

# The Administration of Justice in the Counties of Fairfax and Alexandria (Arlington) and the City of Alexandria

## Part II

By ROBERT NELSON ANDERSON

When Virginia assumed jurisdiction over Alexandria County by the Act of the General Assembly passed March 13, 1847, *supra*, the judicial power of the state was vested in a Supreme Court of Appeals, the General Court, the Circuit Superior Courts of Law and Chancery (20 circuits) and the County Courts.<sup>80</sup> Accordingly on June 16, 1847, at three o'clock (the June Term, 1847), pursuant to the provisions of Section 5 of the Act passed March 13, 1847, *supra*, a new Circuit Superior Court of Law and Chancery for Alexandria County was installed (attached to the Sixth Judicial Circuit) and began its judicial

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<sup>80</sup> The District Courts of law referred to above as having been established in 1788, Hening, Stat. at Lar. XII, 572, ch. 39; p. 644, ch. 1; p. 730, ch. 67, remained in operation for about 20 years. However, in 1809 these were abolished under acts establishing a Superior Court of Law in each county. 1807-8, ch. 3, p. 5; ch. 14, p. 10; ch. 6, p. 9. Under these statutes the state was divided into 12 (later 15) judicial circuits, and to each circuit there was allotted a Judge of the General Court. The several acts concerning the Superior Courts of Law were reduced into one by the Act of 1819, Revised Code 1819, ch. 69, 227.

Also as noted above, in 1777 an act was passed establishing a High Court of Chancery for the State. Hening, Stat. at Lar. IX, 389. When first established it consisted of three judges, but the number was reduced to one by an Act of 1788. Hening, Stat. at Lar. XII, 767. The jurisdiction of this court extended over the whole state till 1802, when the state was divided into three districts and a Superior Court of Chancery established for each District, 1801-2, ch. 14, p. 12. The places of holding these courts were Richmond, Williamsburg, and Staunton. These districts were later subdivided. Acts of 1811-12, ch. 15, p. 19; 1813-14, ch. 16, p. 44; *ibid.*, ch. 33, p. 81.

The acts concerning the Superior Courts of Chancery were reduced into one by the Act of 1818, Revised Code, 1819, ch. 66, p. 196.

On January 14, 1830, an amended Constitution (the first since 1776) was adopted by a Convention meeting in Richmond and after ratification by the people of Virginia was proclaimed July 1, 1830. It remained in effect until January 1852. Under this amended Constitution the judicial power was vested in a Supreme Court of Appeals, in such Superior Courts as the Legislature might ordain and establish, and the judges thereof, and in the County Courts and in the Justices of the Peace. The legislature was also empowered to vest such jurisdiction as was deemed necessary in corporation courts and in magistrates who might belong to the corporate body.

Acting pursuant to the constitutional authority, the legislature by the Act of April 16, 1831, abolished the Superior Courts of Law held by 15 judges and the Superior Courts of Chancery held by four judges and instead divided the state into 20 circuits, and thereby established a Circuit Superior Court of Law and Chancery in each county and in certain corporations, such courts to be held by the judge of the General Court elected and assigned for and to such circuit respectively. Acts, 1830-31, ch. 11, p. 42.

Under the Act of October 1, 1777 (see footnote 43), establishing a General Court, Hening, Stat. at Lar. IX, p. 401, that court had a large jurisdiction, but of most of this it was deprived by the Act of October 1788 establishing the District Courts, Hening, Stat. at Lar. XII, 739. It, however, continued until July 1, 1852, when it was abolished (Code of Virginia, 1860, p. 664), to be the supreme criminal tribunal of Virginia. The Acts concerning the General Court were reduced

functions at the old federal Circuit Courthouse on Columbus Street.<sup>80a</sup> John Scott, one of the Judges of the General Court and Judge of the Circuit Superior Court of Law and Chancery of the Third Judicial District, presided. He immediately appointed Cassius F. Lee (who had served as clerk of the Circuit Court of the District of Columbia for Alexandria County from October 1840) Clerk of Court for a term of seven years and thereupon admitted a group of 12 lawyers to practice as attorneys and counsellors in his court.<sup>81</sup>

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into one by the Act of 1792, Hening, Stat. at Lar. XIII, 422. See also Acts of 1818, Revised Code, 1819, p. 219, and the Act of 1831, Suppl Revised Code, 1833, p. 134, ch. 106, which fixes the number of judges at 20.

As to the acts (after the Revolution) establishing a Supreme Court of Appeals and Special Courts of Appeals, see the report made by the Revisors in January 1849, an extract from which is in 5 Gratt. pp. 564, 574. The several acts concerning these courts were reduced into one by the Act of 1792, Hening, Stat. at Lar. XIII, p. 405, and the Acts of 1818, Revised Code, 1819, ch. 64, p. 189.

<sup>80a</sup> For details concerning the erection of the old Federal Circuit Courthouse, see Part I of this article, vol. 2, no. 1, pp. 26-29.

It has now come to light that leading up to the erection of the old Federal Courthouse on Columbus Street the United States Circuit Court of the District of Columbia for the County of Alexandria at its October Term, 1837, on motion of the attorney for the United States ordered Samuel Bartle, David Price, and James W. Sears, master carpenters, to examine the roof, walls, and ceiling of the room which the court then occupied and to report to the court on their strength and safety. Their report, filed on October 11, 1837, stated: "The undersigned have examined the Alexandria County Courthouse, and believe the building to be in a dangerous situation to hold the court in. We find that the walls have spread at the top at least fifteen inches, and, in consequence of which, it has left the heels of the rafters no bearing. It is only the connexion of timbers that holds the roof up; and, in the manner that the roof is framed, without collar bearing, makes it still more dependent on the walls for support. We think the walls have spread at least six inches within the last twelve months. As to the cost of repairing the present court house, it will be very little short of a new one, as there does not appear to be any part of the building that has strength enough about it to support the upper work of a good house; the piers that it stands on are also in a state of decay."

Following this report a grand jury for the County of Alexandria, District of Columbia, also at the October Term, 1837, returned a presentment signed by Phineas Janney, foreman, that the building was unsafe and entirely unfit for the purposes required; whereupon, with the approbation of the court, the grand jury appointed a committee consisting of Francis S. Key, attorney for the District of Columbia; Edmund J. Lee, clerk of the Circuit Court; Alexander Hunter, marshal of the District of Columbia; Thomson F. Mason, Esq.; and Phineas Janney, foreman of the Grand Jury, to wait upon the President of the United States and the Secretary of the Treasury and make such representations as to the condition of the courthouse as they might deem necessary in the case.

