WEST VIRGINIA CODE CHAPTER 56 ARTICLE 4

§56-4-1. Rule days.

In the clerk's office of every circuit court, rules shall be held on the first Monday of every month, whether the court be in session or not, except that when a term of the circuit court commences on the first Monday in a month, or on either of the two following days, or on the preceding Tuesday, Wednesday, Thursday, Friday or Saturday, the rules which otherwise would have been held for such month on the first Monday shall be held on the last Monday in the next preceding month. The rules shall continue for three days, unless such continuance will interfere with the term of the court for which the rules are held, in which case they shall not continue beyond the day preceding the commencement of the term of such court. But if any Monday which is a rule day shall also be a holiday, then rules shall be held on the following Tuesday regardless of the fact that the latter day may be the first day of a term of court.

§56-4-2. Rule docket.

There shall be a docket of the cases at rules wherein the rules shall be entered; and the books in which rules and orders are entered in chancery cases shall be separate from those in which rules and orders are entered in other cases.

§56-4-3. Rule entries.

Where rules are held on the last Monday in a month, as provided in section one of this article, they shall be entered in the rule docket and indorsed on the declaration or bill as if taken on the first Monday in the month to which they relate.

§56-4-4. Continuance at rules in absence of clerk.

When there is no clerk to take a rule in a case, it shall stand continued until the next rule day after there is a clerk.

§56-4-5. What rules may require.

The rules may be to declare, plead, reply, rejoin, or for other proceedings; they shall be given from month to month.

§56-4-6. Time for appearance; rule to file declaration; nonsuit for nonprosecution; damages.

A defendant may appear at the rule day at which the process against him is returnable, or, if it be returnable in term, at the first rule day after the return day, and, if the declaration or bill be not then filed, may give a rule for the plaintiff to file the same. If the plaintiff fail to do this at the succeeding rule day, or shall, at any time after the defendant's appearance, fail to prosecute his suit, he shall be nonsuited and pay to the defendant, besides his costs, $5.

§56-4-7. Dismissal for failure to file declaration or bill.

If three rules elapse after the rules at which the process is returned executed as to any one or more of the defendants, without the declaration or bill being filed, the clerk shall enter the suit dismissed, although none of the defendants have appeared.

§56-4-8. Return to show defendant's nonresidence; abatement as to nonresident not served.

When a summons to a party to answer an action or bill is received by an officer who knows that such party is not a resident of his county, or not a resident of the state, he shall, unless he find him in his county on or before the return day, make a return that he is a nonresident of the county and/or state as the case may be; whereupon, if the court from which such process issued have jurisdiction of the case only on the ground of such defendant's residence in such county, the action or suit shall abate as to him and if he be returned a nonresident of the state, and the court have jurisdiction of the case only on the ground that the cause of action arose in the county, the action of suit shall abate as to him

§56-4-9. Minors may sue by next friend or guardian; substitution of plaintiffs.

Any minor entitled to sue may do so by his next friend or guardian. When the action or suit is brought by his next friend, the court may, for good cause, substitute the guardian in lieu of the next friend, or any other person as the next friend.

§56-4-10. Guardian ad litem.

The proceedings in a suit wherein an infant or insane person is a party shall not be stayed because of such infancy or insanity, but the court in which the suit is pending, or the judge thereof in vacation, or the clerk thereof at rules, shall appoint some discreet and competent attorney-at-law as guardian ad litem to such infant or insane defendant, whether such defendant shall have been served with process or not, and after such appointment no process need be served on such infant or insane person. If no such attorney be found willing to act, the court, or the judge thereof in vacation, may compel him to act, or appoint some other discreet and proper person in his stead; but the attorney or other person so appointed shall not be liable for costs. Every guardian ad litem shall faithfully represent the interest or estate of the infant or insane person for whom he is appointed, and it shall be the duty of the court to see that the estate of such defendant is so represented and protected. And the court, or the judge thereof in vacation, whenever of opinion that the interest of an infant or insane person requires it, shall remove any guardian ad litem and appoint another in his stead. When, in any case, the court or judge is satisfied that the guardian ad litem has rendered substantial service to the estate of an infant or insane defendant, it may allow him reasonable compensation therefor, and his actual expenses, if any, to be paid out of the estate of such defendant.

§56-4-11. Transfer of cases from law to equity and vice versa.

No case shall be dismissed simply because it was brought on the wrong side of the court, but whenever it shall appear that a plaintiff has proceeded at law when he should have proceeded in equity, or in equity when he should have proceeded at law, the court shall direct a transfer to the proper forum, and shall order such change in, or amendment of, the pleadings as may be necessary to conform them to the proper practice; and, without such direction, any party to the suit shall have the right, at any stage of the cause, to amend his pleadings so as to obviate the objection that his suit or action was not brought on the right side of the court. After such amendment has been made, the case shall be placed by the clerk on the proper docket of the court and proceed and be determined upon such amended pleadings. The defendant shall be allowed a reasonable time after such transfer in which to prepare the case for trial.

