the Court in the penalty of $50.00, whereupon be it hereby Ordered and Adjudged that, notwithstanding anything hereinbefore, the execution hereof is hereby suspended for a period of four

months from the date hereof, and also thereafter until such application is acted upon by the Supreme Court of Virginia, if such petition be actually filed within the four-month period above specified.

Enter /s/ DAVID F. BERRY
Judge

Date: September 17, 1973

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

Notice Of Appeal

Pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia comes now the defendant, C. Waverly Parker, *pro se,* and hereby gives notice of an appeal from that final order entered by the Circuit Court of Greene County in the above-styled case on 17 September 1973, in which order the said C. Waverly Parker was adjudged guilty as charged in a writ of *quo warranto.* No transcript or narrative statement is hereafter to be filed.

Assignments Of Error

Also pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia further comes the said defendant, C. Waverly Parker, *pro se,* and hereby assigns the following errors of the trial court in such case:

I. The trial court erred, in the final order appealed from, in overruling the demurrer of the defendant and entering final judgment that such defendant was guilty as charged in the writ of *quo warranto,* because:

A. The defendant, as a commissioner in chancery of one of the circuit courts of this State, even though not in the performance of his duties as such, had a right (and was indeed required) to make the arrest of which the Commonwealth complained, as a conservator of the peace under the provisions of section 19.1-20 of the Code of Virginia, in that:

1. Prior to the enactment of Chapter 549 of the Acts of Assembly of 1972 commissioners in chancery could so act, as the Supreme Court of Appeals held in *Withers* v. *Commonwealth,* 109 Va. 837 (1909); and

2. Chapter 549 either:

a. ought not to have been construed by the trial court so as to amend section 19.1-20 such that commissioners in chancery are no longer conservators of the peace unless otherwise acting as commissioners in their county or corporation; or

b. is unconstitutional, insofar as it would otherwise afford a basis for such construction, because:

(1) such chapter was enacted in violation of section 12 of Article 4 of the Constitution of Virginia, in that

(a) its title failed to express any object respecting commissioners in chancery but, on the contrary, limited the purpose of such chapter solely "to remove [ing] from the Code of Virginia all references to the office, no longer needed, of the county surveyor."

Whence the foregoing Notice of Appeal and Assignments of Error:

/s/ C. WAVERLY PARKER
Stanardsville, Virginia

Filed 25 September, 1973