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Joint Wrongdoing–Distinction Between Join Tortfeasors and Contributors to Injury

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of the next of kin, is an insult to the family right to have its dead rest inviolate. The voucher for the reality of the injury may be found in the mutilation or disturbing of the dead body. Since the injury is in its essence an injury to the family honor or dignity, it would follow that the recovery must depend upon the degree of the relationship.  

—W. F. B.

**Joint Wrongdoers—Distinction Between Joint Tortfeasors and Contributors to Injury.**—The defendant was one of several independent upper riparian owners, refuse from whose mines destroyed the value of plaintiff’s property in such a way that it was very difficult to prove how much of the damage was done by each. Held, the independent owners are not jointly liable, nor is any one of them liable for such damages in their entirety. *Farley v. Crystal Coal & Coke Co.*, 102 S. E. 265 (W. Va. 1920).

The decision in the principal case is supported by the great weight of authority in this country. *Pulaski Anthracite Coal Co. v. Gibboney Sand Bar Co.*, 110 Va. 444, 66 S. E. 73; *Little Schuylkill Navigation, Railroad & Coal Co. v. Richard’s Admr.*, 57 Pa. St. 142. The decisions generally rest on the theory that the wrong done, upon which the right of action arises, is throwing refuse into the stream. This is in every sense a separate wrong, and torts originally several cannot be made joint because their consequences afterwards become blended and united with each other. *Little Schuylkill Navigation, Railroad & Coal Co. v. Richard’s Admr.*, supra; *Swain v. Tennessee Copper Co. et al.*, 111 Tenn. 430, 78 S. W. 93. The chief obstacle in such cases is the practical impossibility of assessing damages with any degree of certainty. In a similar case the Ohio court held that the jury could not reach their verdict by ascertaining the amount of the whole damage, and dividing it by the number contributing thereto. *Upson Coal & Mining Co. v. Williams*, 75 Oh. St. 644, 80 N. E. 1134, 22 L. R. A. N. S. 283n. Most courts hold that the relative proportion of refuse thrown in by each may form some guide, and that a jury in case of such difficulty caused by the defendant himself, should measure the injury with a liberal hand. *Little Schuylkill Navigation, Railroad & Coal Co. v. French*, 81½ Pa. St. 366; *Swain v. Tennessee Copper Co.*, supra. The court in the latter case intimates that in such cases the court would be slow to interfere with damages supposed to be excessive. Such a method of assessing
damages largely does away with the main objection to the principal case, *viz.*, the plaintiff’s difficulty of obtaining adequate relief.

—M. T. V.

**EQUITY—PROCEDURE—DEPOSITIONS IN EQUITY MAY BE TAKEN AFTER CAUSE HAS MATURATED AND IN ADVANCE OF ANSWER.—** In a suit to set aside an alleged sale of some coal properties, an exception was taken to the reading of certain depositions taken on behalf of the plaintiff before the filing of the answers. The ground of such exception was that the depositions were prematurely taken. Held, that there is no merit in this objection. *Tierney v. United Pocahontas Co. et al.*, 102 S. E. 249 (W. Va. 1920).

Under some statutes and in chancery under special circumstances, depositions may be taken *de bene esse* after service of process; and before an answer has been filed; and in special cases before the return of the writ or the appearance of the defendant. *Harding v. American Glucose Co.*, 182 Ill. 551, 55 N. E. 577; *Amory v. Fellowes*, 5 Mass. 219; *Mumford v. Church*, 1 Johns. Cas. 147 (N. Y.); *Southwell v. Limerick*, 9 Mod. 133, 88 Eng. Reprint 360; *Gilpin v. Semple*, 1 Dall. 251 (Pa.). Under the chancery practice as to depositions in chief, and under some statutes, the cause must be at issue before depositions can be taken. This is the strict common-law rule. *Karaway v. Kentucky Ref. Co.*, 163 Fed. 189; *Henderson v. Hall*, 134 Ala. 455, 32 So. 840; *S. C. Hall Lumber Co. v. Gustin*, 54 Mich. 624, 20 N. W. 616; *Gardner v. Roycrofters*, 103 N. Y. Supp. 637; *Barnsley v. Powell*, 3 Atk. 593, 66 Eng. Reprint 1142. In West Virginia there is a rule which prohibits the taking of a deposition to prove a matter before it is pleaded. *Egdell v. Smith*, 50 W. Va. 426, 40 S. E. 402; *Goldsmith v. Goldsmith*, 46 W. Va. 426, 33 S. E. 266. But the West Virginia courts seem to look at the pleading rather than the issue, and say that there is no practice forbidding the plaintiff to support the allegations of his complaint, by proof, even before they are denied. *James v. Piggot*, 70 W. Va. 435, 74 S. E. 667.

—A. W. L.

**INTERSTATE COMMERCE—CONTROL BY STATES—REGULATION OF INTERSTATE TRANSMISSION OF NATURAL GAS AND ELECTRICITY.—** An electric plant generated electricity in Virginia and transmitted the electric current directly to consumers in West Virginia. The West