

## INDEX.

---

|                                       | PAGE |
|---------------------------------------|------|
| Notice of Appeal .....                | 1    |
| Complaint .....                       | 2    |
| Answer .....                          | 4    |
| Reply .....                           | 6    |
| Judgment .....                        | 6    |
| Case .....                            | 7    |
| Motion for Nonsuit .....              | 114  |
| Motion for Direction of Verdict ..... | 145  |
| Charge of the Court .....             | 145  |
| Defendant's Exceptions .....          | 155  |
| Grounds of Appeal .....               | 160  |

### TESTIMONY FOR PLAINTIFF.

|                   |     |
|-------------------|-----|
| Dr. John B. Boyd: |     |
| Direct .....      | 7   |
| Archie Heyer:     |     |
| Direct .....      | 10  |
| Cross .....       | 22  |
| Redirect .....    | 37  |
| McKinley Flippin: |     |
| Direct .....      | 37  |
| Cross .....       | 43  |
| Annie Heyer:      |     |
| Direct .....      | 48  |
| Cross .....       | 50  |
| Redirect .....    | 54  |
| George Smith:     |     |
| Direct .....      | 55  |
| Cross .....       | 82  |
| Redirect .....    | 97  |
| Recross .....     | 101 |



|                      | PAGE |
|----------------------|------|
| Phineas Proctor:     |      |
| Direct .....         | 104  |
| Cross .....          | 108  |
| Redirect .....       | 109  |
| Lionel W. Lancaster: |      |
| Direct .....         | 111  |
| Cross .....          | 112  |
| Redirect .....       | 113  |

## TESTIMONY FOR DEFENDANT.

|                     |          |
|---------------------|----------|
| Charles Le Maistre: |          |
| Direct .....        | 115      |
| Cross .....         | 118      |
| Irving Finch:       |          |
| Direct .....        | 119, 140 |
| Cross .....         | 124      |
| Redirect .....      | 125, 128 |
| Recross .....       | 127, 129 |
| John Tober:         |          |
| Direct .....        | 137      |
| Cross .....         | 139      |
| George D. Cooper:   |          |
| Direct .....        | 140      |
| Cross .....         | 143      |

## REBUTTAL.

|                   |     |
|-------------------|-----|
| McKinley Flippin: |     |
| Direct .....      | 144 |

## PLAINTIFF'S EXHIBITS.

|                                    | Offered<br>Page | Printed<br>Page |
|------------------------------------|-----------------|-----------------|
| P-1.—Photograph .....              | 10              | ...             |
| P-2.—Photograph .....              | 10              | ...             |
| P-3.—Letters of Administration ... | 11              | ...             |

## DEFENDANT'S EXHIBIT.

|                                 |     |     |
|---------------------------------|-----|-----|
| D-1.—Plan, Thompson Building .. | 143 | 168 |
|---------------------------------|-----|-----|



Notice of Appeal.

(Filed January 23, 1929.)

New Jersey Supreme Court

10

ARCHIE F. HEYER, administrator  
*ad prosequendum* of the es-  
tate of Clarence B. Heyer, de-  
ceased,

Plaintiff,

v.

JERSEY CENTRAL POWER & LIGHT  
COMPANY,

Defendant.

Action at Law.  
Notice of Appeal.

20

To

WARD KREMER, Esq.,  
Attorney of Plaintiff.

SIR:

TAKE NOTICE that the defendant appeals to the  
Court of Errors and Appeals of New Jersey from  
the whole of the judgment entered in this cause.

30

Dated January 18, 1929.

Respectfully,

COLLINS & CORBIN,  
Attorneys of Defendant.

Service acknowledged January 19, 1929.

WARD KREMER,  
Attorney of Plaintiff.

40



**Complaint.**

(Filed December 21, 1927.)

