1902

*May 13.

*June 9.

THE ROYAL ELECTRIC COMPANY (DEFENDANTS)..... } APPELLANTS;

AND

MALVINA HÉVÉ (PLAINTIFF).....RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC.

Negligence—Operations of a dangerous nature—Supplying electric light—Insulation of electric wires.

The defendants are a company engaged in supplying electric light to consumers in the City of Montreal under special charter for that purpose. They placed a secondary wire, by which electric light was supplied to G.'s premises, in close proximity to a guy-wire used to brace primary wires of another electric company which, although ordinarily a dead wire, might become dangerously charged with electricity in wet weather. The defendants' secondary wire was allowed to remain in a defective condition for several months immediately preceding the time when the injury complained of was sustained, and it was at that time insufficiently insulated at a point in close proximity to the guy-wire. While attempting to turn on the light of an incandescent electric lamp on his premises, on a wet and stormy day, G. was struck with insensibility and died almost immediately. In an action to recover damages against the company for negligently causing the injury :

Held, affirming the judgment appealed from, that the defendants were liable for actionable negligence as they had failed to exercise the high degree of skill, care and foresight required of persons engaging in operations of a dangerous nature.

APPEAL from the judgment of the Court of King's Bench, appeal side, affirming the judgment of the Superior Court, District of Montreal, by which the plaintiff's action was maintained with costs.

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*PRESENT :—Taschereau, Sedgewick, Girouard, Davies and Mills JJ.

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The action was brought by the plaintiff, as well personally as in her capacity of tutrix to her minor children, to recover damages against the company for negligence which caused the death of her husband, the father of the minor children.

The case is fully stated in the judgment of His Lordship Sir Louis H. Davies now reported.

Atwater K.C. and *Campbell K.C.* for the appellants. There was no evidence on which it could reasonably be found that the deceased came to his death by an electric shock. On the contrary, it is shewn that the usual characteristic of death by electricity was absent.

The company, under their charter, are entitled to use electric wires in the City of Montreal for the purpose of supplying electric light. They merely used this franchise and do not incur any unusual obligation in exercising their rights.

There is no evidence, either direct or by presumptions to be drawn from the facts established, to shew that the deceased came to his death through any fault on the part of the company. On the contrary, it appears that fuse wires were placed at the point where the supply-wire passed into deceased's premises and at various other parts of the building which would have had the effect of preventing the entrance of a current sufficient to cause death.

We refer to *The Canadian Pacific Railway Co.* v. *Roy* (1); *Port-Glasgow & Newark Sailcloth Co.* v. *Caledonian Railway Co.* (2); *The Canada Paint Co.* v. *Trainor* (3), and to the remarks of His Lordship Mr. Justice Strong, as to onus of proof, in *Evans* v. *Skelton* (4) at page 649, where the established jurisprudence is succinctly stated.

(1) [1902] A. C. 220.
(2) 20 Ct. Sess. Cas. (4 Ser.) 35.
(3) 28 Can. S. C. R. 352.
(4) 16 Can. S. C. R. 637.

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Brodeur K.C. and *Bissonnet K.C.* for the respondent. It is immaterial how the deadly current entered the defendants' wires. It is enough to shew that they neglected to use proper care and foresight in placing and insulating these wires so as to secure safety to consumers at all seasons and in all conditions of weather liable to occur in our climate.

The company's charter does not relieve them from the obligation to make use of the highest degree of skill, care and foresight in the dangerous operations of the business in which they have engaged.

We rely upon the findings of negligence by the trial judge, which have been affirmed in the court below, and we refer to the following cases in support of the principles upon which the judgment under appeal is rested, viz., *McAdam* v. *Central Railway and Electric Co.* (1); *McLaughlin* v. *Louisville Electric Light Co.* (2); *Haynes* v. *Raleigh Gas Co.* (3); *Ennis* v. *Gray* (4); *Giraudi* v. *Electrical Improvement Co. of San José* (5); *Denver Consolidated Electric Co.* v. *Simpson* (6); *Alton Railway and Illumimating Co.* v. *Foulds* (7); *The Citizens Light and Power Co.* v. *Lepitre* (8); *Yates* v. *Southwestern Brush Elec. Lt. & Power Co.* (9); *The George Matthews Co.* v. *Bouchard* (10); *Compagnie l'Urbaine-Incendie* v. *Jarriant* (11); Thompson on Negligence (2 ed.) Nos. 796, 895; Keasby on Electric Wires, pp. 260, 305; Groswell on Electricity, p. 205.