§56-4-12. Abatement for want of form in declaration.

No action shall abate for want of form, where the declaration sets forth sufficient matter of substance for the court to proceed upon the merits of the case.

§56-4-13. Unnecessary averments in trespass on the case.

In actions of trespass on the case, where the action of trespass would formerly have been proper, general averments that the defendant committed other wrongs, and that the acts charged were done with force and arms against the peace, may be omitted; and the plaintiff may prove all that he could have proved if such averments had been inserted in the declaration.

§56-4-14. Allegations of place where contract was made or act done.

It shall not be necessary in any declaration or other pleading to set forth the place in which any contract was made, or act done, unless when, from the nature of the case, the place is material or traversable, and then the allegation may be, as to a deed, note or other writing bearing date at any place, that it was made at such place, or as to any other act, according to the fact, without averring or suggesting that it was at or in the county in which the action is brought, unless it was in fact therein.

§56-4-15. Averments as to jurisdiction; profert; oyer.

It shall not be necessary in any action to aver that the cause of action arose, or that the matter is, within the jurisdiction of the court, or to make profert of any deed, letters testamentary, or commission of administration; but any party may have oyer in like manner as if profert were made.

§56-4-16. Allegations not traversable nor requiring proof.

All allegations which are not traversable, and which the party could not be required to prove, may be omitted, unless they are required for the right understanding of allegations that are material.

§56-4-17. Form of declaration or count on insurance policy.

A declaration or count on a policy of insurance, whether the policy be under seal or not, may be in effect as follows:

A ..... B .....complains of

C ..... D ....., who has been summoned to answer this: For that the defendant, by virtue of the policy of insurance herewith filed (or a copy of which is herewith filed), owes (here state the amount claimed under the policy) to the plaintiff for loss in respect to the property (or subject) insured by said policy, caused by (here insert the cause of loss in general terms, for example: By fire, by the damages of navigation, or otherwise, according to the fact) on or about the ..... day of ....., in the year ....., at (or near to) ....., (stating the place at or near to which the loss occurred).

If the declaration or count be on a life policy, then it shall be sufficient to follow the above form in effect down to and including the word, "plaintiff" and add thereto in effect as follows:

Because of the death of E.F., whose life was insured by said policy, and who died on or about the ..... day of ....., in the year ....., at (or near to, stating the place where his death occurred) .....; or, if the fact be so, the plaintiff may state in the declaration or count that the time or place where the loss or death occurred is unknown to him giving in general terms such information as may be in his power in respect thereto. Nothing contained in this section shall render insufficient in law any declaration or count which would be sufficient if this section had not been passed.

§56-4-18. Filing account in assumpsit.

In every action of assumpsit the plaintiff shall file with his declaration an account stating distinctly the several items of his claim, unless it be plainly described in the declaration, and if he fail to do so, he shall not be permitted on the trial of the case to prove any item not stated in such account.

§56-4-19. Statement of particulars of claim.

In any action or motion, if good cause therefor be shown or appear, the court or judge in vacation may order the plaintiff to file a more particular statement, in his respect, of the nature of his claim, or the facts expected to be proved at the trial, and may stay the action until a reasonable time after such order is complied with; and such statement must be made under the oath of the plaintiff, or some other credible person, to the effect that the affiant believes the same will be supported by evidence at the trial. But no such order shall be made if it appear that there has been unreasonable delay on the part of the defendant in applying therefor.

§56-4-20. Statement of particulars of defense.

In like manner, if good cause therefor appear, and there be no unreasonable delay on the part of the plaintiff in applying for such order, the court or judge in vacation may order the defendant to file a more particular statement, in any respect, of the nature of his defense, or the facts expected to be proved at the trial, which statement shall be under the oath of the defendant, or some other credible person, to the effect that the affiant believes the same will be supported by evidence at the trial.

§56-4-21. Plea in action on insurance policy; statement specifying particular defense.

To any declaration or county on a policy of insurance, whether the same be in the form prescribed by section seventeen of this article or not, and whether the action be covenant, debt or assumpsit, the defendant may plead that he is not liable to the plaintiff as in said declaration is alleged. But if in any action on a policy of insurance, the defense be that the action cannot be maintained because of the failure to perform or comply with, or violation of, any clause, condition or warranty in, upon or annexed to the policy or contained in or upon any paper which is made by reference a part of the policy, the defendant must file a statement in writing specifying by reference thereto, or otherwise, the particular clause, condition or warranty in respect to which such failure or violation is claimed to have occurred, and such statement must be verified by the oath of the defendant, or some other credible person, to the effect that the affiant believes the matter of defense therein stated will be supported by evidence at the trial.

