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 *Oct. 2, 3.
 *Oct. 17.

MONTREAL LIGHT, HEAT AND
 POWER COMPANY (DEFEND-
 ANTS).....

} APPELLANTS;

AND

MARIE LOUISE LAURENCE
 (PLAINTIFF).....

} RESPONDENT.

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

*Negligence — Electric lighting — Dangerous currents — Trespass —
 Breach of contract — Surreptitious installations — Liability for
 damages.*

P. obtained electric lighting service for his dwelling only, and signed a contract with the company whereby he agreed to use the supply for that purpose only, to make no new connections without permission and to provide and maintain the house-wiring and appliances "in efficient condition, with proper protective devices, the whole according to Fire Underwriters' requirements." He surreptitiously connected wires with the house-wiring and carried the current into an adjacent building for the purpose of lighting other premises by means of a portable electric lamp. On one occasion, while attempting to use this portable lamp, he sustained an electric shock which caused his death. In an action by his widow to recover damages from the company for negligently allowing dangerous currents of electricity to escape from a defective transformer through which the current was passed into the dwelling:

Held, reversing the judgment appealed from, that there was no duty owing by the company towards deceased in respect of the installation so made by him without their knowledge and in breach of his contract and that, as the accident occurred through contact with the wiring which he had so connected without their permission, the company could not be held liable in damages.

*PRESENT:—Sir Charles Fitzpatrick C.J. and Girouard, Davies, Idington, MacLennan and Duff JJ.

APPEAL from the judgment of the Court of King's Bench, appeal side, whereby the judgment of the Superior Court, District of Montreal, entered by Doherty J., upon the verdict of the jury at the trial, was affirmed and the plaintiff's action maintained with costs.

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The circumstances of the case and questions at issue on this appeal are sufficiently stated in the head-note and in the judgments now reported.

Archer K.C. and *G. H. Montgomery* for the appellants.

Henry J. Elliott and *H. R. Bisailon* for the respondent.

THE CHIEF JUSTICE.—This appeal must be allowed with costs. I agree in the opinion stated by His Lordship Mr. Justice Girouard.

GIROUARD J.—It seems to me there was an entire misconception of the legal relations existing between the electric company, appellants, and the late Joseph Jean Paquette. The jury and the two courts below found that the company was alone responsible for the accident. Mr. Justice Trenholme, dissenting, saw in the circumstances of the case one of contributory negligence or *faute commune*.

As I understand the evidence, the electric company owed no duty to this man Paquette. It was under no special obligation whatever to him with regard to the wire which caused his death. The company undertook to safely supply him with electric light in his

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residence, being No. 1580 Saint Lawrence Street, but never undertook to do the same thing for the store, No. 1584, next to it, where the accident took place, by touching one of the wires which he had himself surreptitiously placed, by illegally connecting it with the wires in his residence, without notice to the company or their knowledge. In fact, Paquette was a trespasser, to use a mild expression.

In the written contract which he signed, it is expressly stipulated that the electric system put in his residence

shall be used by the consumer only, upon the said premises only, and for the purposes hereinafter specified only,

and that,

no new connection shall be made by which the current could be used, except with the written consent of the company.

He finally agreed to

provide all lines on the premises or connecting same with the point of delivery, and maintain the same in efficient condition, with proper protective devices, the whole according to Fire Underwriters' requirements.

The wires which he put in the back-store and oil-room in the back of his store, No. 1584, and connected with the wires in his residence, No. 1580, it is conceded by the respondent, were not up to the Fire Underwriters' requirements. Had they been, it is probable that the accident could not have happened, as it did not in No. 1580 and fifteen other premises supplied by the same defective transformer.

For these reasons, I would allow the appeal and dismiss the respondent's action with costs.

DAVIES J.—I concur for the reasons stated by His Lordship Mr. Justice Girouard.

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IDINGTON J.—The appellants applied electric current for lighting purposes to people in Montreal, where the respondent's husband lived. He asked for a supply. He signed a written application therefor which contained an express undertaking that he would provide

all lines on the premises or connecting same with the point of delivery and maintain same in efficient condition with proper protective devices, the whole according to Fire Underwriters' requirements.

The application was made for a supply to be delivered to a dwelling house in Montreal known as No. 1580, Saint Lawrence Street.

The installation of the wire and other appliances in the house conformed to the requirements of the condition just quoted. They were inspected and approved of by the company's officers in the usual way before any current was applied. Upon such approval, the current was supplied through these wires, so approved of, to the house. Shortly afterwards, the deceased made, by means of a wire, the connection between these approved wires and a portable lamp he desired to use in the back premises of his shop which adjoined the dwelling and bore another street number. This connection was made without notice to the company or knowledge of the company and did not conform to the condition or provision I have quoted and was used for lighting the shed in rear of the shop. The current thus supplied for the additional portable lamp passed through the meter and, of course, was

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paid for, monthly, along with that which supplied the dwelling house, as if part thereof.

The appellants' transformer became defective. One result of that, coupled as the jury find with the want of a ground-wire, caused a current of a higher tension than the contract provides for entering into the dwelling house. No injury came to any one using the house switches or lamps therein. But the current passed by means of the unauthorized wire connected with the portable lamp to the hand of him who was alone responsible for it being there. As a result the current killed him. The Superior Court of Quebec awarded damages to his widow for the death thus caused of her husband. The Court of King's Bench of the Province of Quebec upheld this judgment and hence this appeal. The jury find that it was by virtue of this contract that contained the provision I have quoted above that anything was done by the appellants.

They find further, however, that the deceased, when he signed the contract containing this provision, did not understand it.

I am quite unable to understand on what principle a claim for damages thus resulting can rest. The only duty the appellants owed the deceased arose from the contract containing this provision that the deceased violated. If he did not understand that contract and any imprudence could be attached to any such misunderstanding the result would be that there was no contract to create any duty.

A duty would arise in the absence of a special contract binding a company supplying electricity to take proper means to do it safely. They could not, however, be bound beyond what they understood they

were doing, the extent of the contract they were executing.

Counsel for the respondent, when the difficulties I have suggested were pointed out to them, sought to avoid the consequences by suggesting that there was a possibility of discarding the part of the contract that the deceased himself misunderstood or misapprehended and that there still remained a common understanding which would be possible to constitute as a contract. No such case was presented to the jury. No such case was made by the pleadings. No such case appears in evidence and, consequently, no such contract has been found as would entitle the respondent to hold the appellants liable under.

The relation of the deceased to the results of what is alleged to have been negligence on the part of the appellants was something entirely of his own creation. He chose to conduct to himself, without any authority from the appellants, the results of what is called their negligence.

I think the appeal should be allowed with costs.

Whether the trial was so conducted as to involve expenses of issues of fact not necessary to be raised in the view we take and issues of fact that are found against the appellants, was not discussed. If there are any such, the appellants should not get costs thereof as against the respondent.

MACLENNAN and DUFF JJ. concurred in the opinion stated by Girouard J.

Appeal allowed with costs.

Solicitors for the appellants: *Montgomery & Lacoste.*
Solicitors for the respondent: *Bisaillon & Brossard.*

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