10       The plaintiff, Archie F. Heyer, administrator *ad prosequendum* of the Estate of Clarence B. Heyer, deceased, residing in the Borough of Little Silver, County of Monmouth and State of New Jersey, complaining says that:

1. Plaintiff is the administrator *ad prosequendum* of Clarence B. Heyer, deceased, and was duly appointed as such administrator by the Surrogate of Monmouth County, on the 30th day of November, 1927.

20       2. On the 5th day of October, 1927, the said Clarence B. Heyer was employed by the plaintiff as a mason.

3. On the said 5th day of October, 1927, the said Clarence B. Heyer was working on a building in Red Bank, Monmouth County, New Jersey, owned by S. S. Thompson & Company, a corporation. The said Clarence B. Heyer was doing plastering work on the building and went up to the roof to erect a pulley for the purpose of carrying cement up and down the outside of the building.

30       4. While the said Clarence B. Heyer was working on the roof and was in the act of placing or erecting the said pulley, he received an electric shock from certain wires owned by the defendant, causing his death.

40       5. Plaintiff further says that the wires of the defendant ran parallel to the building upon which the said Clarence B. Heyer was working and about three or four feet from the said building. They did not touch the roof at any place.



*Complaint.*

6. Plaintiff further says that the death of the said Clarence B. Heyer was caused by the transmission of the current from the said wires to the body of the said Clarence B. Heyer and that the wires in question were not insulated.

7. The death of the said Clarence B. Heyer was caused by the negligence of the defendant, Jersey Central Power and Light Company, and its agents and servants in permitting its wires to be so constructed and maintained at a point at or near the place where the said Clarence B. Heyer was sent and instructed to work that the said current from the said wires could be transmitted to the said Clarence B. Heyer.

8. Plaintiff further says that the defendant was negligent in maintaining at the said point a wiring system in such location as to their construction that the said current might be transmitted in such manner as actually did occur in this case and in maintaining the said wires without proper insulation or protection against the transmission of the said current to persons at work at or near the said wires.

9. Plaintiff further says that the defendant was guilty of negligence in keeping and maintaining the said wiring system without insulation in such a place and manner that any person at or near the wires might come in contact with them or might have the said current transmitted to him on account of the failure properly to insulate the wires.

10. Plaintiff further says that this suit has been instituted within twenty-four calendar months after the death of the said Clarence B. Heyer.

10

20

30

40



*Answer.*

11. The said Clarence B. Heyer left him surviving the plaintiff, Archie F. Heyer, who has suffered great pecuniary loss and injury as a result of the death of the said Clarence B. Heyer resultant from the negligence of the defendant as aforesaid.

10

Plaintiff demands as his damages Fifty Thousand Dollars.

WARD KREMER,  
Attorney for Plaintiff.

---

**Answer.**

(Filed December 24, 1927.)

20

The defendant, Jersey Central Power & Light Company, a body corporate, having its place of business in the City of Perth Amboy, County of Monmouth and State of New Jersey, says that:

**FIRST DEFENSE.**

1. It has no knowledge or information sufficient to form a belief as to Paragraph 1.

2. It has no knowledge or information sufficient to form a belief as to Paragraph 2.

30

3. It has no knowledge or information sufficient to form a belief as to Paragraph 3.

4. It denies Paragraph 4.

5. It denies Paragraph 5.

6. It denies Paragraph 6.

7. It denies Paragraph 7.

8. It denies Paragraph 8.

9. It denies Paragraph 9.

10. It has no knowledge or information sufficient to form a belief as to Paragraph 10.

40

11. It denies Paragraph 11.



*Answer.*

## SECOND DEFENSE.

The alleged accident set forth in the complaint was due to contributory negligence on the part of the plaintiff intestate in failing to exercise reasonable care for his own safety.

10

## THIRD DEFENSE.

The alleged accident set forth in the complaint was due to contributory negligence on the part of the plaintiff, Archie F. Heyer, in failing to exercise reasonable care for the safety of the plaintiff intestate.