§56-4-22. Same -- Joinder in issue; statement specifying matter in waiver, estoppel or confession and avoidance.

Upon the plea mentioned in the next preceding section, the plaintiff may join issue without other pleading. But if the plaintiff intends to rely upon any matter in waiver, estoppel, or in confession and avoidance of any matter which may have been stated by the defendant as aforesaid, the plaintiff must file a statement in writing, specifying in general terms the matter on which he intends so to rely; and such statement must be verified by the oath of the plaintiff, or some other credible person, to the effect that the affiant believes the matter of reply therein stated will be supported by evidence at the trial.

§56-4-23. Failure to file statement; insufficient statement; amendment; exclusion of evidence of party in default; sufficiency of statement.

If either party to such action or motion fail to file any statement required of him by the four preceding sections of this article, or by the other party pursuant to any of the provisions of the said sections, or if the statement be adjudged insufficient in whole or in part, the court, as justice may require, may grant further time for filing the same, or permit the statement filed to be amended, or may, at the trial, exclude the evidence offered by the party in default as to any matter which he has so failed to state or has insufficiently stated, and which is not described in the notice, declaration or other pleading of such party so plainly as to give the adverse party notice of its character. But no statement which, in the particulars required by or under the said sections to be stated or referred to therein, is sufficient to notify the adverse party, in effect, of the nature of the claim or defense intended to be set up against him shall be adjudged insufficient.

§56-4-24. Right to amend in general.

The plaintiff may of right amend his declaration or bill at any time before the appearance of the defendant; and, notwithstanding such appearance, in any action, suit, motion or other proceeding, the court, if in its opinion substantial justice will be promoted thereby, may, at any time before final judgment or decree, and upon such terms as it may deem just, permit any pleading to be amended, or material supplemental matter to be set forth in amended or supplemental pleadings, introducing a necessary party, discontinuing as to a party, eliminating from a multifarious bill all but one of the equitable causes of action alleged, or changing the form but not the cause of action, except that no proceeding by motion shall be converted by amendment into a formal action at law, or vice versa, and the court may allow any other amendment in matter of form or substance in any process which is not void, pleading or proceeding, which may enable the plaintiff to sustain the action, suit, motion or proceeding for the cause for which it was intended to be brought, or enable the defendant to make full and complete defense.

§56-4-25. Amended declaration or bill, supplemental bill or bill of revivor in vacation.

The plaintiff may also, at any time before or after the appearance of the defendant, in vacation of the court wherein the action or suit is pending, file in the clerk's office an amended declaration or bill, supplemental bill or bill of revivor in such suit; whereupon the clerk shall issue a summons against the defendant, requiring him to plead to or answer such amended declaration or bill. But if the court shall be of the opinion that the same was improperly filed, it shall dismiss such declaration or bill at the cost of the plaintiff.

§56-4-26. Amendment after demurrer is sustained.

If a demurrer be sustained to a declaration or bill, the plaintiff, upon giving notice to the defendant or defendants who have appeared or to their counsel, may file an amended declaration or bill at any time within the term at which the demurrer was sustained; and thereupon the cause shall proceed as if such amended pleading had been filed at the time when the original declaration or bill was filed; but the court shall allow the defendant a reasonable time to plead to or answer such amended declaration or bill. The plaintiff may, if he so elect, have the cause remanded to rules for amendment.

§56-4-27. Amendment to cure variance between pleading and proof.

If at the trial of any action or motion, there appears to be a variance between the evidence and allegations or recitals, the court, if in its opinion substantial justice will be promoted thereby, may allow the pleadings to be amended to conform to the proof.

§56-4-28. Continuance and costs after amendment.

If substantial amendment of any pleading is made, the court shall enter such order as to continuance as shall seem fair and just. But the trial of an action at law shall not be continued to another term because of the filing of an amended declaration, or because of an amendment made for the purpose of curing a variance between pleading and proof, unless the defendant shall satisfy the court by affidavit or otherwise that because of such amendment he cannot safely proceed with the trial without such continuance. Every continuance to a subsequent term granted because of an amendment of a pleading shall be at the costs of the party making the amendment.

§56-4-29. Plea in abatement -- Misnomer; amendment inserting correct name.

No plea in abatement for a misnomer shall be allowed in any action; but in a case wherein, but for this section, a misnomer would have been pleadable in abatement, the declaration and summons may, on the motion of either party, and on affidavit of the correct name, be amended by inserting the correct name.

§56-4-30. Same -- Plea in abatement for defects in writ or return; variance from declaration; void process.

