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January 1921

Interstate Commerce--Control by states--Regulation of Interstate Transmission of Natural Gas and Electricity

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 MATURED 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

Virginia Public Service Commission fixed the rate at which the electricity, while still in the course of interstate transmission, might be sold directly to consumers. Congress had not acted in regard to such commerce. *Held,* that the rate regulation did not violate the interstate commerce clause of the Federal Constitution. *Mill Creek Coal & Coke Co.* v. *Public Service Commission,* 100 S .E. 557 (W. Va. 1919).

For a discussion of this case, see NOTES, p. 180.

MINES AND MINERALS—OIL AND GAS—FORFEITURE OF LEASE FOR BREACH OF COVENANT.—In an oil and gas lease the lessees covenanted to complete a well within sixty days or pay fifteen dollars per month in advance for each month such completion was unavoidably delayed. At the end of sixty days, no well having been started, the lessor served notice that the lease was forfeited for breach of the covenant and sued to cancel it. The lower court found that the lessees had not been unavoidably delayed and canceled the lease. The defendant appealed. *Held,* the judgment should be affirmed. *Waters* v. *Hatfield,* 190 Pac. 599 (Kan. 1920).

For discussion of this case, see NOTES, p. 190.

PROCESS—SERVICE UPON CORPORATIONS—PLACE OF SERVICE.—A return of service of process upon a foreign corporation failed to state that the agent of the corporation served resided in the county in which he was served. *Held,* the service was invalid. *Leiter* v. *American-La France Fire Engine Co.,* 104 S. E. 56 (W. Va. 1920).

For a discussion of this case, see NOTES, p. 186.