

March 1960

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Repository Citation

Thomas D. Terry, *Book Review of Handbook of the Virginia Rules of Procedure in Actions at Law*, 2 Wm. & Mary L. Rev. 539 (1960), <https://scholarship.law.wm.edu/wmlr/vol2/iss2/26>

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HANDBOOK OF THE VIRGINIA RULES OF PROCEDURE IN ACTIONS AT LAW

by ARTHUR W. PHELPS, Charlottesville

The Michie Company, 1959. pp. 325. \$15.00.

Professor Arthur W. Phelps has made a significant contribution to the literature of Virginia law with the publication of his Handbook of Virginia Rules. Practitioners and students, alike, will benefit from the carefully organized and compact presentation which Professor Phelps offers. The lack of a well integrated index system and the organization of the Virginia Code has long plagued the advocate resulting in wasted hours and technical errors. Professor Phelps' Handbook provides a quick reference method for alleviating these vexing problems.

The Handbook is organized according to Part 3 of the Rules of Practice and Procedure. Each Rule constitutes a major subdivision with further topical breakdowns according to the requirements of the particular subject matter of the individual Rules. Rule 3:1, dealing with the application of the Rules, is given a thorough treatment in an effort to outline the statutory procedures which affect the interplay between the Virginia Rules and the numerous statutory requirements. Those civil actions at law specifically mentioned in Rule 3:1 as being covered by Part 3 of the Rules and not seeking a judgment for money (actions for establishment of boundaries, ejectment, unlawful detainer, etc.) are listed and discussed as to purpose and common law background, jurisdiction and venue, initiating procedure, judgment and execution. In addition, those civil actions not covered by Rule 3:1 and hence not subject to the requirements of Part 3 of the Rules are listed and given a similar treatment. The result is a convenient reference for the procedures applicable to actions at law seeking relief other than money judgments. As previously indicated the material collected under Rule 3:1 of the Handbook is helpful in answering the following questions:

1. What type of civil action is available in Virginia for stating a particular type of claim?

2. Are there specific statutory provisions governing the initiation, pleadings, judgment and execution of a particular civil action?
3. What are the statutory provisions for removal and appeal from County Courts and other courts not of record?

The material collected under Rule 3:2 and following, is designed to direct the reader to the problems encountered in applying the Rule, the effect of other Rules on the application of the specific Rule under consideration, the judicial and statutory authority available for interpreting the Rule, and an indication of those areas which are uncertain at the present time. An example of the organization of discussion under a particular Rule are the subdivisions of Rule 3:5, Defendant's Response. The headings are: History, Time and Extention of Time, Failure to File Response, Oversight, Case Agreed, Form, Abolition of General Issue and General Denial, Specific Defenses and Demurrer. Professor Phelps does not attempt to give an exhaustive review of the authorities, but simply indicates the leading case, statutory reference, textual discussion or law review article which, in his opinion, best describes the Virginia position on the topic under discussion. In addition, frequent references are made to the provisions of the Federal Rules of Civil Procedure for purposes of comparison. An example of the author's treatment of the unsettled areas is found under Rule 3:18, General Provisions as to Pleadings, under the sub-heading Statute of Frauds:

"While there is some debate as to the pleading of the statute of frauds at common law, it is often stated that it must be specially pleaded. Federal Rule 8(c) makes it an affirmative defense, but the Virginia Rules are silent as to the statute of frauds. Certainly the better practice would be to plead it affirmatively. This is especially true with the abolition of general issue in Virginia."

Following the above discussion, the author indicates a recent Virginia case which, nevertheless, held that it is not always necessary to specially plead the Statute. Thus, the reader is quickly given a concise picture of the general attitude of the Virginia courts on the subject and counsel may pursue the topic according to his individual needs. There is con-

siderable value in approaching a procedural problem with a rudimentary understanding of the historical basis of the Rules, and the Handbook will prove extremely valuable for such an introduction. From the student's viewpoint, this is probably the most valuable asset of the Handbook, in addition to the obvious organizational aids in studying Virginia procedure. The needs of the practitioner, when not identical with those of the student, are likely to emphasize speed and tactical considerations. Both are well satisfied by the Handbook. The index is carefully planned and presented in topical digest form with abundant cross references. Further, two tables are included which should be of considerable value. These are: A table of Rules Cited of Supreme Court of Appeals of Virginia which lists each reference to a particular Virginia Rule including those other than Part 3 Rules, and a table of Statutes Cited, Code of Virginia 1950. This latter table is of special note because of the difficulty in achieving the same results through the use of any other materials available in Virginia today. For example, the operation of the transfer statute (§ 8-138, Code of Virginia 1950, providing that "a case brought on the wrong side of the court is still regarded as commenced when filed even though it is necessary to transfer it to the proper side of the court") may be traced as to its effects upon each of the Rules through the use of this table. Unfortunately, there is no table of cases or law review articles cited, probably because of the limited discussion of individual holdings and the necessarily representative character of the cases cited. However, such an index would be desirable from several standpoints and it is believed that the purpose of the Handbook would be furthered by such an inclusion.

Professor Phelps has been a student of Virginia procedure since his arrival at the College of William and Mary in 1945. He has contributed several articles to the Virginia Law Review on the subject (i.e. *The Bill of Particulars in Virginia*, 39 Va. L. Rev. 989 (1953) and *The Notice of Motion and Modern Procedural Reform*, 35 Va. L. Rev. 380 (1949)) and presently teaches the procedural course at William and Mary. The Handbook represents a synthesis of his research and organization in an area which has long needed a summary presentation for quick reference purposes.

T. D. T.