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Civil Procedure-Title 8.01: Virginia's New Civil Procedure Act

Scott D. Anderson
University of Richmond

Theodore I. Brenner
University of Richmond

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RECENT LEGISLATION

Civil Procedure—TITLE 8.01: VIRGINIA'S NEW CIVIL PROCEDURE ACT

I. SCOPE

On October 1, 1977, Title 8 of the Code of Virginia was repealed and Title 8.01 became effective. The revisers of Title 8 have produced an extensive, as well as comprehensive, change in the statutes which govern civil procedure in Virginia. Most of the provisions have been rewritten, deleted or moved to other titles. With several notable exceptions, civil procedure in Virginia will remain basically unchanged. Much of the revisers' work leaves Title 8 substantively intact. The major changes will be discussed in a chapter by chapter analysis of Title 8.01 in Section II of this article.

The revisers of Title 8 have written a Statement which has been published as "Revision of Title 8 of the Code of Virginia — Report of the Virginia Code Commission to the Governor and General Assembly of Virginia."¹

Although the General Assembly made several changes to Title 8.01 as proposed by the Commission, the Code Commission's report serves as an invaluable aid in understanding the scope of the changes and the intent with which the revisions were made. In the report, each code provision is followed by a note detailing the purpose of each change. These notes show that the primary purpose of the recodification is to reorganize and modernize the Virginia civil procedure statutes. Many sections have been rewritten or undergone minor language changes which do not materially alter their meaning or effect. Some sections have been left unchanged; other sections have been combined. Sections have been deleted as obsolete, unnecessary, or no longer used in modern practice. Numerous others have been deleted because the procedures they controlled were thought to be better governed by the Rules of Court.

There has been an overall reorganization of Title 8; many provisions have been moved to the chapters in which they more logically belong. For the same reason, many provisions of Title 8 have been relocated to other titles. For example, all provisions dealing with fees and costs have been moved to Title 14.1 (Costs, Fees, Salaries and Allowances) and present

1. VA. CODE COMM'N REPORT, REVISION OF TITLE 8 OF THE CODE OF VIRGINIA (House Document No. 14, November 17, 1976) [hereinafter cited as H. Doc. 14].

Chapter 38 dealing with trespasses and fences has been moved to Title 55 (Property and Conveyances). All criminal procedure provisions have likewise been purged from Title 8.01.²

The revisers attempted to clarify many provisions of Title 8 in order to relieve the present uncertainty and confusion of some statutes and to avoid potential areas of doubt. In many instances, present case law has been codified in Title 8.01.

Confusing and obsolete procedural distinctions have also been eliminated. Under Title 8.01 the differences in procedures between circuit courts in term and in vacation have been abolished.³ In most cases, procedural differences between district and circuit courts have been eliminated. In many statutes, dollar limitations have been changed to reflect present monetary values.

It should be stressed that Title 8.01 does not fundamentally alter Virginia Civil Procedure. It modernizes, consolidates, simplifies, clarifies and condenses Title 8, but there are few major changes. The Virginia practitioner will not have to relearn civil procedure in order to practice in Virginia courts. The following section of this article will highlight those changes which appear most significant.

II. HIGHLIGHTS OF CHANGES IN THE LAW

A. CHAPTER 1 — *General Provisions as to Civil Cases*

An attempt has been made to collect all preliminary matters in an introductory chapter to Title 8.01. Toward that end, a definitional section has been provided.⁴ Included are sections authorizing the promulgation of Rules of Court by the Supreme Court of Virginia,⁵ and circuit and district courts.⁶ Realizing that the passage of Title 8.01 and its application might well work inequities and materially alter substantive rights, courts have been given discretion in applying the new provisions.⁷ Thus in actions arising prior to the effective date (October 1, 1977), the central question

2. VA. CODE ANN. § 19.2-260 (Repl. Vol. 1975) of the Criminal Procedure Title provides that trial by jury in criminal cases shall be regulated by Title 8. For this reason, several references to criminal cases are retained in Chapter 11 (Juries). H. Doc. 14, *supra* note 1, at 219.

3. VA. CODE ANN. § 8.01-445 (Repl. Vol. 1977) abolishes the distinction between what a court may do in term as opposed to vacation. References to term and vacation have been deleted throughout Title 8.01.

4. VA. CODE ANN. § 8.01-2 (Repl. Vol. 1977).

5. VA. CODE ANN. § 8.01-3.A. (Repl. Vol. 1977).

6. VA. CODE ANN. § 8.01-4 (Repl. Vol. 1977).

7. VA. CODE ANN. § 8.01-1 (Repl. Vol. 1977).

when considering the propriety of the application of Title 8.01 is whether such application will work a miscarriage of justice.⁸

In order to promote uniformity of definition throughout the code of civil procedure, the revisers advocated the use of the general terms, "person under a disability"⁹ and "fiduciary,"¹⁰ to embrace certain classes of parties that are enumerated in the statute. The lists do not purport to be exclusive. The use of these generic terms was not intended in any way to alter existing law in Virginia involving or concerning those persons who are reclassified "persons under a disability" or "fiduciaries." The definitions are intended only to simplify, to clarify and to provide consistency in subsequent code provisions.¹¹

The revisers consolidated the rule-making authority of the Supreme Court into one section¹² and provided that such rules shall become effective sixty days from adoption.¹³ Provision was made for the legislature to modify or annul any rule so promulgated by subsequent legislation.¹⁴

Older Virginia practice permitted district and circuit courts to promulgate local rules for the "orderly management of court dockets."¹⁵ Because it was determined that this standard created more confusion than uniformity of local rules, the standard was changed to the promotion of "proper order and decorum, and the convenient and efficient use of court houses and clerks' offices."¹⁶

B. CHAPTER 2 — *Parties*

All provisions relating to parties in a civil action have been collected and located in this chapter. The revisers emphasized the policy of allowing the

8. H. Doc. 14, *supra* note 1, at 54.

9. VA. CODE ANN. § 8.01-2.6. (Repl. Vol. 1977).

10. VA. CODE ANN. § 8.01-2.3. (Repl. Vol. 1977).

11. H. Doc. 14, *supra* note 1, at 56.

12. VA. CODE ANN. § 8.01-3 (Repl. Vol. 1977).

13. VA. CODE ANN. § 8.01-3.B. (Repl. Vol. 1977).

14. VA. CODE ANN. § 8.01-3.D. (Repl. Vol. 1977). Since Title 8.01 deals only with civil procedure, all references to criminal practice in Title 8 were deleted. H. Doc. 14, *supra* note 1, at 57. Thus, some holes are created unless appropriate additions are made in Title 19.2 (Code of Criminal Procedure). For example, § 8.01-3.D. provides the procedure whereby the legislature may by subsequent legislation modify or annul a Rule of Court. Since the revisers have indicated that this provision applies only to *civil* rules of court, it is submitted that there will be a real point of controversy when a criminal statute is in direct conflict with a criminal rule (part 3:A, Rules of Court). A provision similar in substance to § 8.01-3.D. should be included in the appropriate position in Title 19.2.

15. VA. CODE ANN. § 8-1.3 (Cum. Supp. 1976).

16. VA. CODE ANN. § 8.01-4 (Repl. Vol. 1977).

addition and deletion of parties to an action without prejudice until the proper parties are before the court. They abolished cumbersome and antiquated practices and urged that the statutes and corresponding Rules of Court be correlated.

The revisers noted that the policy of section 8-96 relating to nonjoinder and misjoinder of parties has been carried over to section 8.01-5, but some of the intricacies of the older statute have been omitted as superfluous in light of certain Rules of Court.¹⁷ The distinction between the court's ability to add parties in an action at law and a suit in equity has been dropped,¹⁸ giving the court broad discretion in adding parties *sua sponte*.

The spirit of section 8.01-2 urging definitional uniformity is evident in section 8.01-9, which provides that a guardian ad litem is to be appointed for all persons under a disability,¹⁹ unless that person is represented as a party defendant by an attorney licensed to practice in Virginia. In that case, such an appointment is not necessary unless a statute specifically requires that an answer be filed by a guardian ad litem or in the exercise of its discretion, the court determines that the interests of justice require the appointment of a guardian ad litem.²⁰ If such a determination is made, the court may appoint the attorney of record to serve in that capacity.²¹

The writ of *scire facias* was viewed as an obsolete, complicated and cumbersome method of reviving actions and judgments and its use was therefore abolished.²² In its place was substituted a motion in the nature of a writ of *scire facias*, a simpler and more direct form of pleading analogous to the procedure used in the federal courts.²³ This use is evident in the operation of section 8.01-16 which gives the court discretion in granting a continuance to a new party in a case, whether he be joined or substituted, after such party has requested the continuance by making an appropriate motion. Formerly the party would have proceeded by writ of *scire facias*.²⁴

A plaintiff may now continue a suit to final judgment against a defendant whose powers cease (*e.g.*, an executor who has died) in equity or at law.²⁵ Older Virginia practice did not permit such an action at law. If a

17. H. Doc. 14, *supra* note 1, at 59, *citing*, Rules of Court 2:15, 3:9A and 3:14.

18. H. Doc. 14, *supra* note 1, at 60.

19. VA CODE ANN. § 8.01-9.A. (Repl. Vol. 1977). *See* note 11 and accompanying text, *supra*.

20. VA. CODE ANN. § 8.01-9.B. (Repl. Vol. 1977).

21. *Id.* In addition to codifying modern Virginia practice, this provision was intended to require that if the attorney of record is appointed to serve as guardian ad litem, he should be licensed to practice in Virginia. H. Doc. 14, *supra* note 1, at 62.

22. VA. CODE ANN. § 8.01-24 (Repl. Vol. 1977).

23. *See* FED. R. CIV. P. 81(b).