In other cases, a defendant on whom process summoning him to answer in any suit or action appears to have been served shall not take advantage of any defect in the writ or return, or any variance in the writ from the declaration, unless such defect or such variance be pleaded in abatement. And in the case of every such defect or such variance, whether the same shall be pleaded in abatement or not, the court may at any time permit the plaintiff to amend the writ or the declaration so as to perfect the writ or correct the variance, and may permit the return to be amended, upon such terms as to it shall seem just. But nothing herein shall deprive a defendant of any right which he has by the common law to make a motion to quash process which is void; and if the process be a void process, the suit or action shall be dismissed upon motion of the defendant.

§56-4-31. Same -- Plea in abatement for want of jurisdiction.

Where the declaration or bill shows on its face proper matter for the jurisdiction of the court, no exception for want of such jurisdiction shall be allowed unless it be taken by plea in abatement.

§56-4-32. Same -- Verification of plea in abatement and of non est factum; may be pleaded and verified by attorney or agent of defendant.

No plea in abatement or plea of non est factum shall be received unless it be verified by affidavit. And in all cases, including those wherein the defendant is a corporation, the plea in abatement may be pleaded and verified by the attorney or agent of the defendant.

§56-4-33. Same -- Time for filing plea in abatement.

No plea in abatement shall be received after the defendant has demurred, pleaded in bar, or answered to the declaration or bill, or later than the next succeeding rules after the rules at which a rule to plead or a conditional judgment or decree nisi is entered.

§56-4-34. Misjoinder and nonjoinder of parties.

No action or suit shall abate or be defeated by the misjoinder or nonjoinder of parties, plaintiff or defendant. Whenever such misjoinder shall be made to appear by affidavit or otherwise, the parties misjoined shall be dropped by order of the court, entered of its own accord or upon motion, at any stage of the cause. Whenever in any case full justice cannot be done and a complete and final determination of the controversy cannot be had without the presence of other parties, and such nonjoinder shall be made to appear by affidavit or otherwise at any time before final judgment or decree, the court of its own accord, or upon motion, may cause such omitted persons to be made parties to the action or suit, as plaintiffs or defendants, by proper amendment and process, at any stage of the cause, as the ends of justice may require, and upon such terms as may appear to the court to be just; but no new party shall be added upon motion unless the place of his residence, if known, be stated with convenient certainty in the affidavit of the party questioning his nonjoinder, and, if his place of residence be not known, unless such fact be stated.

§56-4-35. Verdict and judgment as to particular defendants; costs.

If, in an action at law, to which one or more parties defendant have been added under the provisions of the preceding section, it shall appear by the subsequent pleadings, or at the trial thereof, that any of the defendants are liable, but that one or more of the persons so added are not liable, the plaintiff shall be entitled to judgment, or to verdict and judgment, as the case may be, against the defendants who are liable, and such as are not liable shall have judgment and recover costs as against the plaintiff, who shall be allowed that part of the costs pertaining to added defendants not liable, as costs against the defendants who caused them to be made parties.

§56-4-36. Scope of demurrer; objections to filing of pleadings for insufficiency abolished; form, grounds and argument.

The sufficiency of any pleading, in law or equity, may be tested by a demurrer. Objections to the filing of any pleading, because of insufficiency, are abolished. The form of a demurrer shall be: The defendant (or plaintiff) says that the declaration (or other pleading) is not sufficient in law, for the following reason (or reasons): All demurrers in civil cases shall be in writing and shall state specifically the grounds of demurrer relied on, and no grounds shall be considered other than those so stated, except by the court of its own accord, but the demurrant may, by leave of the court, amend his demurrer by stating additional grounds, or otherwise, at any time before the trial at law or final hearing in equity. When a party demurs to any pleading, the demurrer shall at once be set for argument.

§56-4-37. Defects disregarded on demurrer.

On a demurrer (unless it be to a plea in abatement), the court shall not regard any defect or imperfection in the declaration or other pleading, whether it has heretofore been deemed mispleading or insufficient pleading or not, unless there be omitted something so essential to the action or defense that judgment, according to law and the very right of the cause, cannot be given. No demurrer shall be sustained because of the omission in any pleading of the words, "this he is ready to verify," or "this he is ready to verify by the record," or "as appears by the record"; but the opposite party may be excused from replying, demurring or otherwise answering to any pleading, which ought to have, but has not, such words therein, until they be inserted.

§56-4-38. Pleading in abatement and in bar at same time; trial of issues.

The defendant may plead in abatement and in bar at the same time, but the issue on the plea in abatement shall be first tried, and if such issue be found against the defendant, he may, nevertheless, make any other defense he may have to the action.