As a result, President Van Buren on January 12, 1838, sent a message to Congress transmitting copies of the above-described proceedings (see Doc. No. 96—House of Representatives, 25th Congress, 2d session). This message was on January 13, 1838, referred to the House Committee for the District of Columbia, and no doubt the act of July 7, 1838, (U.S. Stat. at Lar. 5, 262), appropriating \$15,000 for the building of a new courthouse was the result. See Part I, p. 26.

<sup>81</sup> The Act passed March 13, 1847, *supra*, by which Virginia assumed jurisdiction over the receded area provided in Section 12 thereof that the Circuit Superior Court of Law and Chancery of Alexandria County and the judge thereof and the County Court of the County and the justices thereof should be vested with and exercise all the powers which by the Constitution and the public and general laws of the Commonwealth are vested in the Circuit Superior Courts of Law and Chancery of the Commonwealth and the judges thereof, and in the County Courts of the counties of the Commonwealth and the justices thereof respectively. Section 13 of the Act also provided that all the judgments and decrees and records of the late Circuit Court of the District of Colum-

Similarly, and pursuant to Section 7 of the Act passed March 13, 1847, *supra*, but approximately two months earlier, the County Court of Alexandria County composed of the justices of the peace of the County was also set in motion.<sup>81a</sup> By Section 17 of the Act the Governor was directed to appoint 13 justices of the peace in and for the County of Alexandria. The orders and decrees of this court covering the period from March 25, 1847, to January 29, 1904, when it was discontinued by legislative enactment,<sup>82</sup> are to be found in volumes 2-15, the first five of which are located in the State Library, Richmond, and the remaining nine in the Clerk of Courts' office, Arlington County. Volume 1 is missing, but there seems to have been no such volume, as volume 2 begins with the organization of the court.

The Act passed March 13, 1847, further provided (Section 8) that the justices of the peace of Alexandria County which were thereafter commissioned and qualified (two-thirds or more being present) were to proceed at the first session of the County Court to appoint a clerk for the court.<sup>82a</sup> Section 18 of the Act transferred all records and proceedings of the Orphans' and Levy Courts of Alexandria County to the County Court thereof.

The Virginia Constitution of 1851 provided for the election of four justices of the peace from each district of the County, and since Alexandria County had five districts (four in the town or City and one in the "country" part of the County), 20 persons were elected justices at the next election held May 27th, 1852. At the term of Court held July 26, 1852, 19 of these justices qualified as members of the County Court with the twentieth one qualifying at a later date.<sup>82b</sup>

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bia for Alexandria County should be transferred and become judgments and decrees and records of the Circuit Court of Law and Chancery of Alexandria County.

A complete set of the Common Law and Chancery Order Books of the Circuit Superior Court of Law and Chancery of Alexandria County and its successor, the present Circuit Court, are in the custody of the Clerk of Courts of Arlington County. These records extend from June 1847 on.

The Circuit Court of the District of Columbia was abolished by Act of Congress approved March 3, 1863. See H. Paul Caemmerer, *A Manual on the Origin and Development of the National Capital*, 1932, p. 193; William F. Carne, *Columbia Historical Mag.*, vol. 5, p. 294.

<sup>81a</sup> On March 25, 1847, the day appointed by law for the organization of the County Court for the County of Alexandria, the following gentlemen assembled at the Courthouse in Alexandria at 12 o'clock M and produced commissions from the Governor appointing them Justices of the Peace for the County together with the certificates of their qualification: William Minor, Turner Dixon, George White, George Wise, John Powell, Charles Koonen, Lucien Peyton, Jonathan Ross, John H. Brent, Robert Crupper, Samuel Bartle, and Joseph G. Carr. The thirteenth Justice, Peter Hewitt, did not appear until the next term of the Court, i.e. on April 5, 1847, at which time he also qualified.

<sup>82</sup> As will be noted, the County Court for Arlington County was reestablished at a later date.

<sup>82a</sup> The person thus appointed was Cassius F. Lee. As noted above, two months later he was also named clerk of the Circuit Court.

<sup>82b</sup> Qualifying on July 26, 1852, were: G. W. P. Custis, Wesley Carlin, Robert Ball, W. T. Harper, James A. English, James H. McVeigh, Daniel Cawood, Robert Hunter, William W. Fowle, Lucien Peyton, James W. Nalls, William N. Brown, Chas. P. Shaw, Andrew Jamison, George A. Tavenner, Jesse T. Ramsay, Wm. H. Rogers, Edgar Snowden, and Joseph D. Moore. J. T. B. Perry of the 4th district made up the authorized 20.

Beginning with the June Term, 1850, John Webb Tyler became judge of the Circuit Superior Court of Law and Chancery of Alexandria County with Cassius F. Lee continuing as clerk. At the November term, 1850, however, the name of the Circuit Superior Court of Law and Chancery for the County of Alexandria seems to have been changed to the Circuit Court of Alexandria as it is known today.<sup>83</sup> Tyler continued to serve as judge of this court until May 20, 1861. In the meanwhile, or on May 27, 1852, F. L. Brockett was elected Clerk of the Circuit Court of Alexandria County for a 6-year term succeeding Lee. However, Brockett resigned October 1, 1854, and Robert A. Sinclair was appointed clerk pro tem on September 30, 1854, serving until May 20, 1861.

After the act of retrocession was accepted by a vote of the citizens of Alexandria County and Town in September 1846, and the jurisdiction of the state of Virginia was extended over the area, the existing Charter of the Town continued in force (with certain modifications that eliminated the power to tax and borrow money) until superseded by a new charter granted by the General Assembly on May 7, 1852 (Acts, 1852, ch. 358, p. 234), subject to ratification of the voters of the Town, which was given on August 4, 1852. By this charter it was provided that the "town of Alexandria shall hereafter be known and called the City of Alexandria." A City Council consisting of a Board of Aldermen and Common Council with a Mayor<sup>83a</sup> was provided for, and every white male citizen having the proper residence was authorized to vote in city elections. Thus the Town of Alexandria acquired the status of a City and a substantial political independence.<sup>84</sup> See: Wm. F. Carne, *The Charter and Laws*

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<sup>83</sup> Soon after the passage of the act by which Virginia assumed jurisdiction over the receded area, or on October 14, 1850, a Convention to form a new Constitution for the State assembled at Richmond, and such Constitution was adopted by the Convention on August 1, 1851, and ratified by the people on October 4, 1851. Under this new Constitution Virginia's judicial system consisted of a Supreme Court of Appeals, Districts Courts which were really intermediate appellate courts, Circuit Courts and a County Court for each county, the latter manned by justices of the peace. The General Assembly was also authorized to vest such jurisdiction as was deemed necessary in corporation courts and in magistrates who might belong to the corporate body. The state was divided into 21 judicial Circuits, ten Districts, and five Sections. Supreme Court and Circuit Judges and Justices of the Peace were elected by the voters for 12-, 8-, and 4-year terms, respectively. Alexandria County was in the same Circuit (9th) as Stafford, Prince William, Fairfax, Loudoun, Fauquier, and Rappahannock. The eighth and ninth Circuits constituted the fourth District and the third and fourth Districts the second Section. The District Court was required to be held at least once a year in every District by the judges of the Circuit Court constituting the Section plus a member of the Supreme Court of Appeals. The Circuit Court was to be held at least twice a year and the County Courts monthly. The General Court authorized by previous Constitutions was abolished.