24. H. Doc. 14, *supra* note 1, at 64.

25. VA. CODE ANN. § 8.01-17 (Repl. Vol. 1977).

party dies in an action in which there are several plaintiffs or defendants, the court is given discretion to sever the action or suit so that the case may continue against the remaining parties without delay, or to suspend the case until a successor in interest is appointed in accordance with the Rules of Court.²⁶

C. CHAPTER 3 — *Actions*

All provisions that recognize a cause of action have been consolidated into a single chapter. Contained therein are twenty specific articles and a catchall (article twenty-one) in which provisions relating to actions but having no other logical place in the chapter are located. Articles in which no substantive changes were made will not be discussed.

1. *Article 1 — Survival and Assignment of Causes of Action*

Whereas older statutes provided that all causes of action survive death, the wording was negative and the revisers were of the opinion that a positive statement would eliminate any possible confusion.²⁷ In order to reconcile conflicting case law,²⁸ it has been recommended that section 64.1-145 be rewritten to provide that damage to an estate of a decedent, either direct or indirect, may be the basis of an action by or against the decedent's personal representative. In codifying current case law, punitive damages are not allowed after the death of a party liable for an injury²⁹ and it has been recognized that the Virginia wrongful death statute is not a "survival" statute, but one which creates a new right in the personal representative of the decedent.³⁰

Formerly the test for assignability of causes of action was the survival of such causes. With the passage of section 8.01-25, *all* causes of action survive and in order to maintain the status quo as far as assignability is concerned, section 8.01-26 allows assignment only of causes of action for damage to real or personal property (whether direct or indirect) or causes of action *ex contractu*.³¹

26. VA. CODE ANN. § 8.01-22 (Repl. Vol. 1977).

27. Thus VA. CODE ANN. § 8.01-25 (Repl. Vol. 1977) states: "Every cause of action whether legal or equitable, which is cognizable in the Commonwealth of Virginia, shall survive. . . ."

28. Compare *Cover v. Critcher*, 143 Va. 357, 130 S.E. 238 (1925) with *Worrie v. Boze*, 198 Va. 533, 95 S.E.2d 192 (1957) and *Trust Co. of Norfolk v. Fletcher*, 152 Va. 868, 148 S.E. 785 (1929).

29. VA. CODE ANN. § 8.01-25 (Repl. Vol. 1977).

30. H. Doc. 14, *supra* note 1, at 69 and cases cited therein. See VA. CODE ANN. § 8.01-50 (Repl. Vol. 1977).

31. VA. CODE ANN. § 8.01-26 (Repl. Vol. 1977). This codifies current case law except for

2. Article 5 — Death by Wrongful Act

In awarding damages for wrongful death, the jury or court may not include punitive damages.³² This alters the general rule that punitive damages may be awarded unless the person liable has died.³³ Section 8.01-52 provides some factors the court or jury may consider in arriving at a figure for damages, but these factors are suggested only as guidelines and are not exclusive. If the award includes costs for care, treatment, hospitalization or funeral expenses, the court or jury must so specifically state in order for proper apportionment to creditors who provided such services.³⁴

There formerly existed an illogical conflict dealing with the class and beneficiaries to receive any damage award. If the decedent was survived by no children or grandchildren, but by a spouse and a parent, the distribution would be made to the surviving spouse and parent.³⁵ Strictly construed, this would have precluded such a distribution had the decedent been survived by *both* parents and a spouse, and in order to preclude this result, appropriate statutory changes have been made.³⁶ In any event, if either party so requests, the jury may be required to specify the distribution of the award and if they are unable to agree, the court shall apportion the distribution.³⁷

If the jury determines the award, the class of persons eligible to receive the distribution is fixed at the time the verdict is entered and if the court specifies the distribution, the class is established at the time the judgment is rendered.³⁸ This codifies present case law.³⁹

A former statute provided that the recovery would be paid to the personal representative who would pay costs and reasonable attorney's fees before distributing each share.⁴⁰ The revisers recommended that in addition to costs and attorney's fees, the personal representative must distrib-

the distinction between direct and indirect damage to property. See *Friedman v. People's Service Drug Stores*, 208 Va. 700, 160 S.E.2d 563 (1968); *Birmingham v. Chesapeake & Ohio Ry.*, 98 Va. 548, 37 S.E. 17 (1900).

32. VA. CODE ANN. § 8.01-52 (Repl. Vol. 1977). This codifies current case law. See *Wilson v. Whittaker*, 207 Va. 1032, 154 S.E.2d 124 (1967).

33. *Dalton v. Johnson*, 204 Va. 102, 129 S.E.2d 647 (1963). See note 29 and accompanying text, *supra*.

34. VA. CODE ANN. § 8.01-52 (Repl. Vol. 1977).

35. VA. CODE ANN. § 8-638 (Cum. Supp. 1976).

36. VA. CODE ANN. § 8.01-53.A.(iii) (Repl. Vol. 1977).

37. VA. CODE ANN. § 8.01-54.B. (Repl. Vol. 1977).

38. VA. CODE ANN. § 8.01-53.B. (Repl. Vol. 1977).

39. See, e.g., *Johns v. Blue Ridge Transfer Co.*, 199 Va. 63, 97 S.E.2d 723 (1957); *Baltimore & Ohio R.R. v. Wightman's Adm'r.*, 70 Va. (29 Gratt.) 431 (1877).

40. VA. CODE ANN. § 8-638 (Cum. Supp. 1976).

ute the amount specifically allocated to hospital, medical and funeral expenses before distributing the remainder to those persons eligible to receive the award under section 8.01-53.⁴¹

Previously, a statute provided that the right of action was not to determine nor an action brought to abate upon the death of the defendant or the dissolution of a corporate defendant.⁴² Language has been added which extends the thrust of this provision to other organizations such as associations and trusts.⁴³

3. Article 8 — Actions for the Sale, Lease, Exchange, Redemption and Other Disposition of Lands of Persons Under a Disability

Without an exhaustive listing of the reasons that the court may order a sale, lease, etc., of lands of one classified as "under a disability,"⁴⁴ the legislature has provided that such disposition shall be made if it will "promote the interest of an owner of land,"⁴⁵ after taking into consideration the rights of any other party interested in the land. Simpler procedures have been enacted with respect to new and renewal leases on behalf of persons under a disability.⁴⁶ The court has been given more discretion in regard to the procedure to be followed in the alternate method for the sale of real estate of one under a disability.⁴⁷

4. Article 12 — Detinue

Detinue in Virginia has long been given judicial approval as an acceptable vehicle for debt collection,⁴⁸ however older practice allowed the defen-

41. VA. CODE ANN. § 8.01-54.C. (Repl. Vol. 1977). The specification is required in order for the statute to be in concert with section 8.01-52. See note 34 and accompanying text, *supra*.

42. VA. CODE ANN. § 8-640 (Repl. Vol. 1957).

43. VA. CODE ANN. § 8.01-56 (Repl. Vol. 1977). "The right of action under § 8.01-50 shall not determine, nor the action, when brought, abate by the death, dissolution or other termination of a defendant. . . ." (Emphasis added). See H. Doc. 14, *supra* note 1, at 85.

44. VA. CODE ANN. § 8.01-2.6. (Repl. Vol. 1977).

45. VA. CODE ANN. § 8.01-68 (Repl. Vol. 1977). The statute allows the court to exercise its ancient equity jurisdiction. To that end VA. CODE ANN. §§ 8-675, 8-677, 8-681, 8-682 and 8-683 (Repl. Vol. 1957) (which provided specific instances in which disposition might have been made if the proper showing was made to the court) have been deleted as unnecessary. See H. Doc. 14, *supra* note 1, at 89.

46. VA. CODE ANN. § 8.01-74 (Repl. Vol. 1977). The section is an expansion of VA. CODE ANN. § 8-674 (Repl. Vol. 1957) which did not provide for new leases where no prior lease existed.

47. VA. CODE ANN. §§ 8.01-78 to -80 (Repl. Vol. 1977). The use of commissioners in chancery or special commissioners is no longer mandatory. They are to be appointed in the discretion of the court.

48. See *Lloyd v. Federal Motor Truck Co.*, 168 Va. 72, 190 S.E. 257 (1937).

dant to elect to return the specific property which was the object of the suit. In case of such an election, no deficiency judgment was allowed the plaintiff. In a statute altering this common law concept, the plaintiff may now recover a deficiency judgment when the defendant, upon exercising his election, surrenders used or damaged property which is not sufficient to satisfy the judgment.⁴⁹ The procedures to be followed by the plaintiff are those of the Uniform Commercial Code⁵⁰ requiring compliance with "reasonable commercial practice."

5. *Article 13 — Unlawful Entry and Detainer*

This article has undergone a general revision consistent with the policies behind the revision of Title 8. The language has been clarified without making substantive changes;⁵¹ provisions which formerly included statutes of limitation⁵² and references to venue⁵³ have been retained in substance but those references have been relocated in appropriate chapters.⁵⁴ Also, language has been deleted from former statutes, giving further discretion to the courts.⁵⁵

6. *Article 18 — Recovery of Claims Against the Commonwealth of Virginia*

The former statute⁵⁶ has been substantially modified. In addition to transferring and changing the statute of limitations contained therein,⁵⁷ language pertaining to "any other claim" has been deleted evidencing the intent of the revisers to restrict the application of the new statute to pecuniary claims against the Commonwealth of Virginia.⁵⁸ Also, the former requirement that claims instituted under this section be brought only in

49. VA. CODE ANN. § 8.01-121 (Repl. Vol. 1977).

50. VA. CODE ANN. §§ 8.9-501 to -507 (Interim Supp. 1977).

51. Compare VA. CODE ANN. § 8-789 (Cum. Supp. 1976), with VA. CODE ANN. § 8.01-124 (Repl. Vol. 1977).

52. VA. CODE ANN. §§ 8-789, 8-793 (Repl. Vol. 1957).

53. VA. CODE ANN. § 8-794 (Repl. Vol. 1957).

54. See Chapter 4, VA. CODE ANN. §§ 8.01-228 to -256 (Repl. Vol. 1977) (Limitations of Actions); Chapter 5, VA. CODE ANN. §§ 8.01-257 to -267 (Repl. Vol. 1977) (Venue).

