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CANADA AND GULF TERMINAL RAILWAY COMPANY (DEFENDANT) } APPELLANT;

AND

DAME E. LEVESQUE (PLAINTIFF).... RESPONDENT.

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

Negligence—Accident—Electric current—Interior installation—Electric power furnished by another person—Electric storm—Transformer out of order—Current of 2,200 volts getting into the interior circuit—Liability—Articles 1053, 1054 C.C.

The respondent's husband, one Leon Claveau, an experienced mechanic, while employed as foreman in charge of the machine shop of the appellant company, was instantly killed by an electric shock as he was holding in his hands a portable electric lamp fixed to an extension cord. In the machine shop the interior installation for electricity was the property of the appellant and was used solely for lighting purposes. The wiring was extremely simple and consisted of two wires running on insulators with, here and there, what is known as rosettes from which lamps were hung. Some of these lamps were furnished with wire sufficiently long to permit of their being used within a certain radius. These extension lamps were attached to insulated wire, had wooden handles, and the globe itself was protected by a sort of wire basket attached to the wooden handle. At the entrance to the shop there was a cut out with fuses generally known as block switch with fuses, and of the kind generally used in such installations. The current contracted for and furnished for the lighting system was 110 volts. Outside the shop, the secondary wires passed through the block switch mentioned, and from there lead to a post situated about fifty feet away, and on which was installed a transformer for the purpose of reducing the high tension current of 2,200 volts to the voltage of 110 required and used for lighting. This transformer was the property of La Compagnie de Pouvoir du Bas St. Laurent, which supplied the current and under whose care and control it was. Beyond such trans-

*PRESENT:—Anglin C.J.C. and Duff, Newcombe, Rinfret and Lamont JJ.

former were the primary wires which carried the high tension current to the transformer where it was reduced to 110 volts and delivered to the appellant at the entrance to its shops. At the time of the accident a very intensive electric storm was raging and had been for some time. The accident occurred in this way: Claveau was overlooking some repairs to an engine and as it was dark, he picked up a portable lamp. The persons in the shop heard a cry and saw a flash of light, and Claveau fell holding the portable lamp in his hands. Apparently he was holding it by the wire screen used to protect the globe. Death was practically instantaneous. The expert evidence showed that the end of one of the primary wires stretching from one of the insulators on the post which held the transformer was broken and burnt, permitting the high tension current to enter the secondary system within the building belonging to the appellant, without passing through the transformer, the breaking and burning of this wire having been caused by a stroke of lightning or some similar occurrence. The respondent sued as well personally as in her quality of tutrix to her four minor children and claimed damages from the appellant company in an amount of $20,000. The respondent's action, having been dismissed by the trial court, was maintained by the appellate court for an amount of $6,000.

Held that the appellant company was not liable, Duff and Lamont JJ. dissenting.

Held, also, Duff and Lamont JJ. dissenting, that it was not the lamp, or at least it was not shown to have been the lamp, which caused the accident.

Held also, Duff and Lamont JJ. dissenting, that the burden of proof that the damage was caused by a thing which the appellant had under its care was upon the respondent. Assuming that Claveau's death was caused by an electric shock emanating from the wires by which the lamp was connected with the source of the electric supply, and seeing that the source of supply and the transmission were under the care and operation of the power company, and not under the care of the appellant, it follows that the burden of proof that the lamp caused the damage is not satisfied, and cannot be discharged, without evidence that the electric current which caused the death of Claveau did not exist apart from the lamp, and this has not been established.

Per Anglin C.J.C. and Rinfret J.—In the eyes of the law and under the present conditions of modern life electricity is an industrial product, which is carried from one place to another. In practice, it has a material existence independent of the metallic wires or conduits through which it is supplied. It is legislatively recognized as susceptible of being measured, bought and sold, distributed and stolen.

Per Anglin C.J.C. and Rinfret J.—Companies supplying electricity for lighting purposes have under their care the electrical current which they supply; and the responsibility under art. 1054 C.C. for a death caused by an excessive electrical current which has escaped from their primary wires and has found its way in the interior installation of the house of one of their clients rests with such companies and not with the consumer, even if the interior installation through which the excessive electrical current is carried is under the care of such consumer.

1928

CANADA & GULF TERMINAL RY. CO. v. LEVESQUE.

Per Anglin C.J.C. and Rinfret J.—The interior installation, comprising the electric current of 110 voltage, being the only "thing" which the appellant had under its care, was not the cause of the accident; the "thing" which caused the death of the respondent's husband,, i.e., the excessive electric current of 2,200 volts, was entirely under the care of the power company.

Per Newcombe J.—There was evidence in the case upon which the trial judge might reasonably find as he did, and therefore his judgment should be restored (*Supreme Court Act*, s. 51).

Per Newcombe J.—If the lamp and the mysterious death-dealing agency, or force, or energy known as the electric current, can be considered as separate entities, it was the latter which was the direct operative cause—the fatal instrument, if it may be so described—and the lamp was no more than a *sine qua non*.

Per Newcombe J.—The burden of proof that the damage was caused by a thing which the appellant company had under its care was upon the respondent. Assuming that Claveau's death was caused by electric shock emanating from the wires by which the lamp was connected with the source of the electric supply, and seeing that the source of supply and the transmission were under the care and operation of the power company, and not under the care of the appellant, it follows that the burden of proof that the lamp caused the damage is not satisfied, and cannot be discharged, without evidence that the electric current which caused the death of Claveau did not exist apart from the lamp, and this has not been established.

Per Duff and Lamont JJ. dissenting.—The appellant company is responsible under art. 1053 C.C. in not having taken all the precautions which a reasonable and competent regard for the safety of its employees would require. The appellant company must be presumed to have known that, unless the transformer was grounded, the employees in the shop were exposed to serious risk of an invasion of the interior circuit by the high-tension current. That risk was created by the connection of the company's installation with the secondary coil of the transformer, and thereby, through the primary coil, with the high-tension current as the source of energy. It was a risk arising from the tapping of that source of energy, and the connection of it with the shop, for the benefit and by the consent and direction of the appellant company. Having regard to the gravity of the risk, the appellant incurred an obligation to exercise the highest degree of care; and this obligation was not performed by simply assuming that the power company had not been negligent. The appellant ought to have ascertained that the proper precautions had been taken before connecting their interior circuit with the transformer.

Per Duff and Lamont JJ. dissenting. The death of the respondent's husband was "caused" by a thing under the care of the appellant, in the sense of article 1054 C.C.; and the appellant has failed to bring itself within the clause of that article, which, upon certain conditions being satisfied, exonerates it from responsibility. The wires and other appliances of the interior circuit, constituted, in their totality, a thing in the care, and under the control, of the appellant. Its function was that of a conductor of electricity. The service it performed

was to receive energy from the primary circuit, and to distribute that energy to the various points at which it was utilized in the production of electric light. It was by the act of the appellant and solely by its act, that the connection was maintained, through which alone, electrical energy was, or could be transferred, from the high-tension circuit of the power company to the interior circuit. It was from this circuit that Claveau received the discharge. Whatever other causes may have co-operated, the interior circuit, as the instrument by which the diversion was effected and by which the energy diverted, was directed and conveyed into Claveau's body and was one of the factors which directly co-operated in bringing about the plaintiff's loss.

Per Duff and Lamont JJ. dissenting: A statutory enactment, assigning responsibility, for damage "caused" by a given act or thing, would not, in the absence of a controlling context, naturally be read as limited in its application to damage exclusively so caused; but would ordinary be considered to apply to damage caused by the designated person or thing functioning in conjunction with other co-operating causes. *Charing Cross* v. *Hydraulic Power Co.* ([1914] 3 K.B. 772 at p. 782. There seems to be no good reason for limiting the application of article 1054 C.C., in such a way as to exclude from its scope all damages except such as are exclusively caused by the thing under the care of the person alleged to be responsible.

Per Duff and Lamont JJ. dissenting. Whatever difficulties may be encountered in determining, for the purpose of applying it to other circumstances, the precise limits of the conception denoted by the word "caused" in the first paragraph of article 1054 C.C., there is no doubt that, where the damages are of such a character as to fall within the purview of risks which a person ought to recognize as arising from his maintenance of the thing which is in debate, then that paragraph comes into operation.