<sup>83a</sup> Section 11 of the Act of May 7, 1852, directed that the Mayor, in addition to his other duties, was to have and exercise all the powers of a justice of the peace.

<sup>84</sup> Municipal Corporations are subordinate political subdivisions of the State established for better administration and government in strictly local affairs. See: *City of Richmond v. Richmond & Danville R. R. Co.*, 2 Gratt. (62 Va.) 604, involving real-estate taxes assessed by the Council of the City of Richmond in 1865 and 1866. By its Charter and the amendments made thereto (Acts 1857-58, Chap. 270, p. 176; Acts 1859-60, Chap. 179, p. 330; Acts 1865-66, Chap. 152, p. 247)

of the City of Alexandria, Va. 1874, p. 14. Nevertheless, the former town, now city, did remain the judicial situs of the County, i.e., for both Circuit and

the City of Alexandria was granted by the State Legislature broad and extensive powers of local government separate and distinct from those of the County.

Under the Charter of the City, the City Council had, among other numerous executive and legislative powers, authority to "raise money by taxes for the use and benefit of said city, provided that such laws shall not be repugnant to or inconsistent with the laws and constitution of this State or of the United States." The Council acting pursuant to this authority imposed a tax for the year 1858 upon "all real and personal estate in the said City" at the rate of 100 cents for each \$100 of the assessed value thereof. In deciding an assessment upon the rolling stock of the Orange & Alexandria Railroad Co. and upon certain lots in Alexandria belonging to it was valid the Virginia Supreme Court of Appeals pointed out that "This proviso [above indicated] only expresses a limitation upon the power of the Council which would have been implied without it. But it does not confine the taxing power of the Council to such subjects as may, from time to time, be taxed by the State. The power is general, to be applied in the discretion of the Council to any subjects of taxation which may not be withdrawn from their power by the paramount authority of the legislature." (Italics supplied.) (*Orange and Alexandria Railroad Company v. the City Council of Alexandria*, 58 Va. (17 Gratt.), pp. 176-184, 1867.

Moreover, the County Court which also possessed the power of taxation was limited by law in making its levies "to raise the money with which the county is chargeable" to "so much of every county as is *without* the limits of a town that provides for its poor and keeps its streets in order." (Italics supplied.) See Va. Code 1849, Chap. 53, Sec. 1, p. 277; Va. Code 1860, Chap. 53, Sec. 1, p. 307; Acts 1863-64, Chap. 67, p. 55. Thus the County Court was without jurisdiction to levy taxes for the support of the County against the citizens of the City even though the City is established within the territorial limits of the County. Cf: *Supervisors of Washington County v. Saltville Land Co.*, 99 Va. 640, 644, 1901.

The fact that City and County are separate governmental entities is demonstrated or exemplified by (1) the Act of April 22, 1852 (Acts 1852, Chap. 71, p. 64), which declares that "voters residing within any corporation, who are hereby authorized to elect a Commissioner of Revenue for such corporation, shall not vote for the Commissioner of Revenue for the County within the limits of which such corporation may lie"; (2) the Act of February 28, 1856 (Acts 1855-56, Chap. 7, p. 7), giving Virginia's consent to the purchase by the United States of a lot of land in the City of Alexandria for the purpose of erecting thereon a building for a custom house and post office and exempting such lot and building from all taxes imposed by the State or by the constituted authority of the City of Alexandria (taxes imposed by the County are not mentioned so obviously the legislature was of the opinion that such taxes were not leviable against the lot in question); (3) the Act of February 25, 1856 (Acts of 1855-56, Chap. 242, p. 164), amended by the Act of March 27, 1860 (Acts of 1859-60, Chap. 346, p. 568), authorizing the County Court of Alexandria County with the concurrence of the City Council of Alexandria to sell the Courthouse of the County with the acre of ground attached thereto, the proceeds of such sale to be applied under the joint direction of the County Court and City Council to the erection of a new Courthouse for the County with suitable accommodations for the Circuit and County Courts, and "should there be any surplus of such proceeds the same shall be equally divided between the said County and City"; (4) the Act of January 5, 1858 (Acts of 1857-58, Chap. 259, p. 160), to prevent the running at large of hogs in the County of Alexandria which by its terms was meant to cover only hogs entering upon lands of citizens of the County of Alexandria *outside* the corporate limits of the City of Alexandria and which was submitted only to such citizens for vote; (5) the Act of March 15, 1860 (Acts of 1859-60, Chap. 276, p. 483), providing for the construction and keeping in repair the public roads of the County of Alexandria and which authorized the County Court to levy upon the tithables of the County *outside* of the limits of the City and which also required that the act be submitted to the voters of Alexandria County *outside* of the City of Alexandria for their approval or rejection; (6) an ordinance of the Virginia Convention's adjourned session of June-July 1861 authorizing the County Court and any incorporated city to make provision for the families of soldiers, etc.; (7) an Act of January 26, 1863 (Acts of 1863, Chap. 32, p. 69), authorizing Town Councils and County Courts to condemn land for hospital purposes.