55. Compare VA. CODE ANN. § 8-791.1 (Cum. Supp. 1976), with VA. CODE ANN. § 8.01-127 (Repl. Vol. 1977). The former statute required "sufficient corporate or cash security." This language has been deleted allowing the court to determine the type and adequacy of the security. Such a revision typifies the policy behind the comprehensive revision of Title 8. See H. DOC. 14, *supra* note 1, at 114.

56. VA. CODE ANN. § 8-752 (Cum. Supp. 1976). See VA. CODE ANN. § 8.01-192 (Repl. Vol. 1977).

57. See VA. CODE ANN. § 8.01-255 (Repl. Vol. 1977).

58. H. DOC. 14, *supra* note 1, at 130.

the Circuit Court of the City of Richmond has been expanded and the plaintiff is now allowed to "petition an appropriate circuit court for redress."⁵⁹

D. CHAPTER 4 — *Limitations of Actions*

A prime objective of the legislature in the revision of Title 8 was the institution of order to the Virginia Code of Civil Procedure. Nowhere is the former state of disorder more evident than in the provisions relating to limitations of actions. Chapter 4 of Title 8.01 attempts to collect these scattered sections and classify them into five comprehensive categories: general provisions,⁶⁰ actions involving real estate,⁶¹ personal actions,⁶² limitations on enforcement of judgments and decrees,⁶³ and miscellaneous limitations provisions.⁶⁴

At the outset, it has been emphasized that "the provision that limitations prescribed in this chapter apply to suits in equity is not intended to supersede the ancient and established rule of laches. . . ."⁶⁵ Legal claims, when adjudicated in equity, have traditionally provided a situation whereby an analogy may be drawn to the applicable statute of limitations.

Instances which have the general effect of tolling or suspending the running of a statute of limitation have been consolidated into a comprehensive provision.⁶⁶ Contrary to former Virginia practice, disabilities which arise after the accrual of a cause of action suspend the running of the limitations period. For purposes of this statute, the disabilities which will toll the running of the statute of limitations are limited to infancy and insanity.⁶⁷ A similar provision tolls the statute for an inmate, during the period of his incarceration, for actions which he is entitled to bring against his committee.⁶⁸ There is no similar tolling provision for all other actions which the convict may bring.⁶⁹

59. VA. CODE ANN. § 8.01-192 (Repl. Vol. 1977). Presumably this change will reduce the time and expense to a plaintiff for the bringing of an action against the Commonwealth.

60. VA. CODE ANN. §§ 8.01-228 to -235 (Repl. Vol. 1977).

61. VA. CODE ANN. §§ 8.01-236 to -242 (Repl. Vol. 1977).

62. VA. CODE ANN. §§ 8.01-243 to -250 (Repl. Vol. 1977).

63. VA. CODE ANN. §§ 8.01-251 to -252 (Repl. Vol. 1977).

64. VA. CODE ANN. §§ 8.01-253 to -256 (Repl. Vol. 1977).

65. H. Doc. 14, *supra* note 1, at 139.

66. VA. CODE ANN. § 8.01-229 (Repl. Vol. 1977).

67. VA. CODE ANN. § 8.01-229.A. (Repl. Vol. 1977). "Fairness to the plaintiff requires that supervening disability toll the statute of limitations as well as disability existing at the time the cause of action accrues." H. Doc. 14, *supra* note 1, at 142.

68. VA. CODE ANN. § 8.01-229.A.(3) (Repl. Vol. 1977).

69. H. Doc. 14, *supra* note 1, at 142.

Changes have been made in limitations provisions dealing with the death of a party. Former Virginia practice designated the date of death as the determinative date for limitations purposes. Section 8.01-229 provides that the critical time is the date of qualification of the decedent's personal representative.⁷⁰ If the decedent is a prospective plaintiff and no action has been commenced by the date of death, the action must be filed by the personal representative before the expiration of the applicable limitation period or within one year after his qualification, whichever occurs later.⁷¹ If the decedent is a prospective defendant and no action has been brought by the date of death, the limitation period is extended until two years after the qualification of the personal representative.⁷²

In cases in which a cause of action accrues against the estate of a decedent after death, the claim may be filed within two years after accrual or within two years after qualification of the personal representative, whichever occurs later.⁷³ This addresses the problem that would arise when a cause of action arises shortly before the two year period after qualification of a personal representative is to expire. If accrual of a personal cause of action in favor of a decedent occurs after death, the action may be instituted by the personal representative either within the applicable limitations period or within one year after his qualification, whichever is later.⁷⁴

Typifying a policy evident throughout the revision of Title 8, the statute of limitations is tolled if a timely action is commenced and subsequently stayed by injunction.⁷⁵ The rationale is that the plaintiff should not be precluded from recovery before the merits of his case have been adjudi-

70. See, e.g., VA. CODE ANN. §§ 8.01-229.B.(1), 8.01-229.B.(2), 8.01-229.B.(4), 8.01-229.B.(5) (Repl. Vol. 1977). If the qualification of a personal representative occurs more than two years after the decedent's death, for purposes of the running of the limitations period, he will be deemed to have qualified on the last day of the two year period. VA. CODE ANN. § 8.01-229.B.(6) (Repl. Vol. 1977).

71. VA. CODE ANN. § 8.01-229.B.(1) (Repl. Vol. 1977).

72. VA. CODE ANN. § 8.01-229.B.(2) (Repl. Vol. 1977). This provision achieves the dual objectives of preserving a cause of action against a decedent for a reasonable length of time and providing a definite date after which no claims may be asserted against the estate, therefore providing a procedure whereby probate may be efficiently administered. H. Doc. 14, *supra* note 1, at 143. If sections 8.01-229.B.(1) and 8.01-229.B.(2) both appear applicable, the latter will control. VA. CODE ANN. § 8.01-229.B.(2) (Repl. Vol. 1977).

73. VA. CODE ANN. § 8.01-229.B.(4) (Repl. Vol. 1977).

74. VA. CODE ANN. § 8.01-229.B.(5) (Repl. Vol. 1977). This section was enacted to fill a statutory void. Section 8-32 provided for the situation whereby the decedent died before accrual of a cause of action and the qualification of the personal representative was delayed for more than two years. No former statute dealt with the possibility of the accrual of a cause of action after death and there is no delay in the qualification of the personal representative. H. Doc. 14, *supra* note 1, at 144.

75. VA. CODE ANN. § 8.01-229.C. (Repl. Vol. 1977).

cated, since the defendant has been given notice that an action has been brought against him within the limitations period.⁷⁶ Similarly, if an action is brought within the limitations period and abates or is dismissed without determining the merits, the time that the action was pending is not computed as part of the period within which another action may be brought.⁷⁷ Also, if a judgment for the plaintiff is arrested or reversed on grounds not precluding a new action for the same cause, or if a former action was properly commenced and the papers or records were subsequently lost, a new action may be brought within one year after the arrest, reversal, loss or destruction.⁷⁸ Additionally, a plaintiff who reinstates his action within six months after suffering a voluntary nonsuit will have the statute of limitations tolled by the nonsuited action.⁷⁹

Finally, if the defendant prevents service of process in any manner after an action has been instituted against him, the time that such prevention continued is not included in the computation of the limitations period.⁸⁰ Formerly this provision was limited to defendants "who had before resided in the Commonwealth."⁸¹

The revisers recognized the confusion apparent in Virginia decisions determining when a cause of action accrues and a statute of limitations begins to run⁸² and section 8.01-230 is intended to resolve any existing conflicts. The section codifies the general rule that the cause accrues and the statute begins to run when the wrongful act or breach of contract or duty occurs, and not the date of discovery. Exceptions are made where expressly provided by statute⁸³ or where relief sought is solely equitable.

76. H. DOC. 14, *supra* note 1, at 145.

77. VA. CODE ANN. § 8.01-229.E.(1) (Repl. Vol. 1977).

78. VA. CODE ANN. § 8.01-229.E.(2) (Repl. Vol. 1977). The policy underlying all of these statutes is that the "plaintiff who brings his action within due time should not be denied a decision on the merits because of subsequent procedural developments or fortuities which have no bearing upon the purpose of statutes of limitations." H. Doc. 14, *supra* note 1, at 145.

79. VA. CODE ANN. § 8.01-229.E.(3) (Repl. Vol. 1977). Since a party pursuant to section 8.01-380.B. may have only one nonsuit as a matter of right, the defendant should not suffer undue hardship under this provision.

80. VA. CODE ANN. § 8.01-229.D. (Repl. Vol. 1977). "Also, it should be noted that the limitation period is not tolled if process can be served despite the defendant's absence — e.g. service of process under the 'long arm' statute." H. Doc. 14, *supra* note 1, at 145.

81. VA. CODE ANN. § 8-33 (Repl. Vol. 1957).

82. Compare *Hawks v. DeHart*, 206 Va. 810, 146 S.E.2d 187 (1966) and *Brunswick Land Corp. v. Perkinson*, 153 Va. 603, 151 S.E. 138 (1930), with *Barnes v. Sears, Roebuck and Co.*, 406 F.2d 859 (4th Cir. 1969) and *Caudill v. Wise Rambler, Inc.*, 210 Va. 11, 168 S.E.2d 257 (1969).