Judgment of the Court of King's Bench (Q.R. 43 K.B. 562) reversed, Duff and Lamont JJ. dissenting.

APPEAL from the decision of the Court of King's Bench, appeal side, Province of Quebec (1) reversing the judgment of the trial judge, Pouliot J., and maintaining the respondent's action in damages resulting from the death of her husband.

The material facts of the case and the questions at issue are fully stated in the above head-note and in the judgments now reported.

A. C. M. Thomson K.C. and *P. E. Gagnon* for the appellant.

L. G. Belley K.C. for the respondent.

(1) (1927) Q.R. 43 K.B. 562.

1928

CANADA & GULF TERMINAL RY. CO. v. LEVESQUE.

ANGLIN C.J.C.—I concur with Mr. Justice Rinfret.

DUFF J. (dissenting).—The pertinent facts are stated from the point of view of the appellants for the purpose of supporting the appeal, in the following extracts from the appellants' factum.

In the machine shop * * * there was an interior installation for electric lighting, which was the property of the defendant-appellant, and used solely for lighting purposes. This wiring was extremely simple and consisted of two wires running on insulators and with here and there what is known as rosettes from which lamps were hung. * * * Some of these lamps were furnished with wire sufficiently long to permit of their being used within a certain radius. These extension lamps were attached to insulated wire, had wooden handles, and the globe itself was protected by a sort of wire basket attached to a wooden handle * * *. At the entrance to the shop there was a cut out with fuses generally known as block switch with fuses, and was of the kind generally used in such installations. The current contracted for and furnished for the lighting system was 110 volts * * *.

Outside the shop, the secondary or interior wires passed through the block switch mentioned, and from there lead to a post situated about forty feet away, and on which was installed a transformer for the purpose of reducing the high tension current of 2,200 volts to the voltage of 110 required and habitually used for lighting. This transformer was the property of La Compagnie de Pouvoir du Bas St. Laurent, who furnished the current, and whose property and under whose charge and control it was * * *. Beyond such transformer were the primary wires which carried the high tension current to the transformer where it was reduced to 110 volts and delivered to the defendant at the entrance to its shops. * * *

The accident occurred in this way: Claveau, the foreman of the machine shop was overlooking some repairs to an engine. The work was being done by Messrs. Lachance, father and son. They told Claveau that the portable lamp which they were using was too short and Claveau replied that he would lengthen it. He did not do this, however, but went to another part of the shop, where he picked up another portable lamp. The witnesses heard a cry and saw a flash of light, and Claveau fell holding the portable lamp in his hands. * * * Apparently he was holding it by the wire screen used to protect the globe. Death was practically instantaneous. * * *

The expert evidence shows * * * and there is no contradictory evidence, that the end of one of the primary wires stretching from one of the insulators on the post which held the transformer, had broken and burnt, permitting the high tension current to enter the secondary system within the building belonging to the defendant-appellant, without passing through the transformer. The breaking and burning of this wire was caused by a stroke of lightning or some similar occurrence. * * *

The essential facts which have a considerable bearing on the present case may be resumed as follows:

1. A very heavy electric storm was in progress at the time of the accident;

2. The storm had resulted in the primary system of wires carrying the high tension current being struck in such a way that either the high

tension current or the current from the lightning itself entered the appellant's building and ran along its secondary system intended for 110 volts only;

3. That the high tension current and the system upon which it was carried, including the transformer, were things belonging to and in charge of, not the appellant but a third party.

This statement requires only one word of comment, for the purpose of putting aside (and thereby simplifying the consideration of the case) the suggestion in the last paragraph not very seriously made that Claveau's injury was due to a stroke of lightning passing from the line of the power company through the interior circuit. The substantive view put forward in the factum is that, the rupture of the main line having been caused by a stroke of lightning, the high potential of that line was applied to the secondary circuit by direct contact of the broken end of the primary wire with the metal supports of the transformer, and that a current or electrostatic charge of abnormally high potential was thus communicated to the secondary circuit. This was the view advanced by Walsh, the only independent expert called by the appellants who negatived explicitly the suggestion that Claveau was killed in consequence of receiving a stroke of lightning. The other witnesss, Méthé, who maintained the opposite, was the engineer of the power company, and was obviously concerned to protect his own company from responsibility for its negligence in failing to take the necessary measures to prevent an escape of current from the main line into the secondary circuit. Under pressure of cross examination, he affirmed he was not an electrician, and not competent to give expert evidence upon subjects within the domain of an electrician. His evidence upon this point, should for these reasons, be disregarded.

It should further be observed that the fair deduction from the evidence of the appellants themselves is that in order to protect the interior circuit from risk of invasion by the high pressure current in the main line, it is usual to ground the transformer, and furthermore that this precaution is as a rule effective, and would have been effective in the circumstances in evidence, if it had been, as it was not, observed.

I have been unable to convince myself that the appellants are not responsible under article 1053 C.C. No-

1928

CANADA & GULF TERMINAL RY. CO. v. LEVESQUE.

Duff J.

body would dispute the obligation of an employer to take reasonable measures for the safety of his employees, and for that purpose to take all the precautions which a reasonable and competent regard for such safety would require. Particularly, if the employees in the course of their duties are brought into contact with or proximity to dangerous things, or things that may become dangerous in the absence of proper precautions, it is his duty to take all reasonable measures, for their protection. The employees are entitled to assume that they are not exposed to risks which do not present themselves to their observation, and which can be avoided, and are commonly and usually avoided by well-known precautions.

The appellant company must be presumed to have known that unless the transformer was grounded, the employees in the shop were exposed to serious risk of an invasion of the interior circuit by the high-tension current. That risk was created by the connection of the company's installation with the secondary coil of the transformer, and thereby, through the primary coil, with the high-tension current as the source of energy. It was a risk arising from the tapping of that source of energy, and the connection of it with the shop, for the benefit and by the consent and direction of the appellant company. It is quite true that the transformer was apparently not situated on the appellant company's premises, and it seems to have been the property of the power company; but the transformer could only function in relation to a circuit connected with its secondary coil, and existed only for the purpose of providing, by the permission of the appellant company, and under contract with it, a current for that circuit. The connection between the high-tension current and the wires and other appliances constituting the appellant company's installation, was, and could only be effected, by the act of the appellants. It was the appellant company's own act, therefore, which in part directly, in part through the instrumentality of the power company, established this potentially dangerous thing in its own shop.

It was held by the Privy Council in *Toronto Power Co.* v. *Paskwan* (1), that the duty of an employer to take

(1) 15 A.C. 734.

reasonable care to provide a safe place for his work people, and a proper plant, is a duty which cannot be delegated. It is unnecessary for the purposes of this appeal to decide whether the performance of that duty in the circumstances before us could have been delegated to an independent contractor or an expert employee. Proper precautions were not in fact taken, and that under the circumstances of this case is sufficient *prima facie* to establish that the employer's duty was not performed, and there is not the slightest evidence to show that the duty was by the appellants delegated to anybody, either contractor or servant. Assuming that the appellants could have performed their duty by employing a competent expert to report upon the proper measures to be taken for the protection of their servants, with authority to take such measures, or by entering into a contract with an independent contractor undertaking to do the same thing, there is no evidence to show that anything of the kind was done by them. It is no answer to say that the power company in failing to take the necessary precautions was guilty of fault, or that it was the duty of the power company to take such precautions. Having regard to the gravity of the risk, the appellants incurred an obligation to exercise the highest degree of care; and I cannot agree that this obligation was performed by simply assuming that the power company had not been negligent. The appellants ought to have ascertained that the proper precautions had been taken before connecting their interior circuit with the transformer.

I now come to the consideration of article 1054 C.C. The wires and other appliances of the interior circuit, constituted, in their totality, a thing in the care, and under the control, of the appellants. Its function was that of a conductor of electricity. The service it performed was to receive energy from the primary circuit, and to distribute that energy to the various points at which it was utilized in the production of electric light. It was by the act of the appellants and solely by their act, that the connection was maintained, through which alone, electrical energy, was, or could be transferred from the high-tension circuit of the power company to the interior circuit. It was from this circuit that Claveau received the dis-

1928

CANADA & GULF TERMINAL RY. CO. v. LEVESQUE.