County Courts, for the next 46 years, a fact which produces considerable confusion when viewed in its surrounding contemporary setting.<sup>84a</sup>

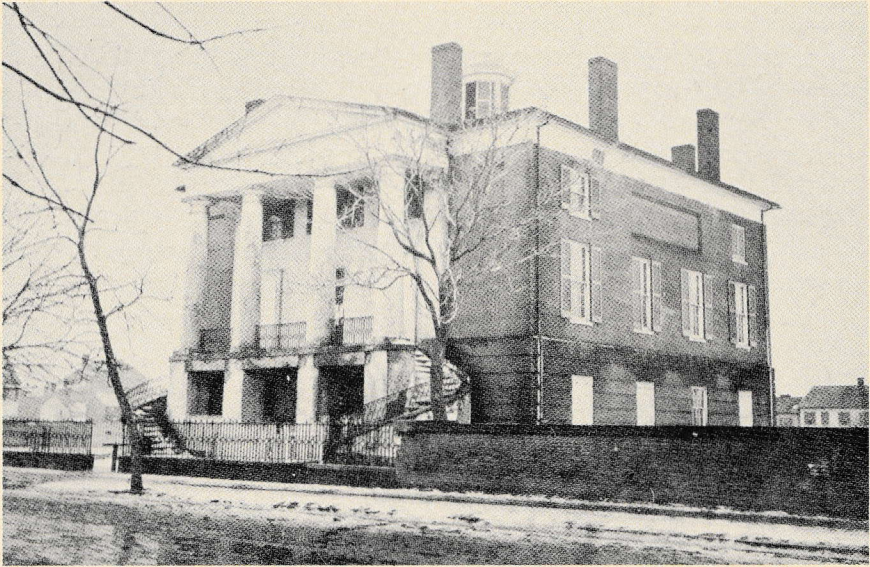
However, the courthouses and other public buildings of a number of the counties of Virginia were situated in cities within the territorial limits of the counties, but as the Virginia Supreme Court of Appeals has ruled jurisdiction over the locality rests in the court (corporation) of the City if one exists and not in the Court of the County. See: *Chahoon's Case*, 61 Va. (20 Gratt.) 733 (1871); *Fitch's Case*, 92 Va. 824 (1895); *Supervisors v. Cox*, 98 Va. 270 (1900). That Alexandria City had such a city or corporation court is apparent from the provisions of the Acts of 1852-53, Chap. 27, Sec 4, p. 43; Acts 1855-56, Chap. 215, p. 140; Acts 1859-60, Chap. 38, Sec 2, p. 138; Va. Code 1860, 206, Sec 1, p. 829.<sup>84b</sup>

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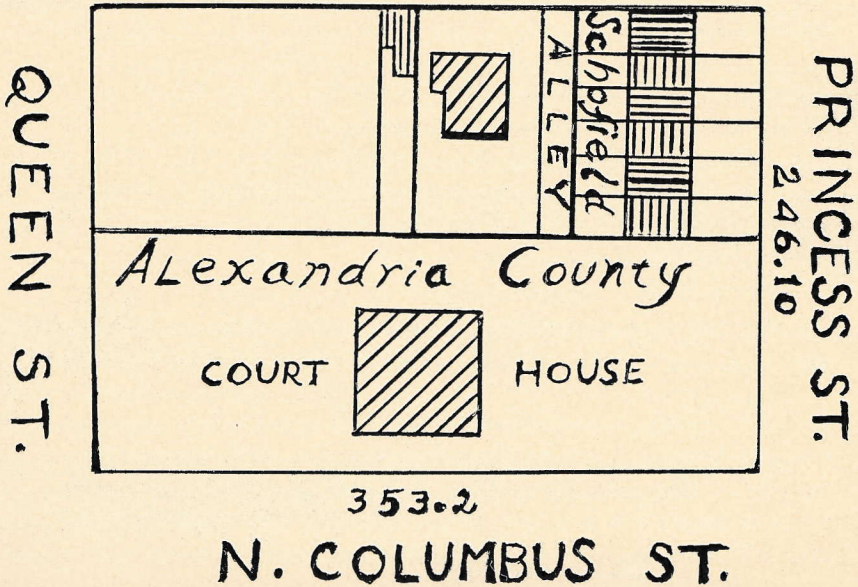
<sup>84a</sup>As noted, pursuant to the Virginia Constitution of 1851, four justices of the peace were elected by the qualified voters in each of the four districts or wards of the City and in the single County district, a total of 20. These justices formed the County Court of Alexandria County. See: Acts 1852, Chap. 52, p. 36; Acts 1853-54, Chap. 179, p. 112; Acts 1852, Chap. 58, p. 49; Acts 1852, Chap. 71, p. 64. The mere fact that 16 of the 20 justices were elected by the citizens of the City of Alexandria would indicate a city dominance even with respect to the affairs of the County Court. Section 14 of the Act of April 22, 1852 (Acts 1852, Chap. 71, p. 64), provides that whenever a vacancy occurs in the number of Justices which each district is authorized to elect the county or *corporation* court shall order a writ of election and appoint commissioners to superintend the election to fill the vacancy.

<sup>84b</sup>The Constitution of 1830 (as did the later Constitution of 1851) granted the General Assembly the power to vest such jurisdiction as should be deemed necessary in corporation courts and in the magistrates who might belong to the corporate body. Pursuant to this authority the Virginia Code of 1849, Title 49, Sec 1, p. 615, provides that "For every county and for each of" certain named corporations such as Richmond, and "for every other corporation in which the power of holding courts has been or shall be vested by law, there shall be a court called the court of such county or *corporation*. It shall be held by the *justices* of the county or *corporation*, or any four or more of them, except where it is otherwise expressly provided." (Italics supplied.) Section 3 of this same Title (p. 616) provides that "The court of a county or *corporation* shall have jurisdiction to hear and determine all cases at law or in chancery within such county or *corporation* which are now pending or may hereafter be brought in said court, except criminal causes against free negroes charged with felonious homicide, or any felony, the punishment whereof may be death, and against white persons, charged with any offense, the punishment whereof may be death or imprisonment in the penitentiary; and except civil causes to recover property or money, not of greater value or amount than \$20.00 exclusive of interest, and except such cases as are by law specially assigned to some other tribunal." (Italics supplied.) Thus it appears that the statutory treatment of the two types of courts—county and corporation—is identical. Sections 1 and 16 of Title 49 of the Virginia Code of 1860, pp. 661, 663, are identical with the foregoing Sections 1 and 3 of the 1849 Code. It is interesting to note that the Acts of 1869-70, Chap. 237, pp. 371, 372, recognize that the same person may be both judge of a county and a city or corporation court at the same time.

On April 2, 1870, in order to supplement the provisions of the Virginia Constitution of 1869 dealing with local governments of cities and counties (see footnote 86), the General Assembly passed an Act to district the State for County Judges, and in Section 2 it provided that certain cities including Alexandria should each have one city judge (Acts 1869-70, Chap. 40, p. 41; Chap. 99, p. 118; Chap. 173, p. 229). Also in that year there was established the Circuit Court of Alexandria City. See: Acts 1869-70, Chap. 289, p. 431, 434; Fairfax Harrison, *Landmarks of Old Prince William* (1924), p. 695. Even under the 1869 Constitution counties retained some power over cities located within their territorial limits. See *Supervisors v. Cox* (1900), 98 Va. 270, where it was held that Norfolk County had the power to condemn land in the City of Portsmouth for the erection of a county clerk's office.



