

February 1939

## Masthead Volume 45, Issue 2

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### Recommended Citation

*Masthead Volume 45, Issue 2*, 45 W. Va. L. Rev. (1939).

Available at: <https://researchrepository.wvu.edu/wvlr/vol45/iss2/1>

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# West Virginia Law Quarterly

## and The Bar

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Published by the Faculty of the College of Law of West Virginia University, and issued in December, February, April and June of each academic year. Official publication of The West Virginia Bar Association.

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Subscription price to individuals, not members of The West Virginia Bar Association, \$2.00 per year. To those who are members of the Association the price is \$1.00 per year and is included in their annual dues. Single copies, 50 cents.

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### STUDENT NOTES

#### THE DOCTRINE OF WEIGHING EQUITIES IN WEST VIRGINIA

Despite the influence of the salutary doctrine of *stare decisis*, courts of equity still retain their flexibility to grant or deny relief as a matter of "judicial discretion".<sup>1</sup> Though perhaps as comprehensive as the term "discretion" itself, the doctrine of "weighing the equities"<sup>2</sup> is considered as only one of the principles developed to guide the courts in administering equitable relief. The application of the doctrine has been much discussed.<sup>3</sup> That it should

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<sup>1</sup> Brokaw v. Carson, 74 W. Va. 340, 81 S. E. 1133 (1914); State v. Baker, 112 W. Va. 263, 164 S. E. 154 (1932); Ritter v. Ulman, 78 Fed. 222 (C. C. A. 4th, 1897); McCLINTOCK, EQUITY (1936) § 21; McClintock, *Discretion To Deny Injunction Against Trusspass and Nuisance* (1928) 12 MINN. L. REV. 565; Notes (1929) 61 A. L. R. 924, 926; (1911) 31 L. R. A. (N. S.) 881.

<sup>2</sup> The term, for purposes of this note, is taken in its broadest meaning, including within its scope such other terms as "balance of injury", "comparative hardship", "balance of convenience", and "balance of equity".

<sup>3</sup> LAWRENCE, EQUITY JURISPRUDENCE (1929) § 863; Slaymaker, *The Rule of Comparative Injury in the Law of Injunction* (1905) 60 CENT. L. J. 23; Chafee, *Progress of the Law — Equitable Relief Against Torts* (1920) 34 HARV. L. REV. 388, 392-394.