Duff J.

charge. Whatever other causes may have been involved, the interior circuit, as the instrument by which the diversion was effected, and by which the energy diverted, was directed and conveyed into Claveau's body, was one of the factors which directly co-operated in bringing about the plaintiff's loss. That seems to me to be only another way of saying that Claveau's death was "caused" by a thing under the care of the appellants in the sense of article 1054 C.C.; and, as we shall see presently, the appellants have failed to bring themselves within the clause of that article, which, upon certain conditions being fulfilled, exonerates them from responsibility.

To this, the appellants' principal answer is that the true cause, that is to say, the only cause within the meaning of article 1054 C.C., was the escape of a high-tension electric current into Claveau's body, and that this high-tension electric current was a thing, not in the "care" of the appellants in the sense of article 1054 C.C. This contention of course involves the proposition that the circuit which was in the care and under the control of the appellants, and played the part just indicated in producing Claveau's death, was not a cause of it, in that sense.

Now, neither in common language, nor in law, has the word "cause" a fixed meaning, which can be formulated in a strict definition. Out of the numberless antecedents of a given effect, we are in the habit of selecting those which attract our attention from a particular point of view, and ascribing to those antecedents the character of cause.

Lawyers, concerned only with assigning juridical responsibility, address themselves primarily to human acts or omissions and their consequences; and as a given effect may result from the co-operation of several such acts or omissions, each of them may serve as the foundation of legal responsibility, as the legal cause from one point of view.

A statutory enactment, assigning responsibility, for damage "caused" by given act or thing, would not, in the absence of a controlling context, naturally be read, as limited in its application to damage exclusively so caused; but would ordinarily be considered to apply to damage caused by the designated person or thing functioning in conjunction with other co-operating causes. *Charing Cross*

v. *Hydraulic Power Co.* (1). There seems to be no good reason for limiting the application of article 1054 C.C., in such a way as to exclude from its scope all damages except such as are exclusively caused by the thing under the care of the person alleged to be responsible. And indeed, this is not permissible in view of the decision in *City of Montreal* v. *Watt* (2).

Article 1054 C.C., envisages the "things" *to which it applies,* as objects of care, and as potential instruments of harm, and interpreting the article in that light, we can without difficulty, arrive at at least one conclusion as to the scope of the word "caused." Responsibility is displaced if the damage dealing act or event is shown to be something that the person having care of the thing, could not prevent by any exertions that might reasonably be required of him. There can be no doubt, that if the thing which is the subject of care, does, in the circumstances in which it is placed, give rise to a risk of harm, recognizable by a reasonably competent forethought, then any harm which actually supervenes from the realization of that risk, is damage "caused" by the thing within the contemplation of article 1054 C.C., and the person having the care of the thing, must, in order to escape responsibility, show that he could not by anything he could reasonably be called upon to do, have averted it. The scope of the word "caused" may be much wider, but for the present it is sufficient that it is broad enough to embrace all such cases. In the legal sense, you would be emptying the word "cause" of all meaning by holding that such cases are not within the intendment of article 1054 C.C.

The occurrence which led to Claveau's death was, as I have pointed out above, one which ought to have been anticipated by the appellants as within the risk created by the maintenance of the interior circuit in connection with the power company's transformer.

It is a little important in this connection not to be misled by descriptive epithets commonly found in legal treatises and even in judgments, which while they have their value for descriptive purposes, cannot, without grave risk of error, be treated as furnishing, even approximately, a

(1) [1914] 3 K.B. 772 at 782. (2) [1922] 2 A.C. 555.

1928

CANADA & GULF TERMINAL RY. CO. v. LEVESQUE.

Duff J.

criterium for differentiating the kinds of casual connection which the law does or does not recognize as entailing responsibility. In *Weld-Blundell* v. *Stephens* (1), Lord Sumner refers to some of these. Effective cause, he observes, is simply that which causes. Proximate cause has acquired a special connotation through its employment in insurance law. He suggests that direct cause is the least objectionable of all phrases because it is consistent with the possibility of the concurrence of more direct causes than one, operating at the same time and leading to a common result, and he refers to *Burrows* v. *March, Gas & Coke Co.* (2) and *Hill* v. *New River Co.* (3), which are not without a noticeable resemblance to the present case. In *British Columbia Electric Ry.* v. *Loach* (4), Lord Sumner, speaking for the Judicial Committee, which included Lord Haldane and Lord Parker, as well as himself, said: observed as to inquiries into responsibility for torts:

> The inquiry is a judicial inquiry. It does not always follow the historical method and begin at the beginning. Very often it is more convenient to begin at the end, that is at the accident, and work back along the line of events which led up to it. The object of the inquiry is to fix upon some wrong-doer the responsibility for the wrongful act which has caused the damage. It is in search not merely of a causal agency but of the responsible agent. When that has been done, it is not necessary to pursue the matter into its origins; for judicial purposes they are remote. Till that has been done there may be a considerable sequence of physical events, and event of acts of responsible human beings, between the damage done and the conduct which is tortious and is its cause. It is surprising how many epithets eminent judges have applied to the cause, which has to be ascertained for this judicial purpose of determining liability, and how many more to other acts and incidents, which for this purpose are not the cause at all. "Efficient or effective cause," "real cause," "proximate cause," "direct cause," "decisive cause," "immediate cause," "causa causans," on the one hand as against, on the other, "causa sine qua non," "occasional cause," "remote cause," "contributory cause," "inducing cause," "condition," and so on. No doubt in the particular cases in which they occur they were thought to be useful or they would not have been used, but the repetition of terms without examination in other cases has often led to confusion, and it might be better, after pointing out that the inquiry is an investigation into responsibility, to be content with speaking of the cause of the injury simply and without qualification.

I repeat, however, that whatever difficulties may be encountered, in determining, for the purpose of applying it to other circumstances, the precise limits of the conception

(1) [1920] A.C. 956, at p. 983.
(2) (1872) L.R. 7 Ex. 96.
(3) (1868) 9 B. & S. 303.
(4) [1916] 1 A.C. 719, at pp. 727 and 728.

denoted by the word "caused" in the first paragraph of article 1054 C.C., of this there seems at least to be no room for doubt, that where the damages are of such a character as to fall within the purview of those risks which the defendant ought to recognize as arising from his maintenance of the thing which is in debate, then that paragraph comes into operation. This seems to be involved in *City of Montreal* v. *Watt & Scott* (1).

We may now examine a little more closely from this point of view, the facts with which we have to deal. The immediate agency in Claveau's death was the discharge of electrical energy into his body. The immediate cause of that discharge, so far as we know, was Claveau's own act in grasping the electric lamp. From the point of view of responsibility, that is of no consequence, because Claveau seems to have had no reason to suspect the risk he was encountering, and there is no suggestion of fault on his part; but Claveau's act took effect in co-operation with two other things, first, the presence in the wire of an electrostatic charge of high potential, or an electrical current of high pressure, and moreover, as an equally essential thing, which such a state of the wire and its appurtenances as permitted the discharge. As concerns Claveau, or Claveau's representatives, either of these things might equally, that is to say, with no distinction from the juridical point of view, be the cause of the discharge. If the presence of the electric charge or electric current was due to the negligence of A, and the state of the appliances which made the discharge possible, was due to the negligence of B, then, from the point of view of A's responsibility, under article 1053 C.C. the first was the cause, in the legal sense, while in the same sense, the second was the cause from the point of view of B's responsibility. Neither A nor B could escape responsibility by attempting to cast it exclusively upon the other.

Then the transfer of electricity, under inordinate pressure, from the high voltage lines of the power company, to the interior circuit of the appellants, involved, first, a condition of the power company's wires, permitting its escape, then a condition of the interior circuit and of the

(1) [1922] 2 A.C. 555.

1928

CANADA & GULF TERMINAL RY. CO. v. LEVESQUE.

