

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Dumphy v. The Montreal Light, Heat and
Power Company, from the Court of King's
Bench for the Province of Quebec (Appeal
Side); delivered the 31st July 1907.*

Present at the Hearing :

LORD ROBERTSON.

LORD COLLINS.

SIR ARTHUR WILSON.

SIR HENRI ELZÉAR TASCHEREAU.

SIR ALFRED WILLS.

[*Delivered by Lord Robertson.*]

Although there is a very voluminous record in this case, the facts are of singular simplicity. A building contractor used a derrick in putting up a house in one of the streets of Montreal. His workmen brought the derrick into contact with the overhead wires of the Respondents, with the result that a current of electricity was diverted to the street and killed the husband of the Appellant. On the face of the case, it is manifest that the *causa causans* of the casualty was the action of the persons using the derrick; and the question is whether the *causa sine qua non*, in the electric wires, was there owing to the fault of the Company using the electricity.

The Company derives its powers from an Act of the Quebec Legislature (1 Edw. VII. c. 66) by which they are authorised (section 10) "to enter upon and construct under or over the streets and public highways" of Montreal "all such pipes, lines, conduits, and other constructions as may be necessary for the purposes of its business, all such work to be performed under the directions of the Municipality in which the works are situated,

“ provided that the Company be responsible for
“ all damages which it may occasion.”

Now the main argument of the Appellant's is that construction overhead, instead of underground, was, of itself, negligence, their alternative argument being that the Respondents made no attempt to insulate the wires or put guard wires round them. This, on both points, was the decision of the jury ; and although, in the action before them, the owners of the derrick were also Defendants, the jury negatived negligence on their part and found the Respondents alone liable on the grounds stated.

The proposition in law laid down at the trial was that the Respondents, having alternative powers to place their wires either overhead or underground, were bound to adopt whichever method afforded the greatest protection to the public, and were guilty of negligence if they failed to do so. The Court of Review, before whom the case was next brought, adopted this proposition and gave judgment against the Respondents. On an appeal to the Court of King's Bench, this judgment was reversed, and the Appellant's action was dismissed. The result is the present Appeal.

The voluminous evidence and elaborate pleadings contain little which purports to discriminate this street from streets in general, as regards the danger or safety of overhead wires. Accordingly, the proposition maintained is the somewhat bold one that, the legislature having authorised in these streets of Montreal overhead wires as well as, and just as much as, underground wires, the Respondents are guilty of negligence in exercising one of these alternative powers. To their Lordships it seems impossible to support this contention. There are various decisions pretty directly in point. But it is never desirable to rest on the authority

of other decisions what is the plain reading of a statute.

The second ground, upon which negligence has been found, exhibits, with singular frankness, the essential defect of the Appellant's case on this second head. The finding is not that insulating the wires or guard wires were an efficient remedy which would have prevented the accident and which the Respondents were negligent in not adopting. On the contrary, the verdict assumes that it is an open question whether what they suggest would have done any good at all. Their complaint is that the Respondents did not experiment on the efficacy of such arrangements. It is impossible to regard this, in the absence of substantive and affirmative evidence, and in view of the adequate support received by the Respondents from their witnesses, as a good ground of liability on negligence.

Their Lordships will humbly advise His Majesty that the Appeal ought to be dismissed and the Judgment of the Court of King's Bench affirmed.

As the Appellant appeals *in formâ pauperis*, there will be no order as to costs.