83. See, e.g., VA. CODE ANN. §§ 8.01-233, -245.C., -249 and -250 (Repl. Vol. 1977).

A substantive change has been made in the method of pleading a statute of limitations. The averment that an action is barred by a statute can only be raised as an affirmative defense specifically set forth in a responsive pleading.⁸⁴ This renders useless the distinction heretofore drawn between "special" and "pure" statutes of limitations and overrules current Virginia case law.⁸⁵ All jurisdictional considerations have been removed from the application of statutes of limitations and it is no longer proper to assert statutes of limitations by demurrer. While this will place a burden on defendants to provide more specificity in pleadings, the uniformity, simplicity and certainty in pleadings that will result outweigh that burden.⁸⁶

Since disabilities may arise which would toll the statute of limitations for an indefinite period under section 8.01-229(A) and since there is a need for security in land titles, the legislature has provided that notwithstanding the provisions of section 8.01-229(A), no disabilities or tacking of disabilities shall operate to allow any person or his successors the right to enter or bring an action to recover land more than twenty-five years after the cause of action has accrued.⁸⁷

Actions for personal injury, including an action for emotional injuries must be brought within two years of the accrual of the cause of action;⁸⁸ however, if the injury results in death, the limitation for wrongful death actions is applicable.⁸⁹

Numerous provisions relating to the limitations periods for actions on various types of contracts have been consolidated into a comprehensive section.⁹⁰ It was recognized that section 8.2-725 controls the comprehensive statute for applicable actions but the U.C.C. provision does not apply to personal injury actions or actions for property damage which are not subject to a contract of sale.⁹¹

Actions for fraud, mistake and rescission of a contract for undue influ-

84. VA. CODE ANN. § 8.01-235 (Repl. Vol. 1977).

85. H. Doc. 14, *supra* note 1, at 149. See *Branch v. Branch*, 172 Va. 413, 2 S.E.2d 327 (1939).

86. H. Doc. 14, *supra* note 1, at 149-50.

87. VA. CODE ANN. § 8.01-237 (Repl. Vol. 1977). See note 68 and accompanying text, *supra*.

88. VA. CODE ANN. § 8.01-243 (Repl. Vol. 1977). Where the conduct causing the emotional injury is not willful, wanton or vindictive, but is "merely negligent and there is no physical impact, recovery may be had for the emotional injury only if the resulting physical injury has been the proximate result of such emotional injury." H. Doc. 14, *supra* note 1, at 153. See *Womack v. Eldridge*, 215 Va. 338, 342, 210 S.E.2d 145, 148 (1974), for the elements that must be proven to recover for emotional injury unaccompanied by physical injury.

89. VA. CODE ANN. § 8.01-244 (Repl. Vol. 1977).

90. VA. CODE ANN. § 8.01-246 (Repl. Vol. 1977).

91. *Id.*

ence do not accrue until the fraud, mistake or undue influence is discovered or until in the exercise of reasonable diligence, it should have been discovered.⁹² Also proposed was a provision that would extend the above standard to the accrual of actions in cases of professional malpractice, but that provision was rejected by the legislature.⁹³ The limitation period on actions for damages arising from defective or unsafe improvements to realty that could not reasonably be discovered within five years has been extended. Such actions may now be brought within six months of discovery but in no event after ten years.⁹⁴

Formerly, statutes of limitations for claims against the Commonwealth were in conflict.⁹⁵ Presently any pecuniary claim authorized by sections 2.1-223.1 and 2.1-223.3 must be presented to the comptroller within five years after the right to the claim arose, or it is barred. If properly presented and disallowed, any resulting action against the Commonwealth must be brought within three years of disallowance.⁹⁶

E. CHAPTER 5 — *Venue*

The concept of venue as simply a fair and convenient place of trial is not a new one in the law. At common law, venue related only to the place of trial in geographical terms, but statutes and decisions in Virginia provided jurisdictional aspects to venue.⁹⁷ Thus it became possible for improper venue to result in dismissal or a void judgment.⁹⁸ In an effort to distinguish the concepts, section 8.01-258 provides that “[n]o order, judgment, or decree shall be voidable, avoided, or subject to collateral attack solely on the ground that there was improper venue. . . .”

92. VA. CODE ANN. § 8.01-249.1. (Repl. Vol. 1977). The passage of this section was foreshadowed by *Caudill v. Wise Rambler, Inc.*, 210 Va. 11, 168 S.E.2d 257 (1969). See also *Stevens v. Abbott, Proctor & Paine*, 288 F. Supp. 836 (E.D. Va. 1968).

93. See H. Doc. 14, *supra* note 1, at 159. The well publicized crisis in the area of professional malpractice insurance may well have provided a strong reason for the defeat of the proposed provision. Its passage could only have increased the number of actions filed and correspondingly prompted a rise in liability insurance rates.

94. VA. CODE ANN. §§ 8.01-250.1., -250.2. (Repl. Vol. 1977). These provisions, modeled after ALA. CODE title 7, § 23(1) (1969) and OHIO REV. CODE ANN. § 2305.131 (1954) (Page), have the effect of overruling *Richmond Redevelopment & Housing Authority v. Laburnum Construction Corp.*, 195 Va. 827, 80 S.E.2d 574 (1954).

95. Compare VA. CODE ANN. § 8-752 (Cum. Supp. 1976), with VA. CODE ANN. § 8-757 (Repl. Vol. 1977).

96. VA. CODE ANN. § 8.01-255 (Repl. Vol. 1977).

97. See, e.g., VA. CODE ANN. § 8.01-179 (Repl. Vol. 1977) pertaining to the motion for judgment to establish real estate boundary lines. This section was derived from VA. CODE ANN. § 8-836 (Repl. Vol. 1957) but the reference to jurisdiction in the old statute was deleted since it apparently meant venue. H. Doc. 14, *supra* note 1, at 126.

98. See *Davis v. Marr*, 200 Va. 479, 106 S.E.2d 722 (1959).

The revisers have noted that the concept of proper venue historically required that the action be tried in the place where the wrongful act allegedly occurred so the jury could decide the case on their personal knowledge of the facts.⁹⁹ Since juries are no longer permitted to decide cases on this basis and service of process is now conceived to operate to give the defendant notice of an action and an opportunity to defend himself, jurisdictional aspects of venue are no longer necessary. As a result, those actions in which "mandatory venue" was formerly applicable have been generally included in section 8.01-261 which is designated "Category A" or "preferred venue."¹⁰⁰ Under sections 8.01-258 and 8.01-264, dismissal is not an available remedy for venue improperly laid, and upon timely objection the remedy is the transfer of the action to a "preferred" forum. If the objection is not properly and timely made, it will be deemed waived.¹⁰¹

For actions to which "preferred venue" does not apply, section 8.01-262 provides a "Category B" or "permissible venue." This statute will apply to the vast majority of civil actions in Virginia. Subsections one through nine listed in the statute are cumulative, and the plaintiff may choose any to which his cause of action is applicable. Section 8.01-262.10 is a provision of last resort. If no other forum, "preferred" or "permissible" is available, the action is allowed in the city or county of plaintiff's residence. This provision insures that the revised venue chapter will not operate in a jurisdictional manner and no action will be dismissed for lack of a proper forum.

In addition to including the city or county of the defendant's residence, it is now possible to bring an action in the city or county of his principal place of employment,¹⁰² or where he regularly does business.¹⁰³ In an attempt to protect the Virginia retailer, section 8.01-262.8 provides that in

99. H. Doc. 14, *supra* note 1, at 167.

100. These actions include: (1) actions to appeal, review or enforce State administrative regulations, (2) actions against officers of the Commonwealth in their official capacities, (3) actions concerning land, (4) actions for writs of mandamus, prohibition or certiorari except those issued by the Virginia Supreme Court, (5) actions on bonds for public contracts, (6) actions to impeach or establish a will, (7) actions to assign or recover dower or curtesy and actions to waive jointure and demand dower, (8) actions on contracts between a transportation district and a component government, (9) attachments, (10) actions to partition personal property and (11) actions to collect state, county or municipal taxes.

101. See VA. CODE ANN. § 8.01-264 (Repl. Vol. 1977) for the proper time and method of registering the objection. If the objection is deemed waived, the venue objection is not subject to collateral attack. Thus a situation similar to that in *Lucas v. Biller*, 204 Va. 309, 130 S.E.2d 582 (1963), should no longer arise.

102. VA. CODE ANN. § 8.01-262.1. (Repl. Vol. 1977). This expands VA. CODE ANN. § 8-38(1) (Repl. Vol. 1957).

103. VA. CODE ANN. § 8.01-262.3. (Repl. Vol. 1977).

actions involving the delivery of goods, "permissible venue" will lie where the goods were received.¹⁰⁴

Certain proceedings were deemed too specialized to be covered by the general venue chapter,¹⁰⁵ and the special statutes dealing with each were preserved. Therefore Chapter 5 of Title 8.01 is not intended to apply to these enumerated actions.¹⁰⁶

If multiple parties are involved, preferred venue will lie whenever any party is entitled to it and if not, venue will not be subject to objection if it is proper as to at least one resident defendant.¹⁰⁷ In all other cases, venue need only be proper as to any party.¹⁰⁸

A forum non conveniens provision has been retained and is a consolidation of earlier provisions.¹⁰⁹ If venue is "preferred" and has been properly laid, the case may be transferred only upon agreement of all parties. If venue is "permissible" and is improperly laid, the court may, on motion of the plaintiff and upon a showing of good cause, retain the case for trial. If proper, but inconvenient venue has been laid, the same statute will allow the court to move the action to a more convenient forum. Good cause is suggested to include the agreement of the parties, or the avoidance of inconvenience to witnesses or parties.¹¹⁰

Mandatory sanctions are imposed when an action is transferred because venue was improperly laid or upon one who makes a frivolous motion to transfer.¹¹¹ Thus, once the court exercises its discretion to transfer, it must

104. It was felt that the place of delivery would be the most convenient for witnesses and the production of tangible evidence of defective delivery, particularly against nonresident middlemen. H. Doc. 14, *supra* note 1, at 177.

105. These include: (1) writs of quo warranto, (2) suspension or disbarment of attorneys, (3) habeas corpus, (4) certain tax proceedings, (5) Juvenile and Domestic Relations District Court proceedings concerning children, (6) domestic relations proceedings, (7) adoptions and (8) injunctions. See VA. CODE ANN. § 8.01-259 (Repl. Vol. 1977).