Duff J.

appliances for tapping the high-tension current of the power company which permitted the application of a dangerously high potential to the circuit, and if the condition of the circuit which permitted this, or the condition of the transformer which permitted it, or the condition of the power company's lines, which permitted it, was due to the negligence of the persons severally responsible for each of these things, then each of them was, in its turn, from the point of view of responsibility, under article 1053 C.C., a cause of the respondent's damage. If the absence of grounding for the transformer, was due to the negligence of the appellants, as well as to the negligence of the power company, then they were jointly responsible, under that article, for that state of affairs, and if grounding would have prevented the accident, the absence of grounding is, from the point of view of both of them, a cause.

It seems equally clear that from the point of view of the first paragraph of article 1054 C.C., any one of these things —the state of the interior circuit, and of the lamp attached to it, as conductors of electricity, in other words, the interior circuit and the lamp, in the state in which they were, permitted the discharge into Claveau's body; the condition of the circuit which permitted the high tension current to pass into the interior of the shop from the transformer; the condition of the power company's main line and the transformer, which permitted the escape of the current from the main line of the transformer's support, and thence to the interior circuit—any one of these things, it seems clear, was in the sense of that paragraph, a co-operating cause of the damage.

I will not dwell upon the effect of this conclusion as touching the responsibility of the appellants. The appellants could only exonerate themselves by showing that no reasonable precautions within their power, would, if taken, have prevented the damage. In this, they failed in three respects. First, apart altogether from the matter of the grounding of the transformer, they failed to show—the evidence is silent upon it—that there was no available means by which they could have protected their interior circuit from such an invasion as that which occurred. Second, the testimony adduced on behalf of the appellants themselves, shows that the lamp was not of the type commonly

in use, and there was no evidence justifying the conclusion that, by a proper insulation, persons using the lamp could not have been made secure against the risk of such a discharge as that which Claveau received. And lastly, there is the matter of the grounding of the transformer, which has been sufficiently discussed already. The appeal should be dismissed with costs.

NEWCOMBE J.—The trial judge found that the defendant company was not guilty of any fault, and that it had not under its care the excessive electric current, found to be the thing which caused the death of the plaintiff's husband. Upon appeal, the majority of the learned judges considered, as I interpret the judgment of the court, that the fatal occurrence was due to the fact that, accidentally, during a violent thunder storm, the portable extension lamp became charged with a current of 2,200 volts, which it was not intended to carry, and that death was caused by the shock communicated to the man's body when he grasped the lamp so charged; that although this electric current was not under the care of the defendant, the lamp was; that, while it was not shown that the defendant was negligent, there was room for the application of article 1054 of the Civil Code of Quebec, and that the defendant should have established that it could not have prevented the accident, which, in the view of the court, it had failed to do, because it was not shown that by the use of a better or safer lamp, or one more qualified to afford protection against the perils which were encountered, the accident could not possibly or probably (fort possible, sinon fort probable) have been avoided. The ground of obligation found by the Court of King's Bench is thus the said article in its relation to the lamp, and the absence of proof of defeasance of the liability held to be thereby imposed, namely, proof of inability to prevent the act (le fait) which caused the damage.

I would interpret article 1054 C.C. in its application to this case as providing that every person capable of discerning right from wrong is responsible for the damage caused by things which he has under his care, but only if he fail to establish (ne peut prouver) that he was unable to prevent the act (le fait) which caused the damage, and I shall as-

1928

CANADA & GULF TERMINAL RY. CO. v. LEVESQUE.

Newcombe J.

sume for the purposes of what I am going to say that the word "person" in this context includes a corporation such as the defendant company.

I would have upheld the judgment of the learned trial judge, and, therefore, in the discharge of what I conceive to be the duty of the court under s. 51 of the *Supreme Court Act*, the appeal should, I think, be allowed. In my judgment there was evidence in the case upon which the trial judge might reasonably find as he did. I am not prepared to replace his finding by one of negligence against the defendant; neither apparently was the Court of King's Bench. Moreover, as to the thing which caused the accident, if it were a thing, I am persuaded that it was not the lamp, or at least it is not shown to have been the lamp. If the lamp and the mysterious death-dealing agency, or force, or energy, known as the electric current, can be considered as separate entities, it was the latter which was the direct operative cause—the fatal instrument, if it may be so described, and the lamp was no more than a *sine qua non*. There are many English cases which illustrate the principle of this conclusion; see for example, *Wilson* v. *Xantho* (1); and *Hamilton* vs. *Pandorf* (2), which, though relating to very different conditions of fact, exemplify the application of a rule of causality which is common to both systems.

It is not necessary to go further, but, if it were, I should wish to consider whether the defendant would not escape liability under article 1054 for the reason that it was unable to prevent the occurrence which caused the damage. This means "unable by reasonable means"; *City of Montreal* vs. *Watt and Scott* (3). If there had been negligence on the defendant's part it would have been liable under article 1053, but negligence is excluded by the findings; there was therefore, in that sense, no failure to adopt reasonable means, and I am in a frame of mind to question whether it does not appear to be unreasonable that the defendant should have anticipated what happened and provided extraordinary means of safety against such a combination of unforeseen occurrences, and the intrusion of a

(1) (1887) 12 App. Cas. 503. (2) (1887) 12 App. Cas. 518.
(3) [1922] 2 A.C. 555, at p. 563.

resulting current twenty times greater than that for which its works were constructed and equipped, if indeed it were possible to do so.

As to the burden of proof that the damage was caused by a thing which the defendant company had under its care, it was upon the plaintiff. Although the lamp may have afforded a passage for the electric current which caused the shock, it seems to be clear, upon the case as it stands, that La Compagnie du Pouvoir de Bas St. Laurent, the power company which supplied the electricity to the premises of the defendant company, produced the current and had the care of the apparatus and the exterior wires by which the current was transmitted, and would have been responsible for the damages upon an allegation of fault or negligence on the part of that company. Assuming that the man's death was caused by electric shock emanating from the wires by which the lamp was connected with the source of the electric supply, and, seeing that the source of supply and the transmission were under the care and operation of the power company, and not under the care of the defendant, it follows that the burden of proof that the lamp caused the damage is not satisfied, and, I should think, cannot be discharged, without evidence that the electric current which caused the death of Claveau did not exist apart from the lamp. No attempt was of course made to establish this, but, to the contrary, the proof proceeds upon the assumption that the lamp and its attachments served only as the conductor of something foreign to the lamp—a source of power, not the lamp, possessing that inherent or latent capacity to produce the fatal result which was excited to action by contact with the man's hand. It is consistent with the absence of liability on defendant's part that electricity is not more intimately known to science than as a name applied to the source of its well recognized phenomena, while its material existence cannot be denied if, as in practice and legislatively recognized, it can be measured, bought and sold, exported, distributed and stolen. (See *Electricity and Fluid Exportation Act,* c. 16 of 1907; Criminal Code, s. 351; *Electric Lighting Act,* 1909, 9 Edw. VII, c. 34, Imp., etc.) Moreover in the judicial authorities to which my brother Rinfret refers the electric current is treated as an independent causative agent. It has the qual-

1928

CANADA & GULF TERMINAL RY. CO. v. LEVESQUE.

Newcombe J.

ity and habit of travelling by wire, but for the damage which it causes in transit, expressing my opinion with some diffidence and with the utmost respect, the Civil Code does not, in the circumstances of this case, attach liability to a person who has the care only of the wire, or of the lamp in which the wire terminates, when the damage is not caused by his fault, even though he have failed to prove that he was unable, within the meaning of the article, to prevent the act which caused the damage.

RINFRET J.—L'appelante, Canada and Gulf Terminal Railway Company, possédait à Mont-Joli une usine de réparation. L'éclairage s'y faisait au moyen de l'électricité fournie par La compagnie de Pouvoir du Bas St-Laurent. A cette fin, le réseau de cette compagnie, composé de fils primaires chargés d'un courant de 2200 volts, se rendait jusqu'à une distance d'environ cinquante pieds de l'usine. Là, le courant était transformé à 110 volts et, ainsi réduit, suivait des fils secondaires jusqu'à l'usine où il rejoignait l'installation intérieure.

