

November 1953

Masthead Volume 55, Issue 3

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>

Recommended Citation

Masthead Volume 55, Issue 3, 55 W. Va. L. Rev. (1953).

Available at: <https://researchrepository.wvu.edu/wvlr/vol55/iss3/1>

This Prefatory Matter is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.

West Virginia Law Review

Published by the College of Law of West Virginia University. Official
publication of The West Virginia Bar Association.

STUDENT BOARD OF EDITORS

Willis Owen Shay, *Editor in Chief*
Lee Allen Strimbeck, *Associate Editor*

Jackson Lawler Anderson
Boyce Albert Griffith
John Marshall Holcomb
Robert Alan Klayman

Isaac Murray Lewis
George Maywood Scott
Giles D. H. Snyder
Carl Frederick Stucky, Jr.

Marlyn E. Lugar, *Faculty Editor in Charge*
Louise Farrell Conaway, *Business Manager*

STUDENT NOTES

INJUNCTIONS AGAINST TRESPASSES WHERE TITLE IS IN DISPUTE.—
There are many cases involving the question of whether equity has "jurisdiction" to enjoin a trespass when the title to the property is in dispute. It seems that it is not really a question of power, but rather a question of whether the court will choose to exercise its power or leave the question of title to the law court. Yet, the West Virginia court continues to speak of lack of jurisdiction, in the sense of power, rather than refusal to exercise jurisdiction where the title is in dispute.

There has been a recent tendency for the courts of equity to be more lenient with regard to granting injunctions against trespasses. However, the old rule that equity will not settle a title dispute still persists.

The early cases in this jurisdiction were very strict in laying down the rule that the plaintiff's title had to be either free from dispute or have been settled by an ejectment action to obtain injunctions against trespasses.¹

The next question that arose was whether the plaintiff could get a temporary injunction to restrain the trespass if he had an action pending at law, or was immediately going to bring such action, to settle the title question. The early cases held that even in such cases, in order to be granted the injunction, the plaintiff had to show irreparable injury, or that the defendant was insolvent so that the legal remedy would be worthless. It was held that the

¹ *McMillan v. Ferrell*, 7 W. Va. 223 (1874).