§56-4-39. Pleading several defenses; demurrer and special replications to special plea.

The defendant in any action or suit may plead as many several matters, whether of law or fact, as he shall think necessary, except that if he plead the plea of non est factum he shall not, without leave of the court, be permitted to plead any other plea inconsistent therewith. To any special plea pleaded by a defendant, the plaintiff may demur and in addition plead as many special replications as he may deem necessary.

§56-4-40. Commencement of plea.

No formal defense shall be required in a plea. It may commence as follows:"The defendant says that."

§56-4-41. Unnecessary allegations in pleas, etc.

In a plea, replication or subsequent pleading, intended to be pleaded in bar or in maintenance of the action, it shall not be necessary to use any allegation of "actionem non" or "precludi non," or to the like effect, or any prayer of judgment.

§56-4-42. Omission of protestation.

No party shall be prejudiced by omitting a protestation in any pleading.

§56-4-43. Conclusion of traverse.

All special traverses or traverses with an inducement of affirmative matter shall conclude to the country. But this regulation shall not preclude the opposite party from pleading over to the inducement when the traverse is immaterial.

§56-4-44. When parties may proceed without similiter or joinder in demurrer.

When any party takes issue on another party's pleading, or traverses the same, or demurs, so that such other party is not let in to allege any new matter, no similiter or joinder in demurrer shall be necessary, but either party may proceed as if there were a similiter or joinder in demurrer.

§56-4-45. Unnecessary allegations in second or other plea.

It shall not be necessary to state in a second or other plea that it is pleaded by leave of the court, or according to the form of the statute, or to that effect.

§56-4-46. Pleading denying execution of writing or entry or genuineness of judgment or decree.

Where a declaration or other pleading alleges that any person made, indorsed, assigned or accepted any writing, it shall not be necessary to prove such fact unless the pleading which puts the matter in issue be verified, or there be an affidavit filed therewith denying such fact.

In any action, suit or proceeding upon, or to enforce, or in which is set off, a judgment or decree, foreign or domestic, wherein the recovery of such judgment or decree is alleged in any pleading, it shall not be necessary to prove the entry or genuineness of such judgment or decree, unless the pleading which puts the matter in issue be verified, or there be an affidavit filed therewith denying such entry or genuineness.

§56-4-47. Plea denying partnership; form of denial of corporate existence.

Where plaintiffs or defendants sue or are sued as partners, and their names are set forth in the declaration or bill, or where a plaintiff or defendant sues or is sued as a corporation, it shall not be necessary to prove the fact of such partnership or the existence of such corporation, unless the pleading which puts the matter in issue be verified, or there be an affidavit filed therewith denying such partnership or the existence of such corporation. A plea putting in issue the existence of a corporation shall be sufficient if it be in form or effect as follows:

"And the said defendant for plea says that the plaintiff (or defendant, as the case may be) is not a corporation, as in the plaintiff's declaration is alleged."

§56-4-48. Judgment or decree by confession.

In any action or suit instituted by process a defendant may, in the vacation of the court, and whether the action or suit be on the court docket or not, confess a judgment or decree in the clerk's office for so much principal and interest as the plaintiff may be willing to accept a judgment or decree for. The same shall be entered of record by the clerk in the order book, and be as final and as valid as if entered in court on the day of such confession, except merely that the court shall have such control over it as is given by section seventy of this article.

§56-4-49. Failure to plead, answer or demur; rule to plead; conditional judgment or decree nisi; judgment or decree by default; order for inquiry of damages.

If a defendant, who appears, fail to plead, answer or demur to the declaration or bill, a rule may be given him to plead. If he fail to appear at the rule day at which the process against him is returned executed, or when it is returnable to a term, at the first rule day after it is so returned, the plaintiff, if he has filed his declaration or bill, may have a conditional judgment or decree nisi as to such defendant. No service of such decree nisi or conditional judgment shall be necessary. But at the next rule day after the same is entered, if the defendant continue in default, or at the expiration of any rule upon him with which he fails to comply, if the case be in equity, the bill shall be entered as taken for confessed as to him and if it be at law, judgment shall be entered against him with an order for the damages to be inquired into, when such inquiry is proper.

§56-4-50. When inquiry of damages unnecessary.

There need be no such inquiry in any action upon a bond or other writing for the payment of money, which by its terms ascertains the amount to be paid thereunder, or against the drawer or indorsers of a bill of exchange or negotiable note, or in an action or scire facias upon a judgment or recognizance.

§56-4-51. Office judgment; affidavits by plaintiff and defendant; judgment.