106. VA. CODE ANN. § 8.01-259 (Repl. Vol. 1977).

107. VA. CODE ANN. § 8.01-263.1. (Repl. Vol. 1977). The prevailing policy is that "Virginia should be more concerned with the convenience of residents than nonresidents, and . . . a plaintiff should not be able to choose a forum less convenient to a resident defendant by joining a nonresident." H. Doc. 14, *supra* note 1, at 178.

108. VA. CODE ANN. § 8.01-263.2. (Repl. Vol. 1977).

109. VA. CODE ANN. § 8.01-265 (Repl. Vol. 1977). This provision readopts section 8-158 which was repealed in 1966.

110. *Id.* See H. Doc. 14, *supra* note 1, at 180.

111. VA. CODE ANN. § 8.01-266 (Repl. Vol. 1977). The court "shall award an amount necessary to compensate a party for such inconvenience, expense, and delay as he may have been caused by the commencement of the suit in a forum to which an objection pursuant to § 8.01-264 is sustained or by the bringing of a frivolous motion to transfer." *Id.*

impose costs.¹¹² Just and reasonable attorney's fees may be awarded in the discretion of the court.

F. CHAPTER 7 — *Civil Actions*

In the formulation of this chapter, much consideration was given to a procedural merger of law and equity by adopting a single form of action. The revisers recognized that forty-five states have adopted the single form¹¹³ but concluded that the present system was firmly established and they were not satisfied that the single form would "(1) better protect the rights of individuals in civil cases to trial by jury; (2) that the principles of stare decisis and equitable relief would be better preserved; or (3) that judicial activism would be discouraged."¹¹⁴ Accordingly, a proposal similar in substance to Fed. R. Civ. P. 2 was not recommended.

Traditional Virginia practice had prohibited the joinder of tort and contract claims,¹¹⁵ and recognizing that this prohibition exalted form over substance and produced multiple litigation with regard to similar facts, such joinder is now permitted provided all claims joined arise out of the same transaction or occurrence.¹¹⁶ It was recognized that formerly, such joinder was allowed in counterclaims against a plaintiff and while the revision does not go as far as FED. R. Civ. P. 18(a), it eases what was formerly a harsh burden on plaintiffs.

Similarly, the restriction that alternative pleading is allowed only in actions arising out of motor vehicle accidents¹¹⁷ has been abolished and it is now possible to plead alternative facts and theories of recovery provided the claim, defense, or demand for relief arises out of the same transaction or occurrence.¹¹⁸ It was recognized that such alternative pleadings may make it appropriate to sever separate issues or claims and provision was made giving the court discretion to do so.¹¹⁹ The legislature was of the opinion that a Rule of Court may be necessary to specify the form of the

112. VA. CODE ANN. § 8.01-267 (Repl. Vol. 1977). Also within the sound discretion of the court is the amount of the costs awarded under section 8.01-266. This somewhat tempers the harsh application of that provision.

113. H. Doc. 14, Appendix III, *supra* note 1, at 30.

114. *Id.*

115. *See, e.g.*, *Standard Products v. Woolridge*, 214 Va. 476, 201 S.E.2d 801 (1974); *Kavanaugh v. Donovan*, 186 Va. 85, 41 S.E.2d 489 (1947).

116. VA. CODE ANN. § 8.01-272 (Repl. Vol. 1977).

117. VA. CODE ANN. § 8-96.1. (Cum. Supp. 1976).

118. VA. CODE ANN. § 8.01-281.A. (Repl. Vol. 1977).

119. VA. CODE ANN. § 8.01-282.B. (Repl. Vol. 1977).

alternative pleadings and also that the section was intended to have no application in class action suits.¹²⁰

The form of a demurrer has been altered. Formerly the specific grounds of a demurrer were not required to be stated unless the court so required or upon motion of a party to the action. Requiring a demurrant to state in writing the specific grounds of demurrer and allowing consideration only of those grounds stated in the demurrer¹²¹ not only codifies current case law,¹²² but it more clearly informs the parties to the action of the nature of the defense.

The use of a motion to strike a defensive pleading is now the proper procedure in equity and at law.¹²³ Older procedure providing that the demurrer was the proper method of testing the sufficiency of a defensive pleading has been abolished, and currently either at law or in equity, the sufficiency of aggressive pleadings is challenged by demurrer, that of defensive pleadings is challenged by motion to strike.¹²⁴

Pleas in abatement and demurrers to the evidence have been abolished.¹²⁵ Defenses formerly asserted by a plea in abatement are now made by a written motion in the nature of a plea in abatement, stating the requested relief and the grounds upon which such relief is to be based.¹²⁶ It has long been the Virginia practice that any matter for which the hazardous demurrer to the evidence¹²⁷ would lie may also be reached by a motion to strike the evidence,¹²⁸ and since the latter has become the more popular form, the demurrer to the evidence has been abolished as obsolete.¹²⁹

Formerly, a plea in abatement would lie for defective, but amendable processes while a motion to quash was proper for invalid, thus nonamendable processes.¹³⁰ Recognizing that only one form of motion is necessary to draw the attention of the court to questions concerning process, and since

120. H. Doc. 14, *supra* note 1, at 191.

121. VA. CODE ANN. § 8.01-273 (Repl. Vol. 1977). The plea in abatement was most frequently used to challenge venue, and since more liberal transfer provisions have been adopted to correspond with the more modern view of venue, the written motion, a more modern form of pleading, has been adopted.

122. *See, e.g.*, Klein v. National Toddler House Corp., 210 Va. 641, 172 S.E.2d 782 (1970); Virginia & S.W. Ry. v. Hollingsworth, 107 Va. 359, 58 S.E. 572 (1907).

123. VA. CODE ANN. § 8.01-274 (Repl. Vol. 1977).

124. VA. CODE ANN. §§ 8.01-273, -274 (Repl. Vol. 1977).

125. VA. CODE ANN. § 8.01-276 (Repl. Vol. 1977).

126. *Id.*

127. *See* VA. CODE ANN. § 8-140 (Repl. Vol. 1957).

128. Green v. Smith, 153 Va. 675, 151 S.E. 282 (1930).

129. VA. CODE ANN. § 8.01-276 (Repl. Vol. 1977).

130. VA. CODE ANN. § 8-118 (Repl. Vol. 1957). *See* H. Doc. 14, *supra* note 1, at 189.

a plea in abatement has been abolished, challenges to process are now properly made by a motion to quash, after which the court, in a proper situation, may either dismiss the action or permit amendment of the process or its return.¹³¹

G. CHAPTER 8 — *Process*

The rules governing service of process in Virginia have not been changed significantly. The changes which have been made should provide for a more uniform, convenient, logical and fair system for serving process. The most important change allows statewide service of process without the previous restrictions based on the venue of the court where the cause of action arose or was brought.¹³²

There are numerous changes in how, where and by whom process shall be served and how such process is to be proved. These alterations are of concern primarily to those individuals who serve process, yet every practitioner should be aware of the new provisions in order to insure that his client is provided with the most effective use of the system.

Sheriffs are now able to serve process in any contiguous city or county as well as in their own bailiwick.¹³³ An uninterested person over 18 years of age may serve process without the necessity of any special procedures. However, sheriffs must still serve original process in divorce and annulment suits.¹³⁴ The return of service by any qualified person constitutes evidence of service, and a sheriff's return is *prima facie* evidence. Virginia's judicially created verity rule has been abolished, and there no longer exists such a thing as conclusive proof of service.¹³⁵

Several changes are directed to the notice element of service of process. Except in divorce and annulment suits, process is served when it is received, even if it has been neither served nor accepted.¹³⁶ When personal service on a person or family member is unavailable, process must be mailed to the person's last known address as well as posted at his abode.¹³⁷

131. VA. CODE ANN. § 8.01-277 (Repl. Vol. 1977).

132. Statewide service of process is authorized by VA. CODE ANN. § 8.01-292 (Repl. Vol. 1977).

133. VA. CODE ANN. § 8.01-295 (Repl. Vol. 1977).

134. VA. CODE ANN. § 8.01-293 (Repl. Vol. 1977).

135. VA. CODE ANN. § 8.01-326 (Repl. Vol. 1977) abolishes the common law verity rule, which stated that an officer's return of service, although false, was conclusive. *See H. Doc. 14, supra* note 1, at 213.

136. VA. CODE ANN. § 8.01-288 (Repl. Vol. 1977) amends VA. CODE ANN. § 8-53 (Repl. Vol. 1957) which provided for such a valid service only on individuals. Now notice of process neither served nor accepted is valid on corporations. H. Doc. 14, *supra* note 1, at 195.

137. VA. CODE ANN. § 8.01-296 (Repl. Vol. 1977) provides an additional means by which a

Procedures for service of process by publication have been revised in order to provide both court clerks and parties a definite time frame for appearance.¹³⁸ When an attorney of record who enters a general appearance is served with process, he must object to such process within five days, or the service is valid.¹³⁹ Several alterations also have been made to simplify procedures for the service of process on corporations,¹⁴⁰ and a revised procedure for service of process on convicts has been adopted.¹⁴¹

The privilege of certain parties from civil arrest has been restated in order to eliminate confusion. With the exception of those persons exempted in the provision, the privilege from service of process for other persons has been left to the common law.¹⁴²

H. CHAPTER 11 — *Juries*

Chapter 11 has undergone few substantive changes. The provisions relating to when a jury may be had in a civil action have been completely rewritten in Title 8.01. The new statute immensely simplifies and clarifies Title 8's provisions¹⁴³ while making only one substantive change in the law.¹⁴⁴ Now the recovery sought must exceed \$100 in order for there to be

person may receive notice of a pending civil action.