## FOURTH DEFENSE.

At the time of the alleged accident set forth in the complaint the plaintiff intestate was at most a mere licensee and as such the defendant, Jersey Central Power & Light Company, owed him no duty except to refrain from willful and wanton injury. There was no such injury to the plaintiff intestate and therefore there can be no recovery.

20

## FIFTH DEFENSE.

At the time of the alleged accident set forth in the complaint the plaintiff intestate was a trespasser and as such the defendant, Jersey Central Power & Light Company, owed him no duty except to refrain from willful and wanton injury. There was no such injury to the plaintiff intestate and therefore there can be no recovery.

30

## SIXTH DEFENSE.

The defendant was not negligent in any respect as alleged in the complaint and the defendant violated no duty which it owed to the plaintiff intestate.

40

COLLINS & CORBIN,  
Attorneys of Defendant.



**Reply.**

(Filed December 29, 1927.)

The plaintiff, residing in the Borough of Little Silver, County of Monmouth and State of New Jersey, replying to the answer of the defendant in the above entitled cause, says that:

10

1. The matters and things therein contained are denied.
2. The plaintiff joins issue thereon.

WARD KREMER,  
Attorney for Plaintiff.

**Judgment.**

20

(Filed January 15, 1929.)

This case was tried before Circuit Judge Rulif V. Lawrence with a jury on January 2nd, 1929.

The jury rendered a general verdict against the defendant, and in favor of the plaintiff for Six Thousand Dollars (\$6,000.00).

Whereupon it is adjudged that the plaintiff, Archie F. Heyer, administrator *ad prosequendum* of the Estate of Clarence B. Heyer, deceased, do

30

|                                                                                                                             |                                                                                                                                                                                                                                                          |
|-----------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Damages \$6,000.00</p> <p>Costs        68.97</p> <p style="border-top: 1px solid black; margin-top: 5px;">\$6,068.97</p> | <p>recover of the said defendant, Jersey Central Power &amp; Light Company, body corporate, the sum of Six Thousand Dollars damages together with his costs which have been taxed at the sum of Sixty-Eight Dollars and ninety-seven Cents making in</p> |
|-----------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

40



*Dr. John B. Boyd, direct.*

the whole the sum of Six  
Thousand Sixty-Eight Dol-  
lars and ninety-seven Cents.

WM. S. GUMMERE,  
C. J.

Judgment entered January 15, 1929.

10

NEW JERSEY SUPREME COURT,

MONMOUTH COUNTY.

ARCHIE F. HEYER, Admr.,  
*Plaintiff,*

*v.*

JERSEY CENTRAL POWER & LIGHT  
COMPANY,  
*Defendant.*

Action at Law.

20

Freehold, N. J., January 2, 1929.

(Mr. Kremer opens for the plaintiff and Mr. Broadhurst for the defendant.)

Mr. Broadhurst: I might say that I concede the death was due to whatever burns he got there on that day.

30

The Court: That the boy's death was due to the burns that he received as due to the occurrence on that day.

DR. JOHN B. BOYD, sworn for plaintiff.

*Direct examination by Mr. Kremer:*

Q. You are a practicing physician in Red Bank, Doctor? A. I am.

40



*Dr. John B. Boyd, direct.*

Q. How long have you been engaged in practice there? A. Well, in Red Bank two and a half years, but I have been practicing fourteen years.

Q. Did you ever know Clarence Heyer? A. Yes.

10 Q. Did you attend him on or about the 5th of October, 1927? A. I did.

Q. Where did you attend him, Doctor? A. At the Woodley Hospital.

Q. And from what was Mr. Heyer suffering? A. He was suffering from burns of the first, second, third and fourth degree.

Q. Will you explain to the court what you mean by that?

20 *By the Court:*

Q. What do you mean by that, Doctor? A. A burn of the first degree is just nothing more than a slight redness or erythema; in the second degree you get a state of erythema with vesicles; in the third degree you get a state of vesicles with pus formation; in the fourth degree you get charring.