TASCHEREAU J.—The judgment of the Court of King's Bench appealed from was one confirming the judgment of the Superior Court whereby a sum of

(1) 67 Conn. 445.
(2) 6 Am. Elec. Cas. 255.
(3) 114 N. C. Rep. 203.
(4) 87 Hun. 355.
(5) 107 Cal. 120.
(6) 21 Col. 371.
(7) 81 Ill. App. 322.
(8) 29 Can. S. C. R. 1.
(9) 40 La. Ann. 467.
(10) 28 Can. S. C. R. 580.
(11) Pand. Fr. 86, 2, 34.

$5,000 had been awarded to the respondent for damages resulting to her from the death of her husband, killed in his own house on the 20th January, 1900, by an electric shock from an incandescent lamp connected with the wires of the appellant company under a special contract with them for lighting the said house with electricity.

I am unhesitatingly of opinion that the judgment appealed from is perfectly right. The company's contentions are untenable, and I would have thought it sufficient to dismiss them purely and simply upon the findings of fact of the provincial courts, as we often do upon such frivolous appeals, if it were not that the company at the argument seemed to have taken it for granted that the ruling of the Privy Council in the case of *Canadian Pacific Railway Co.* v. *Roy* (1)ppli a es to this case, and that, consequently, Arts. 1053 and 1054 of the Civil Code are superseded by their charter as they were held to be by the railway charter in question in that case, so that, as they would contend, they are not responsible for the damages they may cause in the exercise of their powers under a special contract in the absence of proof by the plaintiff of negligence on their part, as railway companies are under that and analogous decisions. (See *Jackson* v. *The Grand Trunk Railway Co.* (2); also compare *East Freemantle Corporation* v. *Annois* (3).

Now, speaking for myself, I do not wish to be taken as acceding to that proposition. I would not feel justified however to say more here, and to determine this important point in the present case for obvious reasons. First, it has been but lightly alluded to at the argument. Then, it is unnecessary to decide it, as the

(1) [1902] A. C. 220. (2) 32 Can. S. C. R. 245.
(3) [1902] A. C. 213.

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judgment is amply supported by the findings of fact at the trial, affirmed by the Court of King's Bench. Moreover, we have not even been referred to the charter of the company at the argument. It is simply mentioned, incidentally as it were, in one of the factums, without a word of comment.

Under the circumstances, I content myself with referring to the cases of *Metropolitan Asylum District* v. *Hill* (1); *Canadian Pacific Railway Co.* v. *Parke* (2), and *Hopkin* v. *Hamilton Electric Light & Cataract Power Co.* (3) which I cited in *Gareau* v. *The Montreal Street Railway Co.* (4). Also to Keasby on Electric Wires, pp. 259 to 305; *Alton Railway and Illuminating Co.* v. *Foulds* (5); *Ennis* v. *Gray* (6); *Haynes* v. *Raleigh Gas Co.* (7); *Snyder* v. *Wheeling Electrical Co.* (8); Joyce on Electric Law, secs. 606 *et seq.*

The company cannot contend under the evidence that the accident in question was caused by *vis major*, or was an inevitable accident. *The Schwan* (9). Neither was it caused by the fault of the deceased or by his negligence. Then, contributory negligence is not a defence in the Province of Quebec as it is under the English law. It must therefore necessarily have been caused by them. They cannot have taken the high degree of care that the law demands from a company trading in so dangerous an element as electricity. If, as they would surmise, the deadly current resulted from the momentary contact of their secondary wires with a guy-wire of the Lachine Company, they are responsible. The fact that the Lachine Company may have been joint tort-feasors would not relieve the appellants from their liablity towards the

(1) 6 App. Cas. 193.
(2) [1899] A. C. 535.
(3) 2 Ont. L. R. 240.
(4) 31 Can. S. C. R. 463.
(5) 81 Ill. App. 322.
(6) 87 Hun. 355.
(7) 114 N. C. Rep. 203.
(8) 43 W. Va. 661.
(9) [1892] P. D. 419.

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respondent. That dead wire had been there for two years, to their knowledge, and their allowing it to remain in a dangerous proximity to their own lines was an act of gross, I would say, criminal carelessness on their part. For future reference, though an expression of my own views on the subject would be *obiter*, I think it expedient to reproduce here the concluding remarks of Mr. Justice Hall, in the Court of King's Bench:

