

IN THE CIRCUIT COURT OF FAYETTE COUNTY, WEST VIRGINIA

CECIL L. JONES

v

TRESPASS ON THE CASE

RINEHART & DENNIS COMPANY,
INC., A CORPORATION, ET AL

*Filed in my office this the
3d day of Jan 1933*

ON ATTACHMENT AND SUGGESTION

Teste;

Mrs. L. S. Jolly

THE ANSWER OF NEW-KANAWHA POWER COMPANY TO AN ORDER OF
ATTACHMENT AND SUGGESTION.

The New-Kanawha Power Company, a corporation organized and existing under the laws of the State of West Virginia, for answer to an order of attachment and suggestion served upon the Auditor of the State of West Virginia on its behalf says:
That the said New-Kanawha Power Company, garnishee, at the time of the service of the said order of attachment and suggestion upon the Auditor of the State of West Virginia for this garnishee, did not have in its hands or possession any goods, effects or credits of the said defendant, Rinehart & Dennis Company, Incorporated, nor any property belonging to the said defendant, Rinehart & Dennis Company, Incorporated, in its possession or under its control; that since the said order of attachment and suggestion was served upon this garnishee no goods, effects or credits belonging to the defendant, Rinehart & Dennis Company, Incorporated, have come into the hands, possession, or under the control of this garnishee; that this garnishee is not liable or indebted to the said Rinehart & Dennis Company, Incorporated, either now or at the time said order of attachment and suggestion was served, or at any time between said times.

This garnishee respectfully sheweth as follows:

Under date of the 13th day of March, 1930 this garnishee

entered into an agreement in writing with the said Rinehart & Dennis Company, Incorporated, with respect to certain construction work at or near Hawks Nest, West Virginia, and Gauley Junction, West Virginia. The said agreement provided for the payment, under certain circumstances and conditions, by this garnishee of certain percentages of the value of the work under said agreement from time to time estimated to have been performed, upon the certification of estimates thereof by the Engineer of this garnishee and approval of such estimates by this garnishee. All sums of money that have become due to the said Rinehart & Dennis Company, Incorporated, with respect to such estimates so certified by the said Engineer and so approved by this garnishee have been paid by this garnishee to the said Rinehart & Dennis Company, Incorporated, and were so paid prior to the time at which the said order of attachment and suggestion was served upon the Auditor of the State of West Virginia, and no moneys are now due and payable from this garnishee to the said Rinehart & Dennis Company, Incorporated, by reason of any such estimate.

Article XXII of the said agreement provides as follows:

"ARTICLE XXII

"MONEYS MAY BE RETAINED

"The Company may keep any moneys which would otherwise be payable at any time hereunder, and apply the same, or so much as may be necessary therefor, to the payment of any expenses, losses or damages incurred by the Company and determined as herein provided, and may retain, until all claims and liens are settled, so much of such moneys as the Company shall be of opinion will be required to settle all claims and liens against the Company and its officers and agents, specified in Article XIX hereof, and all claims and liens of mechanics, builders, laborers and material men for labor performed or furnished and for materials used or employed in The Work, or the Company may make such settlements and apply thereto any moneys retained under this Agreement.

"If the moneys retained under this Agreement are insufficient to pay the sums found by the Company to be due under the claims and liens for labor and materials as aforesaid, the Company may, at its discretion, pay the same, and the Contractor shall repay to the Company all

consent in writing of the Contractor, use any moneys retained, due or to become due under this Agreement for the purpose of paying for both labor and materials for The Work, for which claims or liens have not been filed.

"The Contractor shall furnish the Company with satisfactory evidence, when called for, that all claims for damages of any kind and for all sums due for labor performed or materials used or employed in The Work have been fully paid."

This garnishee has elected to retain under the said agreement all moneys now due or owing or hereafter to become due or owing under the said agreement by this garnishee to the said Rinehart & Dennis Company, Incorporated, until all claims and liens arising under the said agreement in connection with The Work, as defined in the said agreement, are settled and satisfactory evidence of such settlement furnished to this garnishee, except as to such moneys so retained, due or to become due, as this garnishee may use, as provided for in the said agreement, for the purpose of paying for labor and/or materials for the said The Work.

For further answer this garnishee says that there have been instituted in the circuit court of Fayette county forty-six actions at law against the said Rinehart & Dennis Company, Incorporated, and others in which this garnishee is joined as a party defendant in each of said actions, and in each of which actions the plaintiff is undertaking to recover judgment for damages against this garnishee on account of alleged injury or death by reason of alleged negligence of the said Rinehart & Dennis Company, Incorporated, in the alleged doing of "The Work" mentioned in the written agreement herein referred to; that the damages claimed in said actions amount to a total sum of one million, two hundred sixty thousand dollars (\$1,260,000.00).

This garnishee further says that the said written agreement between this garnishee and Rinehart & Dennis Company,

Incorporated, dated the 13th day of March, 1930, contains the following provision, (this garnishee being referred to therein as the Company, and the Rinehart & Dennis Company, Incorporated, as the Contractor):

"The Contractor shall assume the defense of, and indemnify and save harmless, the Company and its officers and agents, from all claims relating: to labor and materials furnished for The Work; to infringement or alleged infringement of inventions, patents, and patent rights, of others (except as hereinbefore in Article XVII hereof otherwise provided) used in or in connection with The Work or however originating from any of the work under this Agreement or from conditions created thereby; to injuries to any person or corporation or to damages to any property of any person or corporation caused by the acts or negligence of the Contractor or any of its agents or employees, or of any sub-contractor or any agents or employees of any sub-contractor, in doing The Work, or in consequence of any improper materials, implements or labor used therein; and shall fully reimburse and repay to the Company all outlay and expense which the Company may incur by reason of its failure so to do."

This garnishee is informed that the said alleged causes of action, if any the plaintiffs or either or any of them have, existed prior to the time the suggestion was served on this garnishee, and this garnishee is advised that by reason of said last mentioned provision in said written agreement, in addition to the matters and things hereinbefore set out, it is entitled to retain all moneys which might otherwise be or become due and owing to the said Rinehart & Dennis Company, Incorporated, until said actions at law are tried and determined and this garnishee is indemnified and saved harmless on account thereof.

Now having fully answered this garnishee prays to be hence dismissed with its reasonable costs in this behalf incurred, and as in duty bound it will ever pray, etc.

IN WITNESS WHEREOF, the said NEW-KANAWHA POWER COMPANY, garnishee, has hereunto caused its corporate name to be signed

and its corporate seal affixed by L. H. Davis, one of its Vice-
Presidents, thereunto duly authorized.

NEW-KANAWHA POWER COMPANY,

By

L. H. Davis

Vice-President

W. L. Lee

Cyprus K. Miller

ATTORNEYS FOR GARNISHEE

STATE OF NEW YORK,

COUNTY OF NEW YORK, TO-WIT:

L. H. DAVIS, one of the Vice-Presidents of NEW-KANAWHA POWER COMPANY, a corporation, the garnishee in the foregoing answer being duly sworn says that the facts and allegations contained in said answer 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.

L. H. Davis

Taken, sworn to and subscribed before me this 28th day of December, 1932. Given under my hand and notarial seal.

Wm. S. Kehringer
Notary Public for _____

NOTARY PUBLIC, Queens County
Clerk's No 110, Register's No 4985
Certificates filed in New York County
Clerk's No 245, Register's No 3B145
Commission expires March 30, 1933

My commission expires on the _____ day of _____

19____.