Q. Do you say that burns on his body were charred?

30 Mr. Broadhurst: I object to that. He said that the death of this boy was due to burns. I don't see why we have to go into the horrible details.

The Court: What do you want?

Mr. Kremer: I just want to show the condition of the burns and so forth.

40 The Court: It is admitted now that he died of burns; he was electrocuted, in other words, by current derived from wires of the electric company.



*Dr. John B. Boyd, direct.*

Mr. Kremer: The doctor did not explain the degrees of the burning.

*By the Court:*

Q. Where was the burning, Doctor? A. Right through the chin and over the neck, down the chest, over the abdomen, he had burns on this thigh and a couple burns in the heels of both feet. 10

Q. What about the hands? A. Yes, he had burns in the right hand particularly.

Q. Describe where they were. A. The burns?

Q. Yes, the burns in the right hand. A. Well, the right hand was burned right down to the bone. It was charred.

Q. Where? A. Well, right finger eminence down to the terminal phalanges, and the fingers burned right through. 20

Mr. Broadhurst: The doctor is indicating the palm of the hand?

The Court: Yes, the palm of the hand.

Q. You say he was burned across the palm of the hand? A. Right there all the way through.

Q. What degree of burn was that? A. Fourth degree.

Q. What is the most severe kind, the char that you speak of? A. The char, yes. 30

*By Mr. Kremer:*

Q. How about his head, Doctor? What degree was that burned? A. Right here?

Q. Yes. A. Right down into the important vessels.

*By the Court:*

Q. Was the left hand burned, Doctor? A. No, sir. 40



*Archie Heyer, direct.*

*By Mr. Kremer:*

Q. Was that a fourth degree burn in his head?

A. Yes.

Q. You say his neck was burned right down to the bone? A. Right down to the important vessels. You could see them bulging.

Q. How long did the boy live? A. Seven days.

Q. Then he died? A. Yes, sir.

No Cross Examination.

Mr. Kremer: I would like to offer in evidence two photographs. I don't know whether counsel wants them proved or not.

Mr. Broadhurst: If Judge Kremer says that this is the building—I never saw it myself. When were they taken? May we have that? December 1, 1928, it is endorsed on the back, December 1st of this year. I have no objection to that.

The Court: The conditions are the same generally?

Mr. Kremer: Yes.

The Court: This accident happened on—

Mr. Broadhurst: October 5, 1927.

The Court: They may be marked.

(Photographs marked Exhibits P-1 and P-2.)

---

ARCHIE HEYER, sworn for plaintiff.

*Direct examination by Mr. Kremer:*

Q. Where do you live, Mr. Heyer? A. Little Silver—Red Bank.

Q. Were you the father of Clarence Heyer? A. Yes, sir.



*Archie Heyer, direct.*

Q. On the date of Clarence Heyer's death how old was he? A. Twenty-two.

Q. What business was the boy employed in? A. With me in mason work.

Q. Have you been appointed as administrator by the surrogate of this county for the purpose of bringing this suit? A. Yes. 10

The Court: That is admitted, I assume.

Mr. Broadhurst: Let me see the letters. I assume it is correct.

The Court: It may be marked.

Mr. Kremer: I would like to offer in evidence the letters of administration.

The Court: Merely routine.

Mr. Kremer: Bearing date November 30, 1927. 20

(Paper marked Exhibit P-3.)