Every judgment entered in the clerk's office in a case wherein there is no order for an inquiry of damages, and every nonsuit or dismission entered therein, shall, if not previously set aside, become a final judgment on the last day of the next succeeding term of the court wherein the action is pending. If the action in which such judgment is entered be one for the recovery of money arising out of contract, and the plaintiff has filed with his declaration (which in all such cases he may do) an affidavit of himself or some other credible person stating that there is, as affiant verily believes, due and unpaid from the defendant to the plaintiff upon the demand or demands stated in the declaration, including principal and interest, after deducting all payments, credits and sets-off made by the defendant, or to which he is entitled, a sum certain to be named in the affidavit, no plea shall be filed in the case either at rules or in court, unless the defendant shall file with the plea an affidavit of himself or some other credible person that there is not, as affiant verily believes, any sum due from the defendant to the plaintiff upon the demand or demands stated in plaintiff's declaration; or stating a sum certain, less than that stated in the affidavit filed by the plaintiff, which affiant verily believes is all that is due from the defendant to the plaintiff upon the demand or demands stated in the plaintiff's declaration. If such plea and affidavit be not filed, judgment shall be entered for the plaintiff by the court for the sum stated in his affidavit, with interest thereon from the date of the affidavit until paid. If such plea and affidavit be filed by the defendant and it be admitted in such affidavit that any such sum is due from the defendant to the plaintiff, judgment may be taken by the plaintiff for the sum so admitted to be due, with interest thereon from the date of the affidavit filed by the plaintiff until paid, and the case tried as to the residue. If the plaintiff has not filed such affidavit with his declaration, and the office judgment in the case be not set aside, the judgment shall not be entered by the court until the plaintiff files such affidavit or proves his case in open court, and the judgment in either case shall be entered as heretofore provided for. If the case be one arising out of contract in which there is an order for an inquiry of damages, and the plaintiff has filed with his declaration the affidavit hereinbefore mentioned, no plea shall be filed in the case, either at rules or in court, unless the defendant shall file therewith the affidavit hereinbefore required to set aside an office judgment in which no order for an inquiry of damages had been made. When a jury is impaneled to execute an order for an inquiry of damages, their oath shall be that they will well and truly find the amount, if any, which the plaintiff is entitled to recover in the action, and a true verdict render according to the evidence. And the affidavit of the the plaintiff hereinbefore mentioned shall be legal evidence on such inquiry.

§56-4-52. Setting aside office judgment; trial.

If a defendant against whom a judgment is entered in the office, whether an order for an inquiry of damages has been made therein or not, shall, before the end of the term at which it becomes final, appear and plead to issue, and shall, in the cases mentioned in the next preceding section in which an affidavit is required, file such affidavit with his plea, the judgment shall be set aside; but if the judgment has been entered up in court or the order for an inquiry of damages has been executed, it shall not be set aside without good cause be shown therefor. Any such issue may be tried at the same term, unless the defendant show by affidavit, filed with the papers, good cause for a continuance. But the plaintiff shall have the right to cross-examine the defendant upon the matters contained in such affidavit.

§56-4-53. Hearing as to defendants served; discontinuance.

Where, in any action against two or more defendants, the process is served on part of them, the plaintiff may proceed to judgment as to any so served, and either discontinue it as to the others or from time to time, as the process is served as to such others, proceed to judgment as to them until judgment be obtained against all. Such discontinuance of the action as to any defendant not served with process shall not operate as a bar of any subsequent action which may be brought against him for the same cause.

§56-4-54. Form of bill of complaint.

The plaintiff's bill may be in form or in substance as follows:

The bill of complaint of A ..... B .....

(state the names of all the plaintiffs) against C .....

D ..... State the names of all the defendants, if known, and if not, designate them as the "unknown parties," or "unknown heirs," etc., as the case may be,) filed in the circuit court of ..... county. The plaintiff complains and says that (here state all the facts constituting a claim to relief). The said plaintiff therefore prays that (here state the particular relief desired). He also asks such other and general relief as the court may see fit to grant.

A ..... B ....., Plaintiff.

Every person designated in the caption of such bill as the defendant shall be a defendant therein, without a prayer that he be made such, and shall be required to answer the bill in the same manner and to the same extent as if he were therein called upon to do so.

§56-4-55. Jury trial of issue upon plea in equity.

A plaintiff in equity may take issue upon a plea, and either party may have such issue tried by a jury.

§56-4-56. Argument of plea or demurrer in equity; time to answer after demurrer overruled; proceeding on default; status of answer filed in vacation.

A plaintiff in equity may have any plea or demurrer set down to be argued. If the same be overruled, no other plea or demurrer shall afterwards be received, but the defendant shall file his answer, in court, if in session, or, if not in session, in the clerk's office of the court in which the suit is pending, within fifteen days after the overruling of his plea or demurrer, unless, for good cause shown, the time is enlarged by the court, or the judge thereof in vacation; and if he fail to appear and answer the bill within such fifteen days, or additional time, if any such be granted, the plaintiff shall be entitled to a decree against him for the relief prayed for therein, or the plaintiff may proceed against such defendant in the manner prescribed by section sixty-six of this article. Any answer filed in the clerk's office in vacation pursuant to the provisions of this section shall have the same status and effect as if filed in term.