> But in my opinion, it is a matter of indifference, legally speaking, where this current originated. The appellants should be held responsible for it under any circumstances. They deal in a commodity of recognized dangerous character, the control of which is a matter of technical knowledge and experience, and entirely uncomprehended by the general public. When a company like the appellants, organized under the name of an electric company, hold themselves out to the public as dealers in and suppliers of that commodity, for gain, and make contracts with private individuals for furnishing light or power, over a system constructed and controlled by themselves, they are bound to deliver it in a form, and under conditions of safety for the person and property for whose use the company charge and receive compensation, and they are also bound, in the discharge of their part of the contract, to a supervision and diligence proportionate to the peculiar character and danger of the commodity in which they deal.
>
> In the case under consideration the electric company not only had stipulated, but had exercised the right of supervision of their system within the premises of the deceased. As to that portion of the system outside of his premises no one but their own employees had even the right of examination or interference. If their transformer was defective, or could become dangerous from the moisture of an ordinary rain storm, it was their business to have discovered and removed the cause of danger. If their system of wiring came within an inch of the wire of another company even if on a dead wire, common prudence would have suggested their interference, either by a protest against the other company, or by the removal of their own wires, while it is in evidence that the proximity of the two systems had existed for months prior to the accident. The fact that guy-wires become, from accident, live wires of the most dangerous character is one unfortunately of too frequent occurence to be overlooked or ignored in the exercise of the constant supervision which an electric system exacts, and which the public has the right to enforce.

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The implied contract between the appellants and deceased was that they should supply his premises with a safe electrical current for lighting purposes by the lamps which they furnished. They failed in this respect, and in the use of their lamp he received a current of electricity by which he was instantaneously killed. The presumption is that it came over the same system and from the same source as that by which his ordinary supply was delivered to him by appellants. The burden of proof is upon them to show the contrary. This they have failed to do, and the judgment holding them responsible for the accident should be confirmed.

SEDGEWICK J. concurred.

GIROUARD, J.:—I am of opinion that the appeal should be dismissed with costs for the reasons given in the Court below.

DAVIES J.—The defendant company is one which supplies electric light to its customers in the City of Montreal. The action is brought by the widow of her deceased husband in her own name and as tutrix to her two minor children to recover damages because of her husband's death. The deceased Girouard was one of the defendants' customers, and his death was charged as being due to an electric shock received by him on the 20th January, 1900, in his dwelling house.

The electric current was brought by the defendants, from Chambly into their works in the City of Montreal where it was passed through transformers so as to reduce the current down to about 2400 volts and then carried by primary wires to different parts of the city. Before being passed into the different houses or factories of the defendants' customers, it was again passed through transformers, attached to poles in the vicinity of the customers, and thus further reduced down to a voltage, varying from 54 to 100 volts, at which the current was supposed to be innocuous. After being thus reduced, it was then carried from the

last transformer into the customers houses through what are called secondary wires.

In the case of Girouard's house these secondary wires were carried from the pole to which the transformer was affixed across the street and into the house. The day when the accident happened was by common consent, admitted to have been very wet and stormy. At the back of the bar kept by the deceased there was a water-closet lighted with the electric light supplied by defendants. The plaintiff had gone there and, while attempting to turn on the light, had received an electric shock which caused her to cry out and call her husband, the deceased. He went into the closet and was heard immediately to cry out and, on the plaintiff and others running to his assistance, he was found speechless leaning against the wall with his right hand on the electric lamp or button. He expired almost immediately.

A doubt was attempted to be raised by the defendants as to whether death was really caused by an electric shock, and was not attributable to natural causes. The only medical expert examined was Dr. Wyatt Johnston, who was called in immediately the accident occurred, and who made an autopsy upon the body. He found a burn on the thumb of the right hand, which had come in contact with the electric lamp, but the autopsy did not reveal any natural cause of death, while, on the other hand, the generally characteristic sign of an electric current having passed through the body, viz., that the blood did not clot, was wanting. The blood in this case did clot but, in the doctor's opinion, all natural causes of death being eliminated, death was due to electricity. No other evidence was offered on this question and the courts below have both held, and I think rightly, that the man's death was due to an electric shock.

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The defendants contend, I think rightly, that the law does not constitute them insurers of the lives of their customers and their families and that, to hold them liable in cases of death or injury arising from electric shocks, there must be some proof adduced of negligence on their part or that of their employees.

I fully agree with the law as stated by Mr. Justice Hall that the defendants, while dealing in and disposing of a commodity of so recognised a dangerous character as electricity, are

> bound to a supervision and a diligence proportionate to the peculiar character and danger of the commodity in which they deal.

I cannot concur with him in thinking that they can be held responsible for the effects of the electric current "under any circumstances." This would be placing their liability too high and be constituting them insurers. They are bound to carry on their business with all possible skill, care and foresight, and are bound, in doing so, to anticipate and take into consideration such conditions of weather as may be reasonably expected in our climate. The law in requiring from them the highest care and skill and the exercise of constant vigilance in their business and operations does nothing more than, having regard to the extremely dangerous character of the article or substance they supply, is necessary for the proper protection of those with whom they deal. But on the other hand, before they can be held liable, there must be shewn to have been the absence of some one of these necessary precautions, or of the required skill and vigilance; in other words, some negligence to which the accident can be reasonably attributed must be found.