Q. What did you say the boy was working at? A. Mason work.

Q. Was he working for you? A. Yes, sir.

Q. And how much did he earn a day? A. \$14, union wages.

Q. Was he a mason? A. Yes, sir.

Q. He served his apprenticeship? A. Yes, sir. 30

Q. Is that a union wage that he was earning?

A. That is union wage at Red Bank, yes, sir.

Q. How long had he been a mason? A. He had been out of his time about a year.

Q. Out of his apprenticeship, you mean? A. Yes.

*By the Court:*

Q. How old, did you say, Mr. Heyer? A. Twenty-two. 40



*Archie Heyer, direct.*

*By Mr. Kremer:*

Q. Twenty-two or twenty? A. Twenty-two.

Q. What was the condition of his health? A. Perfect.

10 Q. Had he had any serious illness in the two or three— A. No.

*By the Court:*

Q. Physically fit, was he? A. Physically fit?

Q. Yes. A. Strong, yes.

Q. Never had had any organic trouble of any kind to your knowledge? A. No, sir.

20 Q. So far as you know he would have the ordinary expectation of living to old age? A. Yes, sir.

Q. In the absence of any untoward event such as electrocution or other accident? A. Yes.

*By Mr. Kremer:*

Q. Did he work steadily? A. Every time the weather was fit.

Q. And what were the boy's habits? A. Very good.

30 Q. He was unmarried? A. He was unmarried, yes, sir.

Q. He lived in your house? A. Yes, sir.

Q. Did you work on the building—

The Court: Who are the next of kin, Judge?

Q. He left besides yourself his mother, did he not? A. His mother and one brother.

*By the Court:*

40 Q. One brother? A. Yes, sir.



*Archie Heyer, direct.*

*By Mr. Kremer:*

Q. What is the brother's name? A. William.

*By the Court:*

Q. How old is the brother? A. He is twenty-one now.

10

Q. Married? A. No, sir.

Q. What is the condition of health of your wife?  
A. Fairly good.

Q. How old is she? A. Forty-four.

Q. And how old are you? A. Forty-nine.

Q. Your health is fairly good? A. Fairly good, yes, sir.

Q. Never had any organic trouble of any kind so far as you know? A. Nothing but a rupture.

20

Q. You haven't had occasion, either you or your wife—or have you or your wife had occasion to consult physicians in the last three or four years?  
A. Why, yes.

Q. Well, for what? A. Well, heavy colds.

Q. But nothing any more serious than that? A. No, sir.

Q. And you have had no illness, either of you?  
A. No, had the flu and tonsillitis.

The Court: Proceed.

30

*By Mr. Kremer:*

Q. How much did the boy make a week, Mr. Heyer? A. Well, there is a five and a half day week. Through all of June, July and August it is a five day week.

Q. He worked the rest of the year five and a half? A. The rest of the year five and a half. Worked every day the weather would permit. Sometimes on rainy days we had inside work, sometimes we didn't.

40



*Archie Heyer, direct.*

Q. And at \$14 a day five and a half days would be \$77; is that right? A. Yes, sir.

Q. What did the boy do with his money? A. Gave it to his mother to use what she wished of it.

Q. Turned it over to his mother? A. Yes.

10 Q. Was any money given to him or retained by him? A. Oh, small expenses, yes.

Q. How much a week out of the money you say he gave to his mother did he keep? A. Well, if he didn't want no clothes or anything of that kind, very little.

Q. How much on an average? A. Maybe \$4 or \$5 a week.

Q. And the rest went to his mother? A. Yes, his mother had full access to it.

20

*By the Court:*

Q. How much did he make a week, Mr. Heyer?

A. Made \$14 a day, Judge Lawrence.

Q. \$14 a day and worked five and a half days?

A. Whenever the weather permitted.

Mr. Kremer: That would be \$77 a week.

The Court: \$77 a week.

Mr. Kremer: Steadily.

30

The Court: Steadily, yes.

Q. Have you any notion how often he would be unable to work by reason of weather conditions or otherwise? Take during the year before this. A. Why—

Q. On an average. A. During January and February was a little bad, that weather, and we didn't have a great deal to do. Otherwise we were right busy.

40



*Archie Heyer, direct.*

Q. And he really did work five and a half days?

A. As weather would permit, yes.

*By Mr. Kremer:*

Q. Well, can you tell us throughout the year 1927, up to the time that he was killed, on an average how many days a week he worked? A. On an average there was very little time lost. It was very busy at that time.