§56-4-57. Time to answer in general.

A defendant may file his answer at any time before final decree, unless required to file it sooner under section fifty-six of this article, or by a proper rule of court under section four, article one, chapter fifty-one of this code, but a cause shall not be sent to rules or continued, because an answer is filed in it, unless good cause therefor be shown by affidavit filed with the papers.

§56-4-58. Claim in answer for affirmative relief; special reply.

A defendant in a suit in equity may, in his answer, allege any new matter constituting a claim for affirmative relief in such suit against the plaintiff or any defendant therein, in the same manner and with like effect as if the same had been alleged in a crossbill filed by him therein; and in such case, if the plaintiff or defendant against whom such relief is claimed desire to controvert the relief prayed for in the answer, he shall file a special reply in writing, denying such allegations of such answer as he does not admit to be true, and stating any facts constituting a defense thereto. But in case a defendant allege new matter in his answer upon which he relies for and prays affirmative relief, such defendant shall not file a crossbill in the same cause except upon condition of striking from his answer all such matter and prayer for affirmative relief as are contained in such crossbill.

§56-4-59. Answer asking affirmative relief equivalent to crossbill.

When a defendant in equity in his answer alleges new matter constituting a claim to affirmative relief, the case shall be decided upon the same principles, and the same relief shall be decreed in the case, as if a crossbill had been filed to obtain such relief.

§56-4-60. Admissions in equity by failure to deny.

Every material allegation of the bill not controverted by an answer, and every material allegation of new matter in the answer constituting a claim for affirmative relief not controverted by a special reply in writing, shall, for the purposes of the suit, be taken as true, and no proof thereof shall be required.

§56-4-61. Proof of allegations denied by answer.

When a defendant in equity shall, in his answer, deny any material allegation of the bill, the effect of such denial shall only be to put the plaintiff on satisfactory proof of the truth of such allegation, and any evidence which satisfies the court or jury of the truth thereof shall be sufficient to establish the same.

§56-4-62. Verification of pleadings in equity.

If the plaintiff desire the defendant to answer the bill on oath, he must verify his bill by affidavit, and if the bill be so verified, the defendant must in like manner verify his answer. But if the bill be not verified, the defendant need not verify his answer, and if he does so it shall not be entitled to any more weight in the cause than if it had not been verified. In case the defendant verify his answer, alleging new matter constituting a claim for affirmative relief, the plaintiff must verify his special reply thereto. A general replication to an answer claiming affirmative relief shall not apply to so much of such answer as states facts constituting a claim to such relief.

§56-4-63. Appearance of corporation by attorney; verification of pleading of corporation.

Any corporation may appear, plead or answer by attorney in any action, suit or proceeding for the same purposes, in the same manner and form and to the same extent and effect as if it were a natural person. Any answer or pleading of a corporation shall be verified in any case in which it would be required to be verified if it were the answer or pleading of a natural person.

§56-4-64. Form of verification of pleading.

The verification of any pleading may be by the pleader or some other credible person. The verification, when by the plaintiff or defendant, may be in form or effect as follows:

State of West Virginia, ... county, to wit:
A..... B....., the plaintiff (or defendant, as the case may be,) named in the foregoing bill (or answer, replication, or plea, as the case may be,) being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and that, so far as they are therein stated to be on information, he believes them to be true.

A ..... B .....,

Plaintiff or defendant.

Taken, sworn to and subscribed before me this ..... day of .....

C ..... D .....,

Clerk (or other officer swearing him)

If the party required to verify a pleading be an administrator or other fiduciary, it shall be sufficient if he swear that he believes the plea or other pleading to be true. A bill of injunction to be sworn to by any person other than the plaintiff, or answer to a bill of injunction to be sworn to by a person other than the defendant making the answer, must be so drawn as to show which of the allegations therein contained are made on information and belief.

The verification, when by a person other than the plaintiff or defendant, shall be in form or effect as follows:

State of West Virginia, ... county, to wit:

A ..... B ..... (a credible person), being duly sworn, says that he has read the foregoing bill (or answer, replication, or plea, as the case may be,) and that he knows the contents thereof; that the facts and allegations therein contained are true, except such as are therein stated upon information and belief, and that as to such allegations he believes them to be true.

A ..... B ..... .

§56-4-65. Exceptions to answers for insufficiency abolished; test by demurrer; amended answer; procedure if amended answer is insufficient.