ERECTED IN 1838-39 AND DEMOLISHED IN 1898-99, THE COURTHOUSE LOCATED ON COLUMBUS STREET, ALEXANDRIA, HOUSED FIRST THE CIRCUIT COURT OF THE DISTRICT OF COLUMBIA AND FROM THE SPRING OF 1847 THE COUNTY AND CIRCUIT COURTS OF ALEXANDRIA COUNTY



PLAT (ACTUAL SIZE) TAKEN FROM THE CITY ATLAS OF ALEXANDRIA, VA. (PART OF WARDS 3 AND 4), PUBLISHED UNDER THE DIRECTION OF C. M. HOPKINS, C. E., PHILADELPHIA, 1877, SHOWING LOCATION OF ALEXANDRIA COUNTY COURTHOUSE

On the day appointed by law for the organization <sup>1847</sup>  
of the County Court for the County of Alexandria <sup>March</sup> <sup>March</sup>  
25<sup>th</sup> 1847. The following gentlemen assembled at the <sup>25th</sup>  
Court House in Alexandria at 12 o'clock M. and  
produced commissions from the Governor of the Common-  
wealth appointing them Justices of the Peace for this  
County with the certificate of their qualifications thereto  
respectively. That is to say

William Merritt, James Dixon, George White, George  
Wise, John Powell, Charles Kiron, Lucius Peyton, Ma-  
thias Rizz, John G. Hunt, Robert Crupper, Samuel  
Pottle and Joseph G. Carr.

The Court proceeded to vote to elect a clerk of this  
court whereupon Casimir Lee was unanimously elect-  
ed clerk pro tempore of said Court, who with Daniel  
Merritt his surety entered into and acknowledged a bond  
in the penalty of \$3000 conditioned as the law directs,  
and the said Casimir Lee took the oath of fidelity to  
the Commonwealth, the oath prescribed by the act enti-  
tled "An act to suppress duelling," the oath to sup-  
port the Constitution of the United States, and the  
oath of office. x x x

Ordered, That Messrs Powell, Crupper, Hunt, Carr and  
Peyton be a committee to superintend the removal of the  
records of the Orphan Court and Circuit Court into the coun-  
ty Court, and to examine and inspect the Clerk's office of  
this County, and to report to this Court the condition in which  
they find the papers and records.

<sup>x</sup> <sup>x</sup> <sup>x</sup>  
March 25, 1847. Ordered, That the Clerk of this Court procure a proper seal  
for the use of said Court, with the Virginia Coat of Arms  
engraved thereon.

Then the Court adjourned until Court in course.  
The above is a true copy from the original.  
C. J. [Signature] [Signature]



Fourteen years after Alexandria County and Town were returned to Virginia's jurisdiction, the first blood of the war between the states was spilled in the then Alexandria City and the City found itself a pawn to the arbitrament of the sword. The admission of West Virginia to separate statehood (June 9, 1863) left the existence of the so-called Restored Government of Virginia (i.e., the Government applicable to the part of Virginia that allegedly did not see fit to secede from the Union and was at the same time within the lines of occupation of the Federal Army) with Governor Francis H. Pierpont as the executive head. Acting on authority of the General Assembly of the Restored Government Pierpont removed the seat of that Government from Wheeling, W. Va., to Alexandria on June 20, 1863. At that time Alexandria became its capital and continued such until the surrender of General Lee at Appomattox in 1865—after which the seat of Government was removed to Richmond.<sup>85</sup> Here Pierpont's authority and administration, still recognized by President Lincoln and by Congress, were exercised over such portions of the remaining territory of Virginia as came under the permanent control of the Union armies and was not "ruled" by Gen. Benjamin F. Butler. From the first to last the area administered by Pierpont was small. At no time did it comprise more than Alexandria, Fairfax, and Loudoun Counties, the Eastern Shore, and the region in and about Norfolk.

Sessions of the General Assembly of the Restored Government of December 7, 1863 (88th year of the Commonwealth) and of December 5, 1864 (89th year), were convened and held in Alexandria in the old Market House Building and City Hall. In these sessions the range of legislation was very limited.

On December 21, 1863, this Assembly passed an act providing for the election of Delegates to a Convention to be held in Alexandria on February 13, 1864, to alter and amend the Constitution of Virginia. This Convention assembled at the place and time appointed and on April 7, 1864, adopted a new Constitution of Virginia. It was not submitted, however, for ratification by the people, nor did it make any material change in so far as the Virginia judicial system is concerned from that provided by the Constitution of 1851, discussed in footnote 83, except that judges of the Superior Courts were to be chosen by both houses of the Assembly.

From 1865 to 1870, when Governor Pierpont's official connection with the governmental affairs of Virginia expired, the administration of the state was under the control and supervision of military officers of the United States and was known as Military District No. 1.

About this time (1865) began the so-called Reconstruction Period. The first steps toward restoration of civil government (Acts of Congress of March 2 and 23 and July 19, 1867) provided for the election of Delegates to a Constitutional Convention to be held in Richmond to provide a new constitution for the state and to submit the same to the qualified voters for adoption. The con-

<sup>85</sup> C. H. Ambler, *Francis H. Pierpont*, 1937, p. 213; James R. Caton, *Jottings from the Annals of Alexandria*, 1933, p. 125.

vention convened on December 3, 1867, and the Constitution it adopted was, after having been first submitted to Congress as required by law, then submitted to the people of the State for ratification which took place on July 6, 1869.<sup>86</sup> Between the sessions of the General Assembly which ended April 29, 1867, and the session which convened December 13, 1870, no sessions were held, the State being under military authority and supervision with General H. H. Wells, Military Governor. Actually during the October 1869–January 1870 Terms, a court named the Military Court of Appeals appears to have temporarily superseded the Virginia Supreme Court of Appeals. See 60 Va. (19 Gratt.) Reports. On December 13, 1870, the General Assembly of Virginia as it is today constituted met free from military control.

Next, we continue with the history of the County Court of Alexandria County.

The presence of Federal troops in the City of Alexandria interrupted the judicial processes set up by the state of Virginia, and apparently the term of court held May 6, 1861 was the last to be held under Virginia authority during the war years.<sup>86a</sup>

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<sup>86</sup> This Constitution of the Convention of 1867 undertook to simplify the judicial system of the State which had been put into force by the Constitution of 1851 (see footnote 83). It provided for a Supreme Court of Appeals of five judges, circuit courts, and county courts. District courts were dropped. The state was divided into 16 judicial circuits (subject to subsequent modification by the Assembly) instead of 21 and the judicial districts and sections of the previous Constitution were eliminated. Circuit judges were elected by the two houses of the Assembly to serve eight years. Alexandria County was placed in the 11th Judicial Circuit with Loudoun, Fauquier, Fairfax, Prince William, and Rappahannock. The manning of the county court was given over to the hands of a single judge chosen in the same manner as the Circuit Judge and to hold office for six years with the same jurisdiction as the existing county court. Cities or towns of over 5,000 population were entitled to a corporation or Husting court manned by a judge also elected by the Assembly.