10

*By the Court:*

Q. You see that doesn't mean anything, Mr. Heyer. You will have to give us some definite information about it. Take during the year 1927, so far as you recall now. You were there; you saw the boy work? A. Yes, sir.

20

Q. He worked with you as a matter of fact? A. Yes, sir.

Q. There are three hundred and sixty-five days in a year, you know. Now how much of that time did he work in 1927? A. As I say, January and February of that winter was a little bad.

Q. Well, that would indicate about sixty days then off the year? A. Yes, that wasn't—

Q. That was not suitable for his work? A. Yes, then probably a rainy day or occasionally that we couldn't work outside work.

30

Q. Was he working indoors when he wasn't working out? A. Sometimes; we didn't always have it. Contracting we don't always have it.

Q. What would be a reasonable deduction then for the rest of the time, rainy weather and other conditions, thirty or forty days a year? A. I would say something like that, thirty days, holidays.

Q. Say ninety to a hundred days in a year? A. At that season, yes.

40



*Archie Heyer, direct.*

Q. Might be fairly deducted for when he didn't work? A. Yes, at that season.

*By Mr. Kremer:*

10 Q. Didn't he work at all in January? A. A little, very little.

Q. And in February? A. Why, during February we had a little but not much.

Q. Well, on an average, if you can tell us, from January to October, did you lose one day a week on an average or two days a week or how many? A. I don't think on an average, from March, I don't think up to the time of the accident, I don't think we lost on an average one day a week.

20 Q. Not over that? A. No, sir.

Q. Now on or about the 5th of October, and for a few days prior thereto, where were you working? A. On the 5th of October started work on the S. S. Thompson Building.

Q. And where was that building located? A. Monmouth Street, Red Bank.

Q. What kind of a building was it? A. Concrete, reinforced with iron.

30 Q. Did you participate in the building of that building? A. I laid all tile and plastered on hollow tile.

Q. What stood there before that building was erected? A. Why, if my memory serves me right there was a small office there, I am not certain.

Q. How many stories high? A. It was one.

Q. One story? A. Yes.

Q. This new building was— A. Five.

Q. Was the building completed on the 5th of October, 1927? A. No, sir.

40 Q. Was the roof on? A. The roof was on, yes, sir.



*Archie Heyer, direct.*

Q. And you had been working there previously to that? A. Yes, sir.

Q. Now what were you doing there that morning, the 5th of October? A. We were to plaster the fire escape.

Q. What time of day did you go to the building? 10  
A. Oh, about quarter to eight, I would say, something like that.

Q. In the morning? A. Yes, sir.

Q. Will you state whether or not it was a clear or rainy morning? A. It was clear that morning. We had had some rain the night before.

Q. Was the ground wet or dry? A. The ground was damp.

Q. Did you go on the roof of the building that morning? A. I did, yes, sir. 20

Q. Was the roof wet or dry? A. Wet.

Q. And now is there a fire wall on the roof? A. Yes, sir.

Q. How high is the fire wall? A. 2 feet 11 inches at the place where the accident happened. Other places it is different.

Q. Is this part of the picture— A. That is it, yes, sir.

Q. Exhibit P-2, is that what you mean by the fire wall? (Indicating.) A. Yes, sir. 30

Q. Runs 2 feet 11 inches from the roof? A. From the roof up.

Q. What is the roof made of? A. Concrete and iron reinforcement.

Q. In the roof itself? A. Yes, sir.

Q. Is there iron on the surface? A. No, sir.

Q. And under the fire wall will you state whether or not there is any metal? A. There is some places, some form wire run through the wall.

Q. Those lines, indicating the lines that appear— 40  
A. Those indicate metal.



*Archie Heyer, direct.*

Q. About seven lines in that wall, are those metal? A. Yes, reinforcement.

Q. What kind of metal? A. Reinforcing iron; form wire, they call it.

10 Q. Where did Clarence go? A. He went on the roof.

Q. Was anybody with him? A. Yes, sir, McKinley Flippin.

Q. He is a colored man? A. Yes, sir.

Q. And where did you go then after you had been on the roof? A. I was down to the ground.

Q. What was Clarence doing at that time on the roof? A. He went up to erect a new pulley another pulley, onto a 6 by 8 for a hoist.