Le réseau et le transformateur étaient la propriété de la compagnie d'éclairage, qui en avait la garde, le contrôle et la direction. Les fils secondaires et l'installation électrique intérieure étaient sous la garde de la compagnie de chemin de fer Canada and Gulf Terminal.

Léon Claveau, l'époux de la demanderesse et le père des autres demandeurs, était contremaître à l'emploi de la compagnie de chemin de fer. Le 9 juin 1925, dans l'usine, il surveillait la réparation d'une locomotive. C'était au cours d'un orage très violent, accompagné d'éclairs et de tonnerre. Les ouvriers eurent besoin d'éclairer l'intérieur de la locomotive. Il y avait à proximité une lampe électrique portative, attachée à un long fil, et que l'on pouvait ainsi transporter d'un endroit à un autre. La lampe consistait en une ampoule dans un socle en cuivre, entourée d'un grillage métallique, et fixée à une poignée en bois.

Claveau traversa la salle de l'usine pour aller chercher cette lampe. On entendit un cri et, en même temps dans la direction d'où venait le cri, on vit une grosse lueur, "comme un éclair". Claveau était tombé foudroyé. On le trouva avec la lampe portative dans la main gauche.

Il avait (dit l'un des témoins) les doigts crispés dans la broche. Il était brûlé sur les doigts. Il la tenait serrée, j'ai été obligé de lui ouvrir la main.

Le médecin, Docteur J. A. Ross, aussitôt appelé, constata une brûlure pouvant s'étendre sur toute la longueur du poignet, très profonde. Même les chairs étaient carbonisées.

Il attribua la mort à un choc électrique et à la brûlure.

L'épouse et les enfants de Claveau ont voulu faire déclarer la Compagnie Canada and Gulf Terminal Railway responsable de sa mort pour n'avoir pas tenu

en bon ordre l'installation extérieure et intérieure de la lumière électrique et (avoir laissé) pénétrer dans la lampe un courant meurtrier.

Ils ont fait ainsi reposer leur demande sur une allégation de faute et de négligence. Mais ils ont ajouté que l'accident fut causé par la lampe et le courant électrique dont, suivant eux, la compagnie Canada & Gulf Terminal avait le contrôle et la garde, et ils tentèrent par là d'appuyer leur réclamation sur l'article 1054 du Code civil.

La Cour Supérieure a jugé:

la demanderesse n'a rapporté la preuve d'aucune faute résultant du fait personnel de la défenderesse.

Quant à l'application de l'article 1054 C.C., la cour a décidé, en fait, que la défenderesse n'avait sous sa garde que l'installation d'éclairage électrique à l'intérieur de l'usine; qu'il

n'a pas été prouvé que la mort de Claveau soit la conséquence de cette installation;

que la cause prochaine de cet accident fut une décharge électrique excessive et imprévue occasionnée par le fait que la foudre est tombée sur un fil primaire de l'installation extérieure et l'a rompu. Comme résultat: le fluide électrique ainsi développé, ou le courant de plus de 2000 volts dont les fils primaires étaient chargés, s'est communiqué aux fils secondaires et a pénétré dans l'usine, où il a provoqué la mort de Claveau. Cette mort a donc été le fait ou des forces de la nature ou d'un courant électrique dont la Compagnie de Pouvoir du Bas St-Laurent avait seule la garde. Les fils secondaires et la lampe ne furent que les agents occasionnels du dommage. En première instance, l'action fut donc rejetée.

La Cour du Banc du Roi ne fut pas d'avis différent sur la façon dont l'accident était survenu. Elle dit, dans son jugement:

1928

CANADA & GULF TERMINAL RY. CO. v. LEVESQUE.

Rinfret J.

L'accident est arrivé parce que, *anormalement et contrairement à toute attente,* le panier protecteur (de la lampe) se trouvait chargé d'un fort courant électrique, lorsque ledit Léon Claveau a pris ladite lampe pour s'en servir. Il est prouvé que l'accident s'est produit pendant un violent orage électrique. Par le fait de l'orage, ou autrement peu importe, un fil reliant le transformateur à un des fils primaires du réseau étant venu à se rompre, le courant de 2,200 volts du fil primaire se communiqua à la caisse métallique du transformateur et, de là, au fil secondaire conduisant à l'usine, sans passer par les bobines destinées à le réduire, etc.

Le majorité de la Cour du Banc du Roi, comme la Cour Supérieure, rejeta les allégations de faute contre la défenderesse. La preuve avait établi que le transformateur n'était pas "terré" (i.e. en communication avec le sol par un fil conducteur ou "grounded"), ce qui aurait probablement empêché l'accident. Mais la cour décida que la compagnie de chemin de fer n'était pas sujette à reproche sur ce point. Elle n'était pas propriétaire du transformateur. Elle n'en avait pas la garde. Il n'est pas prouvé qu'elle connaissait cette défectuosité.

Ce serait trop exiger d'un simple consommateur d'énergie électrique et, pour employer le langage du Conseil Privé: ce ne serait pas raisonnable (de) dire qu'elle a manqué, en ne se donnant pas la peine d'aller vérifier si le transformateur était installé suivant les règles de l'art.

Cependant la cour fut d'avis que la mort de Claveau avait été causée par la lampe électrique portative, alors qu'elle était sous la garde de la défenderesse. La majorité des juges décida, en conséquence, que la compagnie Canada and Gulf Terminal était légalement responsable de cette mort parce qu'elle n'avait pas établi qu'elle n'aurait "pu empêcher le fait qui a causé le dommage". Pour monsieur le juge Greenshields, au contraire, la preuve que l'accident avait été causé par la faute de la Compagnie de Pouvoir du Bas St-Laurent, qui avait omis de "terrer" son transformateur, était suffisante pour faire bénéficier la défenderesse de la clause "disculpatoire" de l'article 1054 C.C.

C'est dans ces conditions que la cause nous est maintenant soumise. Et, comme on le voit, le conflit entre la Cour Supérieure et la majorité de la Cour du Banc du Roi ne porte que sur l'application de l'article 1054 C.C. Les deux cours se sont accordées pour absoudre la défenderesse de toute responsabilité en vertu de l'article 1053 C.C. Le jugement de la Cour du Banc du Roi signale que la lampe portative n'était pas irréprochable, mais ce n'est que pour accentuer, dans son raisonnement, le défaut de la défenderesse de se disculper.

L'emploi d'une lampe différente (avec socle en porcelaine, poignée recouverte de caoutchouc, etc.), de préférence à la lampe avec socle en cuivre qu'il y avait ici, est la seule précaution raisonnable que l'on a suggérée comme pouvant être adoptée pour empêcher l'accident, par application du principe: "unable by reasonable means to prevent the damage complained of" posé par le Conseil Privé dans la cause de *City of Montreal* v. *Watt and Scott Ltd.*(1). Mais il est prouvé que la lampe dont on a fait usage en l'espèce était suffisante ("correcte") pour le voltage qu'elle devait normalement recevoir; et il n'est nullement établi que, par l'emploi d'une lampe différente, telle que décrite, l'appelante eût "pu empêcher le fait qui a causé le dommage" (art. 1054 C.C.).

L'appelante, pour prévenir un fait de ce genre, avait d'ailleurs, comme la preuve le démontre, employé un moyen plus efficace. Elle avait fait installer dans l'usine un appareil qui fait déclancher le coupe-circuit et (qui) ouvre automatiquement s'il arrivait des décharges ou un courant très fort. Ce sont des précautions dans l'usine qui sont réglées de façon à laisser passer la charge normale de la ligne sans travailler, mais s'il passe un courant double ou triple de la charge normale, il y a un piston-plongeur qui se soulève et qui occasionne un déclanchement, et le courant, le circuit se trouve interrompu par le fait même.

Lors de l'accident qui nous occupe, le coupe-circuit n'a pas fonctionné automatiquement. L'inspection qui a suivi n'y a cependant rien démontré de défectueux; et la présomption de l'expert a porté sur les éclairs.