138. VA. CODE ANN. § 8.01-317 (Repl. Vol. 1977) provides that the order of publication and the publication itself contain a specific date on or before which the party served is required to appear and defend his interests. This date is to be no sooner than fifty days from the date on which the order of publication is entered.

139. VA. CODE ANN. § 8.01-314 (Repl. Vol. 1977) reverses the procedure by which an attorney of record who makes a general appearance can object to service of process. Under VA. CODE ANN. § 8-69 (Repl. Vol. 1957) an attorney must have been provided with five days notice before the entry of an order directing service on the attorney.

140. VA. CODE ANN. §§ 8.01-299 to -306 (Repl. Vol. 1977) deal with service of process on foreign and domestic corporations; municipal, county and quasi-governmental bodies; partnerships; and unincorporated organizations.

141. VA. CODE ANN. § 8.01-297 (Repl. Vol. 1977) provides for direct service of process on the convict as well as on a guardian ad litem who must be appointed unless the convict is already represented by counsel.

142. VA. CODE ANN. § 8.01-327.2 (Repl. Vol. 1977) lists such privileged persons. The revisers discussed the reasons why such a limited statute of immunity from process was thought desirable in H. Doc. 14, *supra* note 1, at 214-15.

143. VA. CODE ANN. § 8.01-336 (Repl. Vol. 1977) is a combination of VA. CODE ANN. §§ 8-211 to -214 (Repl. Vol. 1957), 8-208.21 (Cum. Supp. 1976) and FED. R. CIV. P. 38(a).

144. The revision was made for the purpose of simplification and clarification. H. Doc. 14, *supra* note 1, at 221. Trial by jury is a matter of right only in those causes where the issue was triable by jury at common law in 1776 when Virginia adopted its first constitution. The General Assembly, in creating new actions or remedies, may decide whether such causes shall be tried by jury. When the legislature fails to indicate how a new action is to be tried, the judiciary must decide to which common law action the new cause is most closely related. Whether or not the new cause of action is entitled to jury determination is controlled by how

a right to a trial by jury.¹⁴⁵

There are relatively minor changes in the procedures for objections to jury list irregularities. Under Title 8.01 such objections may be made with leave of the court even after the jury has been sworn.¹⁴⁶ It is no longer automatically reversible error if a juror should serve twice in a one year period.¹⁴⁷ There are revised procedures concerning the number of jurors necessary in civil cases and the way in which jury strikes are to be made in actions with multiple parties.¹⁴⁸

I. CHAPTER 12 — *Interpleader; Claims Of Third Parties Levied On*

Virginia interpleader practice has been completely revised by Title 8.01 with the view toward creating a simple, modern interpleader practice. Under the new statute, Virginia's equitable interpleader is abolished¹⁴⁹ and the present statutory interpleader is greatly expanded.¹⁵⁰ The technical equitable interpleader is replaced by a statute which retains only the requirement that there be an identity of claims.¹⁵¹ The statute is a combina-

the related common law action could be tried. H. Doc. 14, *supra* note 1, at 220-21.

145. VA. CODE ANN. § 8.01-336.B. (Repl. Vol. 1977). Under VA. CODE ANN. § 8-211 (Repl. Vol. 1957) trial by jury was available where the action was triable and the recovery sought exceeded twenty dollars.

146. VA. CODE ANN. § 8.01-352 (Repl. Vol. 1977).

147. VA. CODE ANN. § 8.01-352.B. (1977). See H. Doc. 14, *supra* note 1, at 228.

148. VA. CODE ANN. § 8.01-359 (Repl. Vol. 1977) calls for a five member jury when the amount involved is less than five thousand dollars instead of the one thousand dollars as found in VA. CODE ANN. § 8-208.28 (Cum. Supp. 1976). Where there are more than two parties in an action, all the plaintiffs share three strikes and the defendants and third party defendants share three strikes from the panel.

149. The Supreme Court of Virginia had ruled in *Runkle v. Runkle*, 112 Va. 788, 72 S.E. 695 (1911) that the old statutory interpleader provisions, VA. CODE ANN. §§ 8-226 to -227 (Repl. Vol. 1957) were supplemental to equitable interpleader. VA. CODE ANN. § 8.01-364 (Repl. Vol. 1977) is intended to abolish equitable interpleader. H. Doc. 14, *supra* note 1, at 236. It is impossible to conceive of a party bringing a motion for equitable interpleader when the much more liberal provisions of VA. CODE ANN. § 8.01-364 (Repl. Vol. 1977) are available.

150. VA. CODE ANN. § 8-226 (Repl. Vol. 1957) provided a statutory interpleader available only to defendants. VA. CODE ANN. § 8-227 (Repl. Vol. 1957) provided a statutory interpleader to test the ownership of distrained or levied upon property. Interpleader provided by VA. CODE ANN. § 8.7-603 (Repl. Vol. 1965) (Uniform Commercial Code interpleader) is unaffected by VA. CODE ANN. § 8.01-364 (Repl. Vol. 1977). H. Doc. 14, *supra* note 1, at 235.

151. Although VA. CODE ANN. § 8.01-364 (Repl. Vol. 1977) is patterned on the federal interpleader statute and rule, the requirement that there be an identity of claims has been retained from the doctrine of equitable interpleader. The claims need not have a common origin and can be founded in different theories of recovery, but the claims must relate to or affect the same property or fund. The question of whether or not the equitable interpleader requirement still exists that the interpleading party have incurred no independent liability to any of the claimants has been left to the discretion of the courts. When the court finds

tion of the federal interpleader rules of FED. R. CIV. P. 22 and 28 U.S.C. § 1335.¹⁵² A plaintiff or defendant who is or may be exposed to multiple liability from or to different parties claiming the same fund property may now, with the leave of court, bring all the claimants into a single action. The court is granted the power to control the controversy by enjoining claimants from bringing claims on the property or fund in other courts of Virginia. The court is also empowered to discharge parties from liability, make its injunctions permanent and issue orders to enforce its judgment. The statute authorizes the interpleading party, either voluntarily or by court order, to pay or tender into court the property claimed and thereupon be discharged from liability.¹⁵³

J. CHAPTER 13 — *Certain Incidents Of Trial*

Several major changes have been made to nonsuit procedures. The new section broadens the application of the nonsuit procedure¹⁵⁴ and, in conjunction with the new statute of limitation provision in Chapter 4 of Title 8.01, makes nonsuiting a cause of action more attractive.¹⁵⁵ Only one nonsuit, however, is allowed as a matter of right. Adverse parties who have filed cross-claims or third-party claims now receive the same protection from an unconsented nonsuit as do parties with counterclaims.¹⁵⁶

There are two other minor changes in Chapter 13. First, juries are expressly forbidden to take pleadings into the jury room but are allowed, with the court's permission, to remove exhibits.¹⁵⁷ Second, the provision allow-

that such independent liability does exist, the court may: dismiss the claim; order severance or separate trials; or require the independent claim to be tried in the interpleader action. H. Doc. 14, *supra* note 1, at 235-36.

152. The substantive difference between federal statutory interpleader (28 U.S.C. § 1335 (1970)) and rule interpleader (FED. R. CIV. P. 22) and Virginia interpleader under VA. CODE ANN. § 8.01-364 (Repl. Vol. 1977) is the retention of the identity of claims requirement in the Virginia statute.

153. VA. CODE ANN. § 8.01-364 (Repl. Vol. 1977). Such a deposit is necessary in order to terminate an existing obligation to pay interest. *See* H. Doc. 14, *supra* note 1, at 237.

154. VA. CODE ANN. § 8.01-380 (Repl. Vol. 1977) expands the procedure, by making it applicable to any cause of action or claim or to any party to the proceeding. H. Doc. 14, *supra* note 1, at 243-44.

155. VA. CODE ANN. § 8.01-229.E.3. (Repl. Vol. 1977) tolls the statute of limitation on a nonsuited cause of action if the action is recommenced within six months of the dismissal by nonsuit.

156. VA. CODE ANN. § 8.01-380 (Repl. Vol. 1977) makes the consent of parties who have filed counterclaims, cross-claims or third party claims necessary before a cause of action may be nonsuited unless those claims can remain pending for independent adjudication by the court. H. Doc. 14, *supra* note 1, at 244.

157. VA. CODE ANN. § 8-221 (Repl. Vol. 1957) permitted juries to take papers in evidence into the jury room. VA. CODE ANN. § 8.01-381 (Repl. Vol. 1977) states that pleadings may not be taken into the jury room but exhibits may taken in, with leave of the court.

ing the verdict to fix the period from which interest will begin on a judgment has been expanded to apply to all actions. Such a determination may be rendered by the court as well as a jury, and the interest so awarded will be considered as a part of the judgment.¹⁵⁸

K. CHAPTER 14 — *Evidence*

The most obvious change in Chapter 14 is the removal of all provisions relating to discovery.¹⁵⁹ The discovery rules are now to be found exclusively in Part 4 of the Rules of Court.

There has been an extensive revision of the provisions governing judicial notice and use of public and business records as evidence.¹⁶⁰ The revised sections facilitate the use of judicial notice and official and business records as evidence. The new provisions require that judicial notice be taken of all law¹⁶¹ including that of Virginia,¹⁶² other states, the United States and other countries. Such notice is also required of all law of political subdivisions and agencies of the above states and countries.¹⁶³ Judicial notice is required of all official publications of states, countries and their political subdivisions.¹⁶⁴ Properly authenticated judicial and official records of other states and countries are to be received as *prima facie* evidence, and Virginia courts are required to give full faith and credit to such records.¹⁶⁵ Properly authenticated copies of official documents and business records are to be given the same status as would be accorded the original.¹⁶⁶ There

158. VA. CODE ANN. § 8.01-382 (Repl. Vol. 1977). See H. Doc. 14, *supra* note 1, at 245.

159. The discovery provisions deleted were VA. CODE ANN. §§ 8-111.1, -301 to -327.2 (Cum. Supp. 1976). See generally W.H. BRYSON, DISCOVERY IN VIRGINIA (forthcoming).