In the Act approved July 11, 1870 (Acts 1869–70, Chap. 289, p. 431, 434) prescribing the times for the holding of the terms of the Circuit Courts of the State, Alexandria County again appeared in the 11th Circuit to which was added the City of Alexandria.

<sup>86a</sup> An ordinance No. 67 extending the jurisdiction of the County Courts in certain cases, passed June 26, 1861, by the Virginia Convention (Adjourned Session) June–July 1861, provided that when the court of any county should fail to meet for transaction of business, or the people thereof, or any of them, should be prevented from attending thereupon by reason of the public enemy the court of the county next thereto, where such obstruction did not exist, and the clerk thereof should have jurisdiction of all matters referable to the court or the clerk of the county so obstructed.

Moreover, a military court (Provost) heard and decided at least one civil matter during this period according to a news article appearing in "The Local News" (Alexandria) for October 21, 1861. It was stated that the Provost Court had prior to this time confined its attention mostly to criminal cases, not desiring to interfere in the ordinary collection of debts or other civil cases, but since the controversy at hand was of a peculiar character, and there being no civil court in Alexandria, the Provost Judge Friese decided to go out of his usual channel and take it up.

The case was this: A merchant of New York named Moore had claims against two firms of merchants in Alexandria. When the Union troops first occupied Alexandria, the members of the firm having taken an active part in the secession movement concluded that they had better go farther south and accordingly abandoned their stores and stocks. It was shown before the court that both members of one of the firms were officers in the Confederate Army, and at least one of the other firm occupied a like position. It was also shown that those who were selling the goods they had left behind were self-constituted agents, and when asked to pay any debt due

At the term of the County Court held June 3, 1861, with only *acting* justices present,<sup>86b</sup> it was ordered that these justices be summoned to appear at the next term to lay the County levy and to consider the propriety of removing the clerk of the court, Benjamin H. Berry. But these items of business when they came up were postponed at each of the nominal terms held on July 1, 1861, August 8, 1861, September 2, 1861, October 7, 1861, and November 4, 1861. However, a special term of the County Court was held on December 16, 1861, at the Courthouse in Alexandria. At this term the following justices of the peace who had been commissioned by Governor Pierpont on November 27, 1861, qualified conformably with an Act passed at Wheeling, Va., by the General Assembly of the so-called Restored Government of Virginia on December 9, 1861: for the 1st Dist.—James C. McCracken, Charles W. Noland, Lewis McKenzie, Samuel Tucker; for the 2d Dist.—John T. Taylor, Hugh McGuinness; for the 3d Dist.—Walter L. Penn, John C. Clark, Robert Crupper; and for the 4th Dist.—Charles A. Ware, Robert Bell, S. L. C. Sidebottom. Robert Crupper was unanimously chosen Presiding Justice. At this session of the court the clerk was ordered to obtain from the late Justices all the books, etc., in their possession which belonged to the County Court.<sup>86c</sup>

Next, we again turn to the Circuit Court for the County of Alexandria. No entries, probably owing to war conditions, are to be found in the Common Law Order Book of that court from May 20, 1861, to May 16, 1864. However, on the latter day, Judge E. K. Snead held court at the Courthouse in Alexandria City. He served as judge through November 29, 1865. Prior to the open-

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from the firms replied that "they had no authority to do so." The claimant Moore, who desired to collect his debt from the goods and chattels the members of the firms left behind, had his case presented by S. Furguson Beach, Esq., "the naval officer and a good Union-lawyer of this city xxx." The affidavits and evidence having been submitted, and the parties heard in defense, Judge Friese decided:

"First, That it was a legitimate case to come before a military court, as it was evidently an attempt to take advantage of existing circumstances, caused by the rebellion; and especially so as the parties hoping to reap this advantage were in arms against the Government, and would be 'aided and abetted' by the carrying out of their scheme.

"Second. That as all the civil courts in this city had been superseded and suspended by the military occupancy of the place, it was only just and equitable that loyal men having claims against disloyal refugees, should be aided by the military authorities in obtaining their dues.

"Third, The Claims having been clearly proved, and no reason shown why any stay of proceedings should be granted, the court ordered that all the goods left by these absconding debtors should at once be taken possession of by the court for the benefit of the claimant; that the stores should be forthwith locked up, the keys handed to the court, and a military guard detailed to watch them; that they should be held in this way for five days in order that the friends of the parties might, if they chose, redeem the goods by paying the claims; that if, at the end of the five days, the claims were not paid, then the goods would be disposed of in liquidation of the claims."

Pursuant to this judgment the stores were closed, and on October 21, 1861, all the goods were placed under military guard and in charge of the court.

<sup>86b</sup> James A. English, H. S. Wunder, Charles P. Shaw, Robert Brockett, and Samuel Brach. James A. English was appointed presiding justice pro tem.

<sup>86c</sup> As indicated in footnote 86, after the adoption of the Constitution of 1869, this Court was manned by a single judge. The last judge of the court at the time it was discontinued in 1904 was James M. Love, referred to in a resolution passed at the time by the Bar of Alexandria County as a "revered and much beloved judge." See *Minutes of the Court*, Vol. 15.

ing of court, or on February 22, 1864, he appointed Jefferson Tacey clerk pro tem, Tacey qualifying as clerk on May 16, 1864. Succeeding Judge Snead was Henry W. Thomas, who held court for the first time on May 21, 1866. He served until February 9, 1869, and was followed in office by W. Willoughby, who opened the May Term in 1869 with Mr. Tacey still the clerk of court.

Judge Willoughby, it seems, was elevated to the Supreme Court of Appeals of the State, and in June 1869 Edm. Canby, Brevet-Major General, U.S.A., Commanding, by an order issued from the Headquarters of the First Military District, State of Virginia, Richmond, Va., named Lysander Hill judge of the 9th Judicial Circuit (Alexandria County's Circuit) effective the 15th of the same month. Thus in this rare situation the military appointed a civil judge in the State of Virginia. With Tacey still acting as clerk, Judge Hill opened the Circuit Court for Alexandria County at the Courthouse in Alexandria City on August 16, 1869.