Le fait que le primaire avait été coupé en avant du transformateur, près de l'usine du Canada & Gulf Terminal, ne devait pas nécessairement faire tomber la "switch" automatique, parce qu'étant donné que les fils qu'il y avait là, les fils nº 10, étaient très faibles, ils auraient brûlé sous l'intensité de l'arc et puis le coupe-circuit de l'usine n'aurait pas eu le temps de sauter.

L'accident s'est donc produit malgré la protection du coupe-circuit; et il fut instantané, puisque le coupe-circuit n'a "pas eu le temps de sauter", ce qui favorise davantage la théorie qu'il fut causé par l'éclair.

Aucune précaution additionnelle n'a été indiquée pour éviter cet accident. Personne n'a signalé un autre "moyen raisonnable" par lequel l'appelante aurait pu "empêcher le fait qui a causé le dommage". Nous serions donc d'accord avec monsieur le juge Greenshields pour dire que

(1) [1922] 2 A.C. 555, at p. 563.

1928

CANADA & GULF TERMINAL RY. CO. v. LEVESQUE.

Rinfret J.

l'appelante, en assumant que ce fût sa chose qui a causé la mort de Claveau, a réussi à se disculper au sens de l'article 1054 du Code civil.

Mais le débat se rétrécit encore davantage. Nous ne pouvons admettre que la mort de Claveau a été causée par la chose de l'appelante.

Cette mort, comme nous l'avons vu,—les deux cours qui ont eu jusqu'ici à se prononcer se sont accordées pour le décider et il est impossible d'arriver à une autre conclusion d'après la preuve—fut le résultat direct du choc électrique.

Comment s'est produit ce choc électrique?

Voici l'explication de M. Philippe Méthé, ingénieur civil, diplômé de l'école polytechnique de Montréal, au service de la Shawinigan Water & Power Company pendant cinq ans, et, au moment où il rendait son témoignage, au service de la compagnie du Pouvoir du Bas St-Laurent, de Rimouski, depuis cinq ans.

Dès le soir de l'accident, il s'est rendu sur les lieux et a examiné l'installation près du transformateur. Il a constaté que l'un des fils primaires était coupé. On lui demande:

Q. D'après vous, qu'est-ce qui a pu couper ce fil?

R. C'est un arc qui s'est produit entre le fil et la caisse du transformateur, le support du transformateur, sur lequel le transformateur est boulonné.

Q. Qu'est-ce qui pouvait provoquer cet arc-là?

R. Une décharge électrique. Un éclair pouvait parfaitement provoquer cet arc-là, dans les conditions où c'était installé.

Il n'a pu constater d'autre cause et n'a vu rien "autre chose qui aurait pu provoquer ce coupement de fil".

On lui pose alors la question:

D'après ces constatations-là que vous avez faites, par quoi croyez-vous que Claveau a pu être tué?

R. Par un éclair.

Q. Par un éclair. Est-ce que l'éclair pouvait le tuer directement?

R. Oui. En frappant à l'endroit où le primaire est coupé, et passant par le support du transformateur et la caisse du transformateur, et de là se transmettant sur le secondaire et en entrant directement dans l'usine.

Q. Est-ce que, sans que le courant fasse ce trajet-là, il pouvait être tué directement par l'éclair?

R. L'éclair pouvait frapper aussi directement sur les secondaires.

Q. Vous avez entendu les témoins décrire la lueur, le feu causé, et à la switch d'entrée, et à la lampe, vis-à-vis de la lampe que tenait Claveau dans ses mains, lorsqu'il s'est fait tuer?

R. Oui.

Q. Voulez-vous dire si cette lueur-là, d'après votre expérience, pouvait être causée par le courant de 110 volts?

R. Non.

Q. Cette lueur semblait-elle dénoter du 2200, ou plutôt un éclair, un courant produit par le tonnerre?

R. C'est plutôt un coup de tonnerre.

Q. Normalement, le 2200 ferait-il une démonstration de flamme aussi considérable?

R. Je ne crois pas.

Q. Dites-vous, monsieur Méthé, que la mort pouvait être causée par un coup de tonnerre, ou si elle a été réellement causée par un coup de tonnerre?

R. Je dis que c'est mon opinion qu'elle a été causée par un coup de tonnerre.

Monsieur N. S. Walsh, examinateur électricien à l'emploi du gouvernement provincial, témoigne comme suit:

Q. Vous avez entendu les témoins qui ont décrit la flamme, le rideau de flamme à l'entrée de l'usine et également dans la figure de Claveau lorsqu'il a été tué?

R. Oui, monsieur.

Q. D'après votre expérience, cette flamme-là pouvait-elle dénoter un courant de 110 volts?

R. Non, pas du tout.

Q. 2,200 volts?

R. Ça prendrait au moins 2,200 volts.

Q. Est-ce que l'éclair pouvait faire le même travail?

R. Non. L'éclair ne ferait pas le même travail que ça.

Q. L'éclair ne ferait pas le même travail?

R. Il me semble pas toujours.

Q. Maintenant, vous avez entendu et vu la description qu'on a faite du fil qui raccordait du primaire, qui raccordait au poteau, de l'isolateur sur le poteau au transformateur. Il y avait une quinzaine de pouces de distance. Est-ce qu'un fil de cette longueur-là peut se couper sans raison?

R. Bien, dans ce bout-là, je ne pense pas. Ça doit être fait par quelque chose à l'extérieur, comme un éclair comme ça été mentionné.

Q. Est-ce que ça pourrait avoir été fait par d'autres causes que le coupage du fil?

R. Bien, je ne pense pas que ça pourrait être fait par autre chose qu'un éclair.

A la demande de la cour, il réitère qu'il attribue au choc extérieur de l'éclair le fait que le 2,200 volts qu'il y avait dans les primaires serait passé dans les secondaires et serait entré dans l'usine.

Méthé et Walsh sont les deux seuls hommes de l'art qui ont été appelés dans la cause à fournir une explication scientifique de ce qui s'était passé. Il résulterait de leurs témoignages que l'accident a été plutôt provoqué par l'éclair. Mais la seule autre conclusion que l'on puisse en tirer est que l'éclair, en rompant le fil primaire, a fait échapper le courant de 2200 volts qui a d'abord "passé sur les 'braces' du transformateur" et de là "s'est connecté avec les secondaires", puis "est venu dans l'usine même".

1928

CANADA & GULF TERMINAL RY. CO. v. LEVESQUE.

Rinfret J.

Sous l'article 1054 C.C., c'est sur le demandeur que retombe indubitablement le fardeau de prouver que le dommage a été causé par une chose que le défendeur avait sous sa garde. Si l'enquête nous laisse dans l'incertitude à ce sujet, le défendeur doit en bénéficier.

Dans la présente cause, si nous admettons l'hypothèse que l'accident a été causé par l'éclair, il est évident que, dans ce cas, nous devons dire qu'il n'en résulte pour l'appelante aucune responsabilité. Si nous acceptons, au contraire, l'explication la plus favorable à l'intimée, à savoir: que la mort de Claveau aurait été causée par le courant de 2200 volts échappé du fil primaire, l'appelante est encore soustraite à toute responsabilité en vertu de l'article 1054 C.C.. parce que la cause du dommage ne peut dès lors être attribuée à une chose qu'elle avait sous sa garde.

Personne ne prétend que la lampe seule, indépendamment de l'électricité dont elle s'est trouvée chargée, a causé la mort de Claveau. Tous les faits positifs qui ont été relatés s'accordent directement avec l'hypothèse d'une mort par électrocution. La lampe par elle-même n'a rien fait et n'aurait pu rien faire. Défectueuse ou non, sans l'électricité à laquelle elle a servi de véhicule, cette lampe était inoffensive. La déclaration qui sert de base à l'action, les constatations faites lors du décès, l'avis donné par les experts sont d'accord pour établir que cette mort a été causée par le "courant électrique". Il s'agit donc de déterminer, à l'aide, bien entendu, des données qui se trouvent au dossier, la personne qui avait ce courant sous sa garde au moment de l'accident.