Now, in the case before us, it appears to me that this proof is abundantly present. The duty and care required of the electric company is equally required with respect to the secondary wires passing from the

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transformer to the houses as it is with regard to the primary wires leading up to and into the transformer. The secondary wires, in the case at bar, had been up for some years, and do not appear to have been subjected to any periodical inspection. One of them as stated by Mr. Thornton, an electrical engineer and the superintendent of the line department of the defendants, was found by him, on examination immediately after the accident, to have been so badly burned or frayed in one spot, just underneath the transformer and within an inch of it, that

> the insulation material was entirely off it and you could see the conductor underneath.

He explains that it might have been gradually frayed owing to the wires swaying in the wind. But whatever the reason, the fact was indisputable. He further says, that

> the secondary wire feeding Girouard's house, which is insulated with D. B. insulating cotton covering, when the moisture gets there on a wet day that insulation does not amount to anything.

Now insulation which does not amount to anything on a wet day is practically no insulation at all, and the company cannot complain if, when an accident happens which cannot be accounted for in any other way than through the want of proper insulation of these secondary wires, they are held responsible.

The negligence of the defendants may be said to consist in their having carried the electric current into Girouard's house through wires which had through time become most defective, and with having permitted these badly insulated wires to remain in dangerous proximity to a guy-wire which, though ordinarily dead, was quite liable in wet weather to become a live wire.

Two theories were suggested, either one of which might under the circumstances have been the cause

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of the accident. One, which was adopted by the trial court, was that owing to the wet the electricity had escaped from the primary wire alongside the transformer, had passed down the wet side of the transformer and entered the secondary wire at the burnt or frayed spot immediately beneath it and so passed through the secondary wire into the house causing Girouard's death. The other, that a guy-wire, belonging to the Lachine company and which supported one of that company's posts and ran just underneath these secondary wires of the defendant company and within an inch and a half of them, had also, owing to the rain and wet, become a live wire, charged with electricity and, from the swaying of the wires in the wind, had come in contact with defendants' secondary wires and so communicated its charge of electricity to the latter. This was the theory suggested in their defence by the defendants in case it was held that Girouard's death was due at all to electricity, and was supported by the evidence of their chief inspector. They evidently believed that if the deadly current could be traced to the guy-wire belonging to the Lachine company that their liability for Girouard's death would be disproved. But it is plain that the defendants should not have permitted another wire, such as this guy-wire of the Lachine company, to remain as it did for so many months within one and a half inches of contact with their secondary wires, unless indeed the latter were so well insulated that no danger could happen from the proximity of the wires.

So far however from these secondary wires of the defendants having been thoroughly and properly insulated, they were in the condition described by Inspector Thornton that

> when the moisture gets on the insulating cotton covering on a wet day the insulation does not amount to anything.

In addition to that they they were left with the burn or abrasion near to the transformer so deep that, as the inspector says, he could see the "conductor underneath." And under this condition of things, if an abnormal charge of electricity came to the secondary wires whether over and along the transformer, as suggested by the Abbé Choquette and adopted by the Court of first instance, or by reason of the secondary wire coming in contact with the guy-wire, after it became a live one, (the theory of the defendants themselves,) in either case it could only be transmitted through those secondary wires into the house of the deceased as a consequence of the negligence of the defendant company. Such negligence was plain and consisted in leaving these secondary wires (*a*) without any proper or effective insulation while in close proximity with a guy-wire which might according to the evidence at any moment in very wet weather become a live wire; and (*b*) with a burn or abrasion on the insulating material around the wire so deep or worn that the conductor inside was quite visible to the naked eye.

Accepting the evidence tendered by the defendants themselves, it is clear that if and when the outside covering of this wire became wet, instead of being a non-conductor, it became really a conductor for any abnormal charge of electricity which might reach it from any source and, with the burn or abrasion so deep or worn as to show the conducting wire beneath, sure to carry any such charge into Girouard's house.

In the view I take of the law and the facts, it makes no difference which theory is adopted. In either case the defendants are clearly liable and that on grounds of the defendants' fault and imprudence and the absence of that care, skill and foresight which constitutes negligence and which the law exacts from those

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controlling and disposing of such a dangerous agent as electricity.

The appeal should therefore be dismissed.

MILLS J. concurred.

Appeal dismissed with costs.

Solicitors for the appellants: *Campbell, Meredith, Allan & Hague.*

Solicitors for the respondent: *Bissonnet & Geoffrion.*