160. The twenty statutes in Title 8 relating to such matters (VA. CODE ANN. §§ 8-263 to -279.2 (Cum. Supp. 1976)) have been reduced to five statutes (VA. CODE ANN. §§ 8.01-386 to -391 (Repl. Vol. 1977)).

161. The term law as used in VA. CODE ANN. § 8.01-386 (Repl. Vol. 1977) encompasses statutes, ordinances, resolutions, judicial decisions and administrative rulings and regulations. H. Doc. 14, *supra* note 1, at 249.

162. VA. CODE ANN. § 8.01-386 (Repl. Vol. 1977). Under VA. CODE ANN. §§ 8-263, -273 (Repl. Vol. 1957) judicial notice was required of laws of other states and countries but the laws of Virginia had to be entered into evidence and proved. H. Doc. 14, *supra* note 1, at 248.

163. VA. CODE ANN. § 8.01-386.B. (Repl. Vol. 1977) provides the procedure by which the court is to become aware of such law.

164. VA. CODE ANN. § 8.01-388 (Repl. Vol. 1977).

165. VA. CODE ANN. § 8.01-389 (Repl. Vol. 1977) gives a broad definition to the term record and specifically includes records of deeds conveying any interest in real property. These records must be authenticated by the clerk of the court and certified by the judge of the jurisdiction where the records are maintained. VA. CODE ANN. § 8.01-390 (Repl. Vol. 1977) gives properly authenticated non-judicial records status as *prima facie* evidence.

166. VA. CODE ANN. § 8.01-391 (Repl. Vol. 1977).

are also several minor changes in the procedure for establishing lost records.¹⁶⁷

There are three major changes in the provisions dealing with witnesses. The introduction of evidentiary material¹⁶⁸ from a party to an action who is incapable of testifying is no longer contingent on the adverse party testifying.¹⁶⁹ In any action where one spouse is permitted to sue the other,¹⁷⁰ the statutory husband-wife communication privilege is abrogated.¹⁷¹ The power to summon witnesses has been extended to include persons acting in a judicial or quasi-judicial capacity.¹⁷² The power to punish as contempt any disobedience of a valid summons is expressly authorized. A prior court order is required to summon certain officials and judges.¹⁷³

Several provisions of Chapter 14 that were applicable only to circuit courts or district courts have been made applicable to all courts.¹⁷⁴ *Nolo contendere* pleas and forfeitures as well as guilty pleas in criminal prosecutions may now be admitted into evidence in a civil action based on the same occurrence.¹⁷⁵

L. CHAPTER 15 — *Payment And Set-Off*

Chapter 15 of Title 8.01 bears little resemblance to its counterpart in

167. VA. CODE ANN. § 8.01-392 (Repl. Vol. 1977) provides for the possibility that court records may be retained on microfilm in the future, and provides for establishing such records should they become lost or unreadable. H. Doc. 14, *supra* note 1, at 250. VA. CODE ANN. § 8.01-394 (Repl. Vol. 1977) abolishes the requirement that a commissioner be appointed to establish lost records. Re-established lost records which are not questioned for twenty years are binding under VA. CODE ANN. § 8.01-395 (Repl. Vol. 1977).

168. VA. CODE ANN. § 8.01-397 (Repl. Vol. 1977) includes entries, memoranda and declarations as the evidentiary material which may be introduced.

169. VA. CODE ANN. § 8.01-397 (Repl. Vol. 1977) clarifies VA. CODE ANN. § 8-286 (Repl. Vol. 1957) to indicate that it is applicable to a person under a disability. H. Doc. 14, *supra* note 1, at 252.

170. The revisers list three such actions: (1) in contract; (2) in tort for damage to the spouse's property; and (3) in a personal injury suit arising out of an automobile accident. H. Doc. 14, *supra* note 1, at 253.

171. VA. CODE ANN. § 8.01-398 (Repl. Vol. 1977).

172. VA. CODE ANN. § 8.01-407 (Repl. Vol. 1977) is intended to delete the summons power of umpires, justices, coroners and surveyors. H. Doc. 14, *supra* note 1, at 257.

173. VA. CODE ANN. § 8.01-407.B. (Repl. Vol. 1977).

174. These provisions are VA. CODE ANN. §§ 8.01-399 (Repl. Vol. 1977) (communications between physicians and patients); 8.01-408 (Repl. Vol. 1977) (recognizance taken upon continuance of case); 8.01-409 (Repl. Vol. 1977) (when court may have process for witness executed by its own officer in another county or city); and 8.01-416 (Repl. Vol. 1977) (affidavit re: damages to motor vehicles).

175. VA. CODE ANN. § 8.01-418 (Repl. Vol. 1977).

Title 8. Most of the provisions have been moved to other titles,¹⁷⁶ incorporated in provisions in other chapters,¹⁷⁷ deleted as obsolete, or are now better governed by the Rules of Court.¹⁷⁸ What remains of the chapter has not been changed in substance.

M. CHAPTER 16 — *Compromises*

There has been an extensive revision of the procedures governing court approval of compromises in suits where one of the parties is under a disability.¹⁷⁹ The phrase "person under a disability" has been adopted throughout Title 8.01 in lieu of such terms as "incompetent", "incapacitated", "insane" and "infant". The phrase includes all persons who, because of some impairment, are unable to protect their legal rights. The right of an infant to attack an order of compromise during the six month period after attaining his majority has been eliminated.¹⁸⁰

N. CHAPTER 17 — *Judgments And Decrees Generally*

The provision that governs the setting aside of judgments has been rewritten in order to clarify the former statute,¹⁸¹ which has created considerable confusion. The new provision closely parallels FED. R. CIV. P. 55 and

176. VA. CODE ANN. §§ 8-239.1 (Repl. Vol. 1957) (counter-claims in proceedings before trial justices) and 8-239.2 (Repl. Vol. 1957) (cross-claims in proceedings before trial justices) have been moved to Title 16.1 (Courts Not of Record). H. Doc. 14, *supra* note 1, at 264.

177. VA. CODE ANN. § 8-244 (Repl. Vol. 1957) (when action deemed brought on counter-claim or cross-claim; statute of limitations; defendant's counsel required for dismissal) has been incorporated in VA. CODE ANN. §§ 8.01-233 and -380 (Repl. Vol. 1977).

178. VA. CODE ANN. §§ 8-239 (Repl. Vol. 1957) (right of set-off recognized; counterclaims and cross-claims in courts of record); 8-240 (Repl. Vol. 1957) (when in action on contract surety may counterclaim on claim of principal against plaintiff); 8-240.1 (Repl. Vol. 1957) (when plaintiff allowed counter set-off; trial of issue); 8-245 (Repl. Vol. 1957) (procedure on defendant's claim; excess); and 8-247 (Repl. Vol. 1957) (effect of chapter on voluntary bonds) have all been deleted.

179. VA. CODE ANN. § 8.01-424 (Repl. Vol. 1977).

180. The revisers believed that infants should be provided no greater protection from compromises entered into while they were minors than other persons whose disability has been removed. Additionally, the proposal section provided for the appointment of a guardian ad litem to represent the interests of all persons under a disability where the court entered an order of compromise. The provision was thought to provide added protection to infants. H. Doc. 14, *supra* note 1, at 267-68. The guardian ad litem requirement was deleted from the Senate Bill and did not become a part of VA. CODE ANN. § 8.01-424 (Repl. Vol. 1977).

181. In *Federal Realty v. Litterio & Co.*, 213 Va. 3, 5, 189 S.E.2d 314, 315 (1972), the Virginia Supreme Court stated that "the full intent and meaning of § 8-348 is not clear." The revisers also pointed to the court's decision and the dissent in *Highway Comm'r v. Easley*, 215 Va. 197, 207 S.E.2d 870 (1974), as further indication of confusion. H. Doc. 14, *supra* note 1, at 270.

60.¹⁸² The procedure by which judgments against joint tortfeasors are discharged has been revised to provide a plaintiff with a better opportunity to collect the full judgment.¹⁸³ A lien for maintenance and support of a spouse or infant child can now arise only after the order adjudicating the obligor delinquent and creating the lien has been docketed, just as other money judgments are docketed.¹⁸⁴

There are also two changes in the time limits provided in Chapter 17. A confessed judgment debtor has twenty-one days in which to move that the judgment be set aside or reduced.¹⁸⁵ A judgment creditor has only thirty days in which to note the payment or satisfaction of a judgment on the judgment docket.¹⁸⁶

O. CHAPTER 18 — *Executions And Other Means Of Recovery*

The only major change in Chapter 18 concerns liens on tangible personal property. A lien will not become valid until the writ of *fi. fa.* has actually been delivered by the levying officer. Under the common law, the writ was binding from the time of its delivery to the officer. The change is intended to protect the bona fide purchaser who buys tangible personal property upon which a lien is in the process of being executed.¹⁸⁷ There are numerous minor changes in the chapter which should be consulted by individuals who are concerned with executions.¹⁸⁸

182. VA. CODE ANN. § 8.01-428 (Repl. Vol. 1977).

183. VA. CODE ANN. § 8.01-443 (Repl. Vol. 1977) provides that there must be satisfaction and acceptance by the plaintiff before a discharge is allowed in an action involving joint tortfeasors.

184. VA. CODE ANN. § 8.01-460 (Repl. Vol. 1977) makes the procedure for creating liens arising out of support and maintenance decrees more like the procedures creating other liens. H. Doc. 14, *supra* note 1, at 283.

185. VA. CODE ANN. § 8.01-433 (Repl. Vol. 1977). Under VA. CODE ANN. § 8-357 (Repl. Vol. 1957) the motion had to be made within ten days.

186. VA. CODE ANN. § 8.01-454 (Repl. Vol. 1977) reduces the ninety day period of VA. CODE ANN. § 8-382 (Repl. Vol. 1957) to thirty days. The fine for failure to note such payment or satisfaction has been increased from a maximum of twenty dollars to a maximum of fifty dollars.