Judge Hill was succeeded on May 16, 1870, by James Keith, who was to serve until November 10, 1894, a period of more than 24 years.<sup>87</sup> In the meantime the clerks of court were as follows: Jefferson Tacey served until his successor George C. Seaton took office. Seaton was elected for a term of four years on November 8, 1870. However, he apparently was removed from office on August 27, 1872. He was succeeded by David M. Hunter who was serving as circuit clerk on May 23, 1873. Hunter was followed by Louis E. Payne, who served until about May 23, 1879, when Alexander Hunter was clerk. On October 25, 1879, Benjamin Austin was appointed clerk in vacation and served until 1886, when on September 7 of that year he was succeeded by Howard H. Young, who served until May 1899.

In the interim, or on January 2, 1895, Charles E. Nicol was named judge of the Circuit Court for Alexandria County. It was during Nicol's judgeship that the Alexandria (Arlington) County Courthouse was removed from Alexandria City. Continued agitation among the lawyers and other citizens of the county for this removal resulted in an Act of the Assembly being passed February 29, 1896 (Acts 1895-96, ch. 556, p. 587), which authorized the County Board of Supervisors, after taking the sense of the qualified voters as to its location, to erect a new court house, clerk's office, and jail in the county and for that purpose to issue bonds not to exceed \$20,000. This Act also directed that a commission should be set up whose duty it was to proceed to have the County's interest in the old court house and jail in Alexandria City sold. On May 28, 1896, the appointed date, the vote was taken, and as a result Fort Myer Heights was selected as the new court's location.<sup>88</sup> A contract was let and the building completed and dedicated on November 16, 1898. The

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<sup>87</sup> On the day first mentioned the Order Book noted that "Jefferson Tacey, who hath been appointed the clerk pro tempore of the County Court and duly qualified is appointed clerk of this Circuit." Emphasis supplied.

<sup>88</sup> See Frank L. Ball, "Arlington Comes of Age—The Building and Dedication of the Court House," *Arl. Hist. Mag.*, Vol. 1, No. 2, p. 5.

December terms of both the County and Circuit Courts were held in the new building, less than a month after the dedication.<sup>89</sup>

Following the occupation of the new courthouse Judge Nicol continued to serve as circuit judge of Alexandria County until March 11, 1907, when he resigned. On this date Governor Swanson appointed Louis C. Barley the judge of the Corporation Court of the City of Alexandria to hold all the courts of the 16th Judicial Circuit,<sup>90</sup> which included Alexandria County. Judge Barley served in this capacity until August 24, 1907, when he was succeeded by J. B. T. Thornton.

In the meantime, or in September 1899, George H. Rucker succeeded Howard H. Young as clerk of the Circuit Court of Alexandria County. Having served during the remainder of Judge Nicol's term, and the short term of Judge Barley, Rucker continued to serve as clerk throughout and beyond the entire period that Thornton was on the bench. In June 1918 Judge Thornton certified to Governor Westmoreland Davis that he was unable to preside further because of illness, and the Governor thereupon designated John T. Goolrick Judge of the Corporation Court of Fredericksburg to hold part of the regular term of the Circuit Court of the County of Alexandria beginning June 18, 1918. Succeeding Judge Goolrick on September 11, 1918, was Samuel G. Brent, with Mr. Rucker still serving as clerk. However, an Order Book entry in the summer of 1919 showed that there was a vacancy in the clerkship owing to the death of Mr. Rucker, whereupon Judge Brent appointed Alan B. Prorise Clerk of the Circuit Court to fill out Rucker's unexpired term.

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<sup>89</sup> On March 1, 1898, the General Assembly declared that the County of Alexandria and the City of Alexandria were equal owners of the half square of ground bounded by Columbus, Princess, and Queen Streets upon which stood the Alexandria County Courthouse and the half square bounded by St. Asaph, Princess, and Pitt Streets and accordingly provided for the partition or sale thereof.

The courthouse and half square of ground were sold under a decree of the Circuit Court of the City of Alexandria at public auction on December 15, 1898, for the total sum of \$4,010. The Court House, with a lot of 95 feet on Columbus and 110 feet in depth was sold for \$1,105. Following the sale the old court house was torn down and hauled away. As James R. Caton said in the *Jottings from the Annals of Alexandria*, 1933, p. 133, "The City lost a structure of architectural value, historic interest and one which today would be valuable, useful and an ornament to Alexandria."

<sup>90</sup> In the interim the Constitution of 1902 had been adopted. This Constitution had been framed by a Convention which assembled in Richmond June 12, 1901, and adjourned June 26, 1902. The instrument was proclaimed by the Convention on June 6, 1902, and became operative on July 10, 1902. It provided for a Supreme Court of Appeals of five judges, circuit courts, and city courts. The State was divided into 24 judicial circuits, subject to subsequent rearrangement. Alexandria County was assigned to the 16th Circuit along with Fauquier, Loudoun, Prince William, Fairfax, and Alexandria City. Circuit judges were elected by the General Assembly for 8-year terms. In each city of the first class (10,000 or more) a Corporation Court in addition to a circuit court was provided. Also the General Assembly was authorized to provide for the appointment or election of and for the jurisdiction of such justices of the peace as the public interest may require. Under this latter provision the General Assembly by an act passed March 23, 1912 (Acts of 1912, ch. 347, p. 685), directed the judge of the circuit court in all counties of the State having a population greater than 300 inhabitants per square mile to appoint upon the act's passage and each two years thereafter a trial justice for such counties if in his discretion he deems it necessary. This act was obviously aimed at Alexandria County.

Rucker had served faithfully as Circuit Court clerk for more than 20 years, and on August 26, 1919, it was ordered that his portrait be hung in the court room.

Following a dispute with Alexandria City,<sup>91</sup> the name of County of Alexandria was, by an act of the General Assembly passed March 16, 1920 (Acts, 1920, ch. 241, p. 343) changed to Arlington, derived from Arlington House which in 1802 George Washington Parke Curtis, the grandson of Martha Washington, had erected on the heights overlooking Washington City.

Returning to the Circuit Court of Alexandria County (now Arlington County), the term of Alan B. Prorise as Circuit Court clerk expired on December 31, 1919, and William H. Duncan (elected November 4, 1919) qualified on January 1, 1920. Judge Brent continued to serve as circuit judge until 1928,<sup>92</sup> when he was succeeded by Howard Worth Smith, who held the office of circuit judge from 1928 to 1930, following which he was elected a member of the Congress of the United States.