Quelles que puissent être les discussions de la science au sujet des phénomènes électriques, nous n'avons pas ici à en rechercher l'explication mécanique, ni à nous inquiéter de leur nature physique. Aux yeux de la loi, et dans les conditions de la vie moderne, l'électricité est un produit industriel, qui se transporte d'un lieu à un autre. Elle a une existence objective indépendante des corps ou fils métalliques employés pour la transmettre à distance, puisque son producteur peut à son gré y provoquer ou en soustraire ce qu'on est convenu d'appeler la circulation du courant; puisqu'il n'est pas nécessaire d'ailleurs que le producteur soit en même temps le propriétaire des fils et qu'il pourra tout

aussi bien fournir son énergie électrique au moyen d'un système de distribution appartenant à un autre, ou allumer une lampe chez son abonné en se servant de fils et d'appareils qui sont la propriété de ce dernier.

Une société d'éclairage est propriétaire de l'énergie électrique produite par ses machines génératrices de la même façon qu'elle l'est du gaz qui circule dans ses conduites et tout autant que la compagnie d'aqueduc a la propriété de l'eau qui est dans ses tuyaux. Chacune de ces choses, du moment qu'elle est captée et rendue utilisable, devient une marchandise que la compagnie exploite commercialement et qu'elle fournit, en lui mesurant le courant au moyen d'un compteur, au consommateur qui en prend livraison. Les fils, les conduites, les tuyaux ne sont que les moyens de livraison. Ils sont susceptibles de possession et de propriété distinctes. Leur propriétaire n'a pas nécessairement sous sa garde l'électricité, le gaz ou l'eau qu'ils contiennent.

Nous trouvons dans le dossier de cette cause tous les éléments des données générales que nous venons d'énoncer. Nous savons que la Compagnie de Pouvoir du Bas Saint-Laurent produisait l'énergie électrique pour fournir l'éclairage, entre autres à l'usine de la défenderesse. En l'espèce, l'électricité dont il s'agit faisait donc l'objet d'un contrat de fourniture. Le contrat n'a pas été versé au dossier, mais il est constant que, dans le but de l'exécuter, la Compagnie de Pouvoir transportait son produit à un voltage de 2,200 jusqu'à un transformateur posé à 50 pieds de l'usine. A cet endroit, elle livrait à la défenderesse un courant de 110 volts, dont cette dernière prenait possession au moyen de ses propres fils,—que nous avons désignés plus haut sous le nom de fils secondaires. Ces fils et ce courant de 110 volts sont tout ce dont la défenderesse pouvait avoir le contrôle et la garde. Ce courant de 110 volts est le seul pour lequel la défenderesse avait passé contrat avec la compagnie d'éclairage, le seul qu'elle pouvait s'attendre à recevoir dans son usine. Mais la preuve est indiscutable qu'il n'a existé aucun lien causal entre ce courant de 110 volts et la mort de Claveau. Comme nous l'avons constaté plus haut, la conclusion la plus probable est que cette mort fut provoquée par l'éclair qui a rompu le fil primaire. La seule autre hypothèse est qu'elle fut causée par le courant de 2,200 volts échappé du fil primaire. Dans l'un comme dans

1928

CANADA & GULF TERMINAL RY. CO. v. LEVESQUE.

Rinfret J.

l'autre cas, la cause du dommage ne peut être attribuée à une chose que la défenderesse avait sous sa garde.

Dans les circonstances, le fil secondaire et la lampe n'ont été que la voie accidentelle par laquelle le courant s'est échappé. Il aurait pu suivre tout autre conducteur métallique, comme, par exemple, le fil d'un paratonnerre. Va-t-on dire que, dans ce cas, il se fût identifié avec le paratonnerre au point de devenir légalement la chose du propriétaire de l'usine? C'est par hasard que, déclanché dans les conditions imprévues que l'on sait, il a suivi d'abord les fils secondaires puis le treillis de la lampe. La " chose " meurtrière, si ce n'était pas l'éclair, fut ce courant de 2,200 volts et non la lampe ou son treillis protecteur.

Or, ce courant de 2,200 volts était sous la garde de la Compagnie de Pouvoir du Bas Saint-Laurent. Ce n'est pas ici le procès de cette compagnie; il se peut que, appelée à le faire, elle eût démontré qu'elle n'eût " pu empêcher le fait qui a causé le dommage ". Mais c'est elle qui avait le devoir de garder ce courant de 2,200 volts et d'empêcher qu'il ne dépassât la barrière du transformateur. Cette barrière ou ce transformateur étaient également sous sa garde. " Si ", comme le dit Demogue (Traité des Obligations, vol. 5, n° 1128), " il y a devoir de garder, la responsabilité subsiste si on cesse de garder ". Il ajoute (n° 1129):

Pour les installations électriques, la compagnie d'électricité répond de la chute des poteaux ou des fils le long de ses lignes. Elle est considérée comme en ayant la garde (Toulouse, 9 fév. 1910, S. 1910, 2, 275—Bordeaux, 17 juin 1907. Droit, 23 nov. 1907—Lyon, 25 avril 1899, Gaz. Pal., 1899, 2, 149—Trib. Vire, 22 juin 1922. Gaz. Pal. 1922, 2, 395), car elle en avait la surveillance et le profit. De même, si les câbles passant à proximité d'un toit provoquent un incendie, sa responsabilité est engagée, bien que, pour surveiller les fils au-dessus du toit de l'abonné et son branchement spécial, elle ait dû stipuler le droit de pénétrer chez lui. Cette circonstance ne fait pas disparaître son pouvoir de garde (Toulouse, 11 juin 1912, D. 1914, 2, 174. Rappr. trib. Tours, 9 déc. 1920, Gaz. Trib. 1921, 2, 454). La compagnie a même la garde de cette force spéciale, l'électricité qui circule dans ses câbles, comme dans le cas ci-dessus, ou dans le cas où un courant trop fort va tuer l'abonné dans sa maison (Grenoble, 6 nov. 1906, D. 1909, 2, 20, Paris, 15 mars 1919, Gaz. Trib. 1919, 2, 122. Rev. dr. civil, 1919, p. 504. Rappr. Trib. com. Marseilles, 11 mai 1920. Gaz. Pal. 1920, 2, 436).

Déjà, dans un article publié dans la Revue Trimestrielle de Droit Civil (année 1919, p. 499, à la page 504), le même auteur avait écrit:

Pour les compagnies électriques, on admet qu'elles ont la garde des appareils et du courant, et cela non seulement chez elle ou sur la voie

publique où passent les fils (Toulouse, 9 févr. 1910, S. 1910, 2, 275 et 13 juin 1914, D. 1914, 2, 174), mais même chez les abonnés. Cette dernière solution a été donnée soit si celui-ci est tué chez lui par l'arrivée d'un courant trop fort (Grenoble, 6 nov. 1906, D. 1909, 2, 30, Revue. 1907, p. 100), soit s'il est électrocuté en s'approchant à la suite d'un arrêt d'électricité d'un transformateur électrique que la compagnie devait fournir, poser et entretenir (Paris, 15 mars 1919, Gaz. Trib. 1919, 2, 123). La notion de garde est donc très large.

Cette idée que la compagnie d'éclairage est responsable de l'électricité qui s'échappe est conforme à la jurisprudence. Il y a analogie sur ce point avec la situation du gardien d'un barrage d'eau qui se brise et cause un dommage matériel à autrui (Voir la cause de *The National Telephone Company* v. *Baker* (1), et aussi ce que dit notre collègue, Monsieur le Juge Duff, dans la cause de *Vandry* v. *The Quebec Railway, Light, Heat & Power Company* (2). Il est intéressant, à ce sujet, de lire le jugement du Conseil Privé (composé de Lord Macnaghten, Lord Shand, Lord Davey, Lord Robertson et Lord Lindley) dans la cause de *Eastern & South African Telephone Company* v. *Cape Town Tramways Limited* (3). Notre intention, en y référant, n'est pas d'en faire l'une des bases de notre jugement, car il est toujours dangereux de chercher un appui dans des arrêts prononcés sous l'empire de lois différentes; mais l'intérêt pour nous réside dans la façon dont Lord Robertson, parlant au nom de la cour, traite cette question "of the escaped current" et y réfère constamment comme "this electricity having escaped and being at large" * * * "the mode of escape of the electricity." * * * "Electricity (in the quantity which we are now dealing with) is capable when uncontrolled of producing injury to life and to property; and in the present instance it was artificially generated in such quantity, and it escaped from the respondents' premises and control.