187. The change in VA. CODE ANN. § 8.01-478 (Repl. Vol. 1977) protects a bona fide purchaser from a judgment creditor in the process of executing a lien on the purchased goods. The statute removes the protection which the judgment creditor formerly enjoyed against a debtor who liquidated his assets in anticipation of the execution of liens. VA. CODE ANN. §§ 8.01-481, -483 and -487 (Repl. Vol. 1977) have minor changes to conform with the revision of VA. CODE ANN. § 8.01-478 (Repl. Vol. 1977).

188. The changes are in VA. CODE ANN. §§ 8.01-471 (Repl. Vol. 1977) (when writs of possession in cities, etc., returnable); 8.01-498 (Repl. Vol. 1977) (selling officers and employees not to bid or purchase); 8.01-499 (Repl. Vol. 1977) (officers receiving money to make return thereof and pay net proceeds); 8.01-504 (Repl. Vol. 1977) (penalty for service of such

P. CHAPTER 20 — *Attachments And Bail In Civil Cases*

Only minor changes have been made in Chapter 20. The separate statutes in Chapter 24 of Title 8 dealing with attachments for rent have been deleted, and such attachments are now treated as other debts.¹⁸⁹ Attachments may be issued or executed on Sundays and holidays.¹⁹⁰ The procedure for handling property given as an appeal bond has been revised.¹⁹¹ The distinction between liens on real and personal property has been eliminated.¹⁹² The time period within which a rehearing may be had on a judgment rendered by publications has been reduced from five years to two years.¹⁹³

Q. CHAPTER 21 — *Arbitration And Award*

The only substantive change in this chapter is the requirement that arbitration agreements be in writing.¹⁹⁴

R. CHAPTER 22 — *Receivers, General And Special*

The coverage of the section providing the persons and entities for which a receiver may be appointed has been expanded.¹⁹⁵ The duties of the permanent receiver have also been more clearly stated in order to provide better protection to creditors.¹⁹⁶ The procedures for making claims upon funds paid into the state treasury under a court order have been modified. There is no longer any limit to the amount that may be paid out after a

notice when no judgment exists); 8.01-506 (Repl. Vol. 1977) (proceedings by interrogatories to ascertain the estate of debtor; summons; proviso; objections by judgment debtor); 8.01-511 (Repl. Vol. 1977) (institution of garnishment proceedings); 8.01-514 (Repl. Vol. 1977) (when garnishment summons returnable); 8.01-521 (Repl. Vol. 1977) (judgments as to costs); 8.01-523 (Repl. Vol. 1977) (service upon federal government); and 8.01-527 (Repl. Vol. 1977) (if bond forfeited, when returned; its effect; clerk to endorse time of return).

189. VA. CODE ANN. § 8.01-533 (Repl. Vol. 1977) is now applicable to debts arising from rent. VA. CODE ANN. §§ 8-566 to -568 (Repl. Vol. 1957) have been deleted. See H. Doc. 14, *supra* note 1, at 309.

190. VA. CODE ANN. § 8.01-542 (Repl. Vol. 1977).

191. VA. CODE ANN. § 8.01-555 (Repl. Vol. 1977).

192. VA. CODE ANN. § 8.01-557 (Repl. Vol. 1977).

193. VA. CODE ANN. § 8.01-575 (Repl. Vol. 1977).

194. VA. CODE ANN. § 8.01-577 (Repl. Vol. 1977).

195. VA. CODE ANN. § 8.01-595 (Repl. Vol. 1977) expands the provision for the appointment of receivers to include "any other legal or commercial entity" in addition to the "person, firm, corporation" definition found in VA. CODE ANN. § 8-739 (Repl. Vol. 1957).

196. VA. CODE ANN. § 8.01-595 (Repl. Vol. 1977) requires the permanent receiver to prepare and distribute a creditor list if this procedure has not been completed by the temporary or prior receiver.

successful claim.¹⁹⁷ Appeals from the comptroller's decisions may now be made to any circuit court.¹⁹⁸

S. CHAPTER 23 — *Commissioners In Chancery*

The constitutionally suspect clause that publication is equivalent to personal service has been eliminated from the court-ordered accounting provision. The statute has been revised to permit more definite notice of the accounting to those concerned.¹⁹⁹

T. CHAPTER 24 — *Injunctions*

Two major changes have been made in injunction procedures: (1) Juvenile and Domestic Relations District Courts are now subject to injunctions,²⁰⁰ and (2) a fifteen day time limit has been added to the statute allowing a direct appeal to a single Supreme Court Justice from a circuit court order granting, refusing, dissolving or refusing to enlarge an injunction.²⁰¹

U. CHAPTER 25 — *Extraordinary Writs*

The little-used common law writs of quo warranto and information in the nature of a writ of quo warranto have been abolished and replaced by a statutory writ.²⁰² The procedures for the use of the writ have been completely rewritten. The summons in a writ of quo warranto requires the defendant to appear at a date set forth in the writ, rather than at the next term of court.²⁰³ A copy of the petition must be attached to the writ.²⁰⁴ A special venue statute has been retained for writs of quo warranto.²⁰⁵ A jury is no longer required in proceedings by writ of quo warranto and a jury must be requested.²⁰⁶ Monetary limits on the recovery of attorneys' fees have been replaced by a reasonableness standard.²⁰⁷

197. VA. CODE ANN. § 8.01-605 (Repl. Vol. 1977).

198. *Id.* Under VA. CODE ANN. § 8-749 (Repl. Vol. 1957) such appeals were required to be made to the Circuit Court of the City of Richmond.

199. VA. CODE ANN. § 8.01-611 (Repl. Vol. 1977). See H. Doc. 14, *supra* note 1, at 342.

200. VA. CODE ANN. § 8.01-621 (Repl. Vol. 1977).

201. VA. CODE ANN. § 8.01-626 (Repl. Vol. 1977).

202. VA. CODE ANN. § 8.01-635 (Repl. Vol. 1977).

203. VA. CODE ANN. § 8.01-637 (Repl. Vol. 1977). If service is made by publication, VA. CODE ANN. § 8.01-641 (Repl. Vol. 1977) gives the defendant only thirty days to move for a rehearing on a default judgment.

204. VA. CODE ANN. § 8.01-639 (Repl. Vol. 1977).

205. VA. CODE ANN. § 8.01-638 (Repl. Vol. 1977).

206. VA. CODE ANN. § 8.01-643 (Repl. Vol. 1977).

207. *Id.*

V. CHAPTER 26 — Appeals

There have been few major changes in the appeals procedures. The chapter has, however, been extensively rewritten. A new provision has been added defining terms.²⁰⁸ "Appeal" is now used as a generic term in place of "appeal", "writ of error" and "supersedeas". Similarly, "appeal bond" has been used in place of bonds for costs, suspending and supersedeas. The new appeal bond provision takes the place of several provisions of Title 8 and provides a simplified procedure intended to minimize the expense of appeals and still provide sufficient protection to the party whose judgment the appealing party seeks to have changed.²⁰⁹ The appeal bond statute changes to thirty days the time in which the appealing party must move to have a judgment suspended while the appeal is being prosecuted.²¹⁰ The minimum amount necessary for a judgment to be appealable has been changed from \$300 to \$500 for most cases.²¹¹ An appeal is now available from an interlocutory order granting or denying an injunction as well as from an order dissolving an injunction.²¹²

III. CONCLUSION

The passage of Title 8.01 represents the culmination of an intensive effort by the legislature to revise and modernize the procedural laws of Virginia. A desire to update, reorganize and clarify the Code of Criminal Procedure (Title 19.2) prompted its revision in 1975,²¹³ and similar legislative policies underlie the current revision of the Virginia Code of Civil Procedure.²¹⁴ Toward those ends, a review of the changes that were made indicates the primary contribution of the revision was the organization of previously scattered sections into well-ordered chapters. The substantive changes were in some cases partially influenced by the Federal Rules of Civil Procedure,²¹⁵ but in certain instances the revisers expressly declined

208. VA. CODE ANN. § 8.01-669 (Repl. Vol. 1977).

209. VA. CODE ANN. § 8.01-676 (Repl. Vol. 1977). See H. Doc. 14, *supra* note 1, at 373.

210. VA. CODE ANN. § 8.01-676 (Repl. Vol. 1977) gives the appealing party thirty days to seek the suspension, but a judgment creditor can get execution of a judgment after twenty-one days and even earlier with approval of the trial court. The appealing party would therefore be prudent in seeking a suspension order as soon as practical. H. Doc. 14, *supra* note 1, at 373.

211. VA. CODE ANN. § 8.01-672 (Repl. Vol. 1977).

212. VA. CODE ANN. § 8.01-670 (Repl. Vol. 1977).

213. See 10 U. RICH. L. REV. 133, 149 (1975) for a survey of the changes and modifications that were made in the Code of Criminal Procedure.

214. These policies are best articulated in the preamble to the engrossed Senate Bill No. 565 (1977): "A bill to revise, rearrange, amend and recodify the general laws of Virginia relating to civil remedies and procedure. . . ." (Emphasis added).

215. H. Doc. 14, Appendix I(a), *supra* note 1, at 24.

to recommend the adoption of the federal practice. Obsolete practices were deleted, statutes more logically included in other titles of the Code were transferred to those titles, and many provisions were modified in order to grant increased discretion to the courts.

It appears contradictory to state that Title 8.01 represents an extensive and comprehensive revision to the Virginia Code of Civil Procedure but that the practitioner will find very few great changes. This, however, is an accurate statement. The most laudable aspect of the revision is the fact that in modern Virginia history such a comprehensive revision is unprecedented. The organization is excellent, the changes are in concert with modern practice and the practitioner will most likely find little difficulty in adapting to those changes.

Scott D. Anderson
Theodore I. Brenner