Judge Smith was succeeded in 1930 by Walter T. McCarthy, who has held the office of circuit judge longer than any other judge since Alexandria County was returned to Virginia in 1847.<sup>92a</sup>

William H. Duncan served as Circuit Court clerk until April 19, 1932, when he was succeeded by John A. Petty, who held the office until December 31, 1935. In the fall of 1935, C. Benjamin Laycock was duly elected Circuit Court clerk for a period of eight years, having qualified on December 26, 1935. Mr. Laycock was stricken ill in the fall of 1944, after having been reelected for another term. The last entry in the clerk's Order Book signed by him personally is dated October 7, 1944. Thereafter, until his death in May 1945, the orders were signed for him by his Deputy Rachel H. White. On May 9, 1945, another deputy, H. Bruce Green, became clerk of the Circuit Court.<sup>92b</sup>

The Clerk's office in Arlington is one of the three largest and busiest of such offices in the State of Virginia. Besides serving as clerk to the Circuit Court, Mr. Green is also clerk of the County Court and clerk of the Juvenile and Domestic Relations Court. He is also recorder of deeds and registrar of wills and the issuing officer for marriage and hunting and fishing licenses.

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<sup>91</sup> City Council of Alexandria v. Alexandria and Fairfax Counties, 84 S. E. Rep. 630.

<sup>92</sup> By the Acts of 1926, p. 462 (Section 5888 of the 1926 Va. Code p. 385) the state was divided into 34 judicial circuits. The counties of Prince William, Fairfax, and Alexandria and the City of Alexandria constituted the 16th Circuit.

<sup>92a</sup> Judge McCarthy was born January 18, 1898, at Richmond, Va., attended Richmond public schools, and graduated from George Washington University Law School in 1923. On January 7, 1961, he received the George Washington University Alumni Achievement Award for notable achievement in the practice and adjudication of the law.

<sup>92b</sup> Mr. Green was reared in Arlington and has lived there for over 50 years. He graduated from National University Law School in 1926, whereupon he entered the practice of law and served as assistant to the late Commonwealth's Attorney, William C. Gloth. Later he was District Manager and Counsel of the Alexandria Office of the Home Owners Loan Corporation. Mr. Green is a member of and past president of the Virginia Court Clerk's Association.

The growth of Arlington made it necessary by 1944 to separate the County from the 16th Judicial Circuit of which it had been a part since the adoption of the Constitution of 1902, and create a new Circuit, the 35th, for Arlington alone (Acts of Virginia, 1944, ch. 73; 1946, ch. 36, p. 249; 1948, ch. 88.) This growth continued, and accordingly at the 1950 session of the Virginia Legislature a second circuit judge was authorized for the County, and in April 1950 William D. Medley was elected to fill that post.<sup>92c</sup>

Another distinguished jurist was added to the Circuit bench of Arlington County when in March 1956, Emery N. Hosmer<sup>92d</sup> was elected by the State Legislature to sit on this the 35th Circuit, which now was authorized to have three judges.

By an act passed March 20, 1930, ch. 166, p. 447, the General Assembly provided that in every county having a population greater than 500 inhabitants to the square mile (later changed to 2,000) there was to be chosen by the qualified voters at the general election in 1931 for four years and every four years thereafter a trial justice for the county who shall be known as judge of the County Court and whose court shall be known as the County Court. This act was obviously passed with Arlington County in mind.<sup>93</sup>

The Act of 1930 creating the County Court was a companion act to the act establishing the county manager form of government. Prior to 1932 there was a trial justice who heard criminal cases only. Civil cases were tried before justices of the peace, of whom there were nine in Arlington.

Cases involving misdemeanors and violations of County ordinances are now tried before the County Court, and civil cases where not more than \$2,000 is involved may be tried there. Where the amount is less than \$300 the case

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<sup>92c</sup> Judge Medley was born in February 1898 at Piney Point, St. Marys County, Md. He attended elementary schools in Maryland, Tech High School in Washington, D.C., and received his L.L.B. degree in 1929 from the National University, Washington, D.C. During World War I he served with the U.S. Marines. From 1930 to 1950 he practiced law, becoming a member of both the District of Columbia and Virginia Bars. He has had a long career in the Assembly of Virginia, having served altogether 14 years—in the House of Delegates from 1934 to 1940 and in the Senate from 1940 to 1948. While occupying his seat in the Senate he was also a member of the Governor's Budget Advisory Commission for 1941 to 1947 and member of the Commission on Uniform Laws for the United States. Judge Medley is also a member of the faculty of the Benjamin Franklin University, Washington, D.C.

<sup>92d</sup> Judge Hosmer was born on October 22, 1900. He has been a life-long resident of Arlington and attended public schools there. Later he was a student at Western High School, Strayers College, and the National University Law School, all of Washington, D.C. receiving from the latter institution the L.L.B. degree. He began the practice of law in Arlington in 1923, serving as Assistant Commonwealth's Attorney, Master Commissioner in Chancery, and Judge pro tempore of the Circuit Court. He is also a past president of the Arlington County Bar Association and of the Virginia Bar Association. He has served also as Chairman of the Tenth District Committee of the Virginia State Bar.

<sup>93</sup> It will be recalled that the Alexandria County Court which had existed since the County was returned to Virginia in 1847 was abolished in 1904 along with the other county courts throughout the state, and for 27 years the historic county courts were no longer a part of Virginia's judicial system. Because of Arlington's extensive development and growth the establishment of a new County Court became an imperative.

must be tried first in the County Court. The County Courts were also given exclusive jurisdiction for the preliminary examination of felony cases with power to discharge or commit for trial. Prior to July 1, 1950, the County Court also had jurisdiction over cases involving children and between members of a family, but on that date the Assembly established a separate Juvenile and Domestic Relations Court. Appeals from cases first tried by the County Court and the Domestic Relations Court are heard in the Circuit Court. When a County Court was established in a particular County all of the jurisdiction heretofore conferred upon justices of the peace and trial justices was transferred to and vested in the County Court, and the historic justices of the peace were no longer to be elected in that County.

The first to serve as county judge under the new County Court Act was Hugh Reid, a venerable and beloved jurist, who when a member of the Virginia Assembly authored and steered through the Assembly the act providing for the county-manager form of government for Arlington. He was succeeded in 1955 by Paul D. Brown. Among those that have served as associate and/or substitute judges are Harry R. Thomas, Hugh C. Cregger, Jr., David B. Kinney, Homer R. Thomas, Charles N. Hulvey, Jr., Burton V. Kramer, and Wesley Cooper.

As stated, the Juvenile and Domestic Relations Court was until July 1, 1950, a part of the County Court. It is now legally separated, although the same presiding judge (Reid) served both courts until 1955 when he retired from the County Court, serving only as judge of the Juvenile and Domestic Relations Court. Hugh C. Cregger, Jr., has served as substitute judge of the latter court.

Thus ends the chronicle of the courts available from Colonial times to the present to a citizen of the area out of which Alexandria (and/or Arlington) County was carved. It must be conceded that the courts, manned as they are by men of high principle and great learning, furnish the greatest bulwark we have for the protection of our liberties and freedom.