Exceptions to answers for insufficiency are abolished. The test of sufficiency shall be made by a demurrer; if found insufficient, but amendable, the court may allow amendment on terms. If the amended or second answer is adjudged insufficient, the defendant may be examined upon interrogatories and committed until he answers them, or on motion of the plaintiff the court may strike out the answer and enter a decree for the plaintiff.

§56-4-66. Attachment or order to answer interrogatories.

Although a bill be taken for confessed as to any defendant, the plaintiff may have an attachment against him or an order for him to be brought in to answer interrogatories. No plea or demurrer shall be received after such attachment, unless by order of court, upon motion.

§56-4-67. Insufficient answer after rule.

If a defendant, after process of contempt, put in an answer which is adjudged insufficient, the plaintiff may proceed with the process of contempt, as if no answer had been filed, or, at the option of the plaintiff, if the bill be verified, the court may thereupon render such decree in the case as may be just.

§56-4-68. Setting cause in equity for hearing.

Whenever a suit in equity is matured at rules as to all of the defendants, it shall be the ex officio duty of the clerk, as soon as the same is matured, to set the case for hearing as to them. If the suit be matured as to only a part of the defendants, the plaintiff may appear at rules and have it set for hearing as to such part. If one month elapse after the answer of a defendant is filed, without the case being so set and without a demurrer being filed to his answer, such defendant may appear at rules and have the case set for hearing as to himself

§56-4-69. Hearing as to one defendant; rule to mature cause.

If a suit in equity be set for hearing as to any defendant, it shall be heard as to him unless his interests be so connected with those of other defendants in the suit that it would be improper to decide upon their interests separately. And though there be such connection, a defendant as to whom the case has been set for hearing may have an order upon the plaintiff to use due diligence to mature the cause for hearing as to the other defendants, and, unless it be so matured within such time as the court may deem reasonable, shall be entitled to a hearing or dismission of it as to him

§56-4-70. Control by court over proceedings in office during vacation.

The court shall have control over all proceedings in the office during any preceding vacation. It may reinstate any cause discontinued during such vacation, set aside any of the proceedings or correct any mistake therein, and make such order concerning the same as may be just.

§56-4-71. Pleadings and proof in actions on bonds, notes or other evidences of debt subject to taxation.

In every action at law, proceeding or suit in equity, instituted on and after July 2, 1934, in a court of record in this state, for the collection of any bonds, notes, or other evidences of debt, the plaintiff or claimant shall be required to allege in his pleadings, or to prove by affidavit or otherwise at any time before final judgment or decree is entered:

(1) That such bonds, notes or other evidence of debt have been assessed for taxation for each and every tax year on the first day of which he was the owner of same, not exceeding five years prior to that in which the action, suit or proceeding was instituted and not in any event, for any period beginning earlier than January 1, 1933, or

(2) That such bonds, notes, or other evidence of debt constituted a part of the capital employed in the business of such plaintiff or claimant and were assessed or taxed as such, or otherwise assessed or taxed as prescribed by law, or

(3) That the plaintiff or claimant has not paid, or is unable to pay, the taxes and interest and penalties, if any, on such bonds, notes or other evidences of debt, but is willing for the same to be paid out of his first recovery thereon, or

(4) That such bonds, notes or other evidence of debt sued upon are not taxable under the law in the hands of the plaintiff or claimant, or are otherwise exempt from taxation; and no judgment or decree of a court of record rendered in an action, suit or proceeding instituted on and after the date aforesaid, shall be valid unless the allegation herein required was made, or unless the proof herein required was reduced before final judgment or decree was entered.

When in any such action at law, suit in equity or proceeding, it is ascertained that there are unpaid taxes, including interest and penalties, if any, on the evidence or evidences of debt sought to be enforced, and the plaintiff or claimant makes it appear to the court that he has not paid, or is unable to pay, said taxes, including interest and penalties, if any, but is willing for the same to be paid out of his first recovery thereon, the court may order, as a part of any judgment or decree in said action, suit or proceeding, that the taxes, including interest and penalties, if any, that are due and owing, shall be paid to the proper officer out of the first collection on said judgment or decree.

But the title to real estate heretofore or hereafter sold by virtue of a deed of trust, mortgage or vendor's lien, shall not be drawn in question upon the ground that the holder of the notes or bonds or evidences of debt secured by such deed of trust, mortgage or vendor's lien, did not list the same for taxation; and this section shall not affect in any manner any action, suit or proceeding pending or instituted in any court of this state prior to July 2, 1934.

If any paragraph, sentence, clause or phrase of this section shall for any reason be held invalid, the validity of the remaining phrases, clauses, sentences and paragraphs of this

section shall not be affected thereby.