Une partie du jugé en cette cause fut:

The principle of *Rylands* v. *Fletcher* (4) is not inconsistent with the Roman law. It applies to a proprietor who stores electricity on his land if it escapes therefrom and injures a person or (interferes with) the ordinary use of property.

Il convient d'insister cependant sur deux arrêts qui ont fait l'application de la loi telle qu'elle est contenue dans l'article 1054 du Code civil de Québec. L'un est de la cour d'appel de Grenoble, France, et l'autre est le jugement du

(1) [1893] 2 Ch. 186.
(2) 53 Can. S.C.R., 72, at p. 100.
(3) [1902] A.C. 38.
(4) [1868] L.R. 3 H.L. 330.

1928

CANADA & GULF TERMINAL RY. CO. v. LEVESQUE.

Rinfret J.

Conseil Privé dans la cause de *Quebec R. L. H. and P. Co.* v. *Vandry* (1).

La cause de Grenoble est celle de la *Société des forces motrices du Haut Grésivaudan* v. *Veuve Richard* (2). Le sieur Richard avait été foudroyé par un choc électrique au moment où il appréhendait, dans sa cuisine, pour en constater l'état, une lampe électrique mobile qui ne donnait qu'une faible clarté. Sa veuve, agissant tant en son nom personnel que comme tutrice légale de ses quatre enfants, avait poursuivi la Société qui fournissait et distribuait l'éclairage électrique dans la maison de la victime.

Là, comme dans la présente cause, les constatations faites à la suite du décès par les médecins qui avaient examiné le cadavre de Richard et par les experts entendus à l'enquête établissaient irréfutablement que la victime avait été foudroyée (nous citons le jugement)

par un courant d'une tension excessive, supérieur de plusieurs milliers de volts à celui que le transformateur, qui reçoit le courant primaire, doit distribuer aux abonnés, et qu'ainsi cet accident est le résultat direct de l'installation électrique de la Société et du fonctionnement de son transformateur.

La cour, en rendant jugement, rappelle d'abord le principe de l'article 1384 C.N., d'après lequel on est responsable non-seulement du dommage que l'on cause par sa propre faute, mais encore de celui qui est causé par le fait des choses que l'on a sous sa garde. Elle procède ensuite à dire:

La Société des forces motrices a la garde de l'installation qui est son œuvre, à l'aide de laquelle elle distribue de la lumière électrique, et il est constant que l'accident mortel survenu à Richard, dans son habitation, au moment où il saisissait de la main gauche une lampe mobile a été causé par la chose même de la Société, puisque Richard a été foudroyé par le courant qui circulait sur la ligne extérieure et qui a été transmis presque intégralement au fil qui desservait son installation intérieure.

Après avoir insisté de cette façon sur le fait que la "chose" qui a causé le dommage fut

le courant qui circulait sur la ligne extérieure et qui a été transmis presque intégralement au fil qui desservait son installation intérieure,

la cour rend bien claire son idée que ce courant doit être envisagé comme une "chose" distincte de l'installation électrique, des fils conducteurs et de la lampe mobile, car elle ajoute:

Il est ainsi sans intérêt de rechercher si Richard avait la charge de l'entretien et de la réparation de son installation intérieure qu'il avait

(1) [1920] A.C. 662. (2) D. 1909-2-30.

payée, au dire de la Société. Il suffit de considérer, pour la solution du litige, que sa mort a été déterminée par l'afflux sur le fil qui transporte la force électrique d'un courant extrêmement fort qui est arrivé presque intégralement sur le fil de Richard alors qu'il ne devait normalement lui être transmis par le transformateur que très diminué et à l'état de courant secondaire.

Indépendamment de la question de faute personnelle de la Société des forces motrices ou de la faute des préposés au fonctionnement du transformateur ou à la distribution du courant, la conclusion de la cour de Grenoble fut que la Société était responsable envers la veuve Richard, à raison du fait que le courant électrique était sous sa garde. Pour employer les termes du jugement, la cour a tenu

ladite Société responsable envers la veuve Richard ès qualité, du fait dommageable de la chose dont elle a la garde, et de la mort du sieur Richard, etc.

Mais la cause de *Québec Railway, Light, Heat & Power Company* v. *Vandry* (1) mérite ici une attention spéciale. Il s'agissait là aussi "of the escape of the electric current". Nous empruntons des Law Reports ce court résumé des faits:

The appellant company, acting under statutory powers, had erected along a road in Quebec two overhead cables for the distribution of electric current at tensions of 2,200 volts and 108 volts respectively, and they supplied current at 108 volts to the respondents' premises. A violent wind (not amounting to force majeure) tore a branch from a tree growing about 28 feet away from the cables, and drove it against them. In consequence the cables were broken down, and the high tension current found its way along the low tension cable into the respondents' premises, and caused a fire. The respondents brought an action for damages against the appellants:—

Comme on s'en souvient, la compagnie Quebec Railway, Light, Heat & Power fut déclarée responsable par le Conseil Privé. Et l'on voit la similitude des faits entre cette cause et le cas qui nous occupe. Là, le fil primaire avait été rompu par une branche d'arbre transportée par un vent violent. Ici, le fil primaire a été rompu par un éclair. Dans les deux cas, comme conséquence de cet accident, le courant de 2200 volts s'est communiqué du fil primaire au fil secondaire. A la maison Vandry, le courant électrique était fourni à 108 volts; à l'usine de la compagnie Canada & Gulf Terminal Railway, il était fourni à 110 volts. Chose digne de remarque, dans la cause de Vandry comme dans la présente, on avait trouvé

(1) [1920] A.C. 662.

1928

CANADA & GULF TERMINAL RY. CO. v. LEVESQUE.

Rinfret J.

that the electric wiring in the premises in question, though old-fashioned, was not defective and was capable of carrying a current of 108 volts (ici de 110 volts). Et ce n'est pas parce qu'elle fut trouvée coupable de faute ou de quasi-délit que la compagnie Quebec Railway, Light, Heat & Power fut condamnée. La base du jugement du Conseil Privé fut le principe de la garde de la chose. Le point sur lequel nous devons insister dans cette décision et dans celle de la cour d'appel de Grenoble est le suivant: Ces tribunaux ont considéré que le courant électrique excessif, supérieur à celui que le transformateur devait distribuer aux abonnés, était la chose qui avait causé le dommage; et bien qu'il fût, dans le premier cas, dans la lampe mobile qui appartenait à Richard, et, dans le second cas, dans l'installation intérieure de la maison de Vandry, nonobstant cela, ce courant électrique continuait aux yeux de la loi, d'être sous la garde de la compagnie d'éclairage.

Il suffit d'ajouter que si, dans chacun de ces deux cas, le tribunal de Grenoble et le Conseil Privé avaient envisagé le courant électrique comme faisant partie de l'installation intérieure ou de la lampe mobile, le résultat eût été différent. Comme la lampe mobile était sous la garde de Richard, et comme l'installation intérieure était sous la garde de Vandry, par application du principe de la garde de la chose, le résultat inéluctable eût été que la veuve Richard ou Vandry eussent été déboutés de leur action.

Nous devons donc ici appliquer de la même façon la règle de l'article 1054 C.C. en concluant que la chose qui a causé la mort de Claveau (à savoir le courant électrique de 2,200 volts) était sous la garde de la Compagnie de Pouvoir du Bas Saint-Laurent, et non pas sous la garde de la défenderesse. Comme conséquence, suivant nous, l'action qui a été intentée contre cette dernière devait être rejetée.

L'appel doit donc être maintenu et le jugement de première instance rétabli, avec dépens tant devant cette cour que devant la Cour du Banc du Roi, si la compagnie appelante juge à propos de les réclamer des intimés.

LAMONT J. (dissenting).—I concur with Mr. Justice Duff.

Appeal allowed with costs.

Solicitors for the appelant: *Sasseville & Gagnon.*
Solicitor for the respondent: *L. G. Belley.*