

October 1961

Book Review of Handbook of Virginia Rules of Equity Practice and Procedure

Thomas D. Terry

Follow this and additional works at: <https://scholarship.law.wm.edu/wmlr>



Part of the [Law Commons](#)

Repository Citation

Thomas D. Terry, *Book Review of Handbook of Virginia Rules of Equity Practice and Procedure*, 3 Wm. & Mary L. Rev. 234 (1961), <https://scholarship.law.wm.edu/wmlr/vol3/iss1/22>

Copyright c 1961 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.

<https://scholarship.law.wm.edu/wmlr>

HANDBOOK OF VIRGINIA RULES OF EQUITY PRACTICE AND PROCEDURE

By ARTHUR W. PHELPS. Charlottesville: The Michie Company,
1961. 386 pp. \$15.00.

PROFESSOR Phelps completes his survey of Virginia Procedure with the publication of this Handbook on the Virginia Equity Rules. His treatment of the Equity Rules is similar to the approach taken in his companion volume on the Law Rules which appeared in 1959, Handbook of the Virginia Rules of Procedure in Actions at Law.

The author presents his material on Rule 2:1 through Rule 2:23 in the first one hundred pages of his three hundred forty pages of text. The balance of his discussion is directed to the established practice and procedure in equity of matters not covered by the Rules. Rules 2:21 (When notice of taking proofs and other proceedings dispensed with) and 2:22 (Finality of decrees) is given a particularly thorough and interesting treatment. Also, the organization of the materials under Rule 2:6 (Orders of publication) should prove to be extremely valuable to the Virginia practitioner. In order to follow the proper practice in serving notice for the taking of depositions, for example, it is necessary that the statutory and Rules provision dealing with particular kinds of cases be clearly distinguished. Otherwise, there is a very real danger of a costly error due to an omission of an essential step in the notice procedure. Under Rule 2:6, Professor Phelps handles this problem with admirable clarity. His outline is:

Notice of Taking of Depositions

A. Generally

1. Ordinary cases; party served

(a) where he appears

(b) where he does not appear

2. Divorce cases

- (a) party served appears
- (b) party served does not appear

B. Service by Publication

- 1. When had
- 2. Defendant served by publication appears and pleads
- 3. Defendant served by publication who does not appear

Thus, the provisions of the Rules, the applicable statutory sections, and the controlling case law is organized in a manner which is imminently practical and easily understood. Without such a breakdown, it is often difficult to wade through the various provisos in the Code without some confusion.

In this volume on the Equity Rules, the author devotes considerably more space to the specific holdings of the Supreme Court of Appeals than was the case in the predecessor volume on the Law Rules. By citing more cases and introducing more factual applications, this volume is made readable and the material tends to be digested rather than read and forgotten. Also, there are frequent references to the popular Virginia works on equity jurisprudence: Lile's *Equity Pleading and Practice*; Lamb's, *A Virginia Cause*; and Barton's, *Chancery Practice*.

In the Law Rules volume, the author gathered the procedures not covered by Part 3 of the Rules under Rule 3:1. The comparable section in the Equity Handbook is Rule 2:24 (Matters not covered by these Rules). The topics covered in this section include Injunctions, Partition, Lands of Persons Under Disabilities, Sale of Contingent Estates, Married Infants, Receivers, Creditors' Suits, Mechanics' and Other Liens, Deeds of Trust, Fiduciaries, Eminent Domain and a host of others. Injunctions are given a particularly exhaustive treatment in this section of the book. Many Code sections are set out in full with appropriate introductory remarks when necessary. Many of these topics, e.g., Inventories and Accounts of Fiduciaries are not susceptible of any extended textual treatment and the author merely organizes and

reproduces the applicable Code sections. The inclusion of the Code sections verbatim may well make the author's task of keeping the book up to date with pocket supplements more tedious, but the convenience to the reader achieved by direct statutory references is certainly a valuable asset.

As was the case in the Law Rules volume, the indexing in the present volume makes for ready reference in the heat of litigation or otherwise. Cross references to the Rules, Statutes cited, and a complete topical index are all included. As was previously mentioned, pocket supplements will be issued to keep the book up to date.

THOMAS D. TERRY