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Procedure, Section III - Objections, Right to Appeal (Survey of Virginia Case Law - 1955)

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PROCEDURE

Section III—Objections in Trial Court, The Right to Appeal

Objections in Trial Court. That rules of procedure are fertile sources of misunderstanding and in some cases fatal to an otherwise well-pleaded case, is widely acknowledged. In 1955 one rule of the Supreme Court of Appeals of Virginia was brought into play at least eight times. This rule was not one which would be described as difficult to comprehend or difficult to comply with, but rather it is usually understood as a basic step in trial procedure. The rule being referred to is Rule 1:8, Objection in Trial Courts—Effect of Failure to State Grounds: "In civil and criminal cases, all objections to writs of every kind, pleadings, instruction, notices, the admissibility of evidence, or other matters requiring a ruling or judgment of the trial court, shall state with reasonable certainty the ground of objection, and unless it appears from the record to have been so stated, such objection will not be considered by this court except for good cause shown, or to enable this court to attain the ends of justice."

In *Hodges Manor Corporation* v. *Mayflower Park Corporation*[1] and also in *Independent Cab Association* v. *La Touche*,[2] the Supreme Court found it necessary to reiterate the rule on the propriety of admission of testimony as to damages on the appellate level, holding that under Virginia Rules of Court 1:8, 5:1(4), a point not saved by objection in the lower court could not be determined on appeal as it had not been saved as required by the rules. In *Owens* v. *Owens*[3] this rule was extended by the court to include a variance in a deposition which was not objected to and consequently could not be considered on the appellate level. In *Andrews* v. *Cahoon*[4] the capacity of an executrix to maintain a suit was questioned by appellees for the first time on the appellate level; the court in refusing to consider the point held that the point should have been properly saved in the lower court to be considered later. In *Almond* v. *Day*[5] the Supreme Court took cognizance of an exception to this rule of

[1] 197 Va. 344, 89 S.E.2d 59 (1955).
[2] 197 Va. 367, 89 S.E.2d 320 (1955).
[3] 196 Va. 966, 86 S.E.2d 181 (1955).
[4] 196 Va. 790, 86 S.E.2d 173 (1955).
[5] 197 Va. 419, 89 S.E.2d 851 (1955).

point reservation by holding that where the constitutionality of the law is in question the point need not be especially pleaded but may be raised for the first time in the Supreme Court of Appeals. In *County Board of Arlington County, Virginia* v. *Kent Stores of Washington Incorporated*,[6] the Court held that, where it was suggested that the defendant had become bankrupt pending appeal by the county board and that the proceeding was moot because no effective order could be entered against the bankrupt corporation, this reasoning was not a valid basis for dismissal where under Section 8-148, Code of Virginia (1950), no motion had been made to substitute the trustee in bankruptcy and no formal proof of bankruptcy or of any stay order by the bankruptcy court had been offered.

The Right to Appeal. That an aggrieved party has the right to appeal his case to a higher court for a final determination has been an accepted part of Virginia's legal doctrine. That our Virginia Courts intend this right of appeal to remain in the aggrieved party's hands, when there has been an error, was definitely stated in two 1955 cases in Virginia. Both these cases arose not out of courts but from non-judicial bodies which in this day and age have come to deal with the citizen's rights and property almost as extensively as the courts of justice.

In *Atwood Transportation Company* v. *Commonwealth of Virginia*,[7] the Supreme Court held that the lack of provision for appeal in the section of the Petroleum Tank Truck Carriers Act governing appeals from decisions of the State Corporation Commission does not expressly or by implication take away from any party in interest or any party aggrieved by order of the commission the right of appeal as provided by the general law, whether the order grants or refuses the certificate of public convenience and necessity, or suspends, revokes, alters or amends one already granted. In *Ross* v. *County Board of Arlington County*[8] the question came before the Supreme Court as to whether or not under Section 15-873 a person aggrieved by the decision of the Board of Zoning Appeals and filing petition with the clerk of court was meeting the statutory requirement which

[6] 196 Va. 929, 86 S.E.2d 44 (1955).
[7] 197 Va. 325, 88 S.E.2d 922 (1955).
[8] 197 Va. 91, 87 S.E.2d 794 (1955).

is "such petition shall be presented to the court within 30 days." The Supreme Court, finding no Virginia decision on the phrase, took cognizance of a New York case, *Barnes* v. *Osborne*,[9] which on a similar phrase had held that "the petition was presented to the court in the fair sense . . . when the jurisdiction of the court was invoked in accordance with the statutory provision which regulates the practice respecting motions and orders." The court in reliance upon this decision granted appellees' right to appeal.

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[9] 286 N.Y. 403, 36 N.E.2d 638 (1941).