20 Q. In saying a 6 by 8 you mean a beam? A. Yes, sir.

Q. A wooden beam? A. Yes, sir.

Q. Where was the 6 by 8 laid? A. Laid one end up on the roof and the other up on the fire wall.

Q. How far out beyond the edge of the fire wall did that 6 by 8 project? A. I would say in the neighborhood of two feet.

Q. While you were down on the ground could you see your boy on the 6 by 8? A. Yes, sir.

30 Q. Where was he? A. Standing on the roof alongside the 6 by 8.

*By the Court:*

Q. You were there at the time, were you, on the ground? A. On the ground, yes, sir.

Q. What was he doing? A. He was wrapping a piece of wire around the 6 by 8 to connect the wheel piece to your pulley.

40 Q. How was this pulley to be constructed? A. The wire was to go around the 6 by 8 and the pulley hung underneath it, with a rope to take



*Archie Heyer, direct.*

mortar from the ground up where we were working on the scaffold.

Q. You say the wire was to be wrapped around the pulley? A. Yes, sir.

*By Mr. Kremer:*

Q. Now, was there any necessity in constructing this pulley to let the rope down to the street to throw that wire he had in his hand up over the high tension wires? A. No, sir.

Q. Would that have been any part of the construction he was doing there? A. No, sir.

Q. Sure of that? A. He had no occasion to throw nothing.

Q. Well, now, did he proceed to wrap that wire around? A. Yes, sir.

Q. And then what happened next? A. I saw the wire was about laid, I went out to my truck to get another pulley. When I reached the truck to reach in I heard an explosion.

Q. How far away was the truck? A. I would say about a hundred feet, seventy-five to a hundred feet.

Q. Was it on Monmouth Street? A. It was on Monmouth Street.

Q. Which side of Monmouth Street? A. On the north side.

Q. In front of the building? A. No, sir; just across the railroad.

Q. Oh, to the west? A. Yes.

Q. Near the tracks of the New York & Long Branch? A. Right next to the tracks, as near as a truck could be to the tracks.

Q. What happened next? A. I heard an explosion, I looked up and saw a smoke.

10

20

30

40



*Archie Heyer, direct.*

*By the Court:*

Q. Where was the boy? A. On the roof.

Q. Did you see him at that moment? A. At that moment, your Honor, I couldn't see who it was. I saw some one fighting smoke and of course I started.

*By Mr. Kremer:*

Q. What kind of an explosion was it? A. Well, it sounded—I couldn't explain it. It was an explosion.

Q. Well, was it like the report of a gun or was it a dull explosion? A. Well, I thought it was a dull, the way I heard it. Of course, when I looked back and saw I couldn't just tell. I know it was an explosion.

Q. Have you ever heard powder set off? A. No.

Q. But you say it was a dull explosion? A. Yes.

Q. Now, you looked up and you saw, you say, smoke? A. Yes.

Q. What kind of smoke? A. Looked like a blue smoke to me.

Q. Where was the smoke? A. Coming from where the hoist was; coming from my son, as it proved to be.

Q. Did you see any flame? A. I didn't, no, sir.

*By the Court:*

Q. You went to the roof right away? A. Yes, your Honor.

*By Mr. Kremer:*

Q. Now, you say that you saw a body that you didn't know was your son? A. I didn't know at the time; the smoke wouldn't—



*Archie Heyer, direct.*

Q. Where was the body? A. Lying across the fire wall.

Q. And you immediately went to the roof? A. Yes, sir.

Q. When you got to the roof what did you find?  
A. When I got to the fifth floor my colored boy was coming down. I went from the fifth floor up through the scaffold way, as we call it, and he laid, my son laid over the fire wall, laid across it, with his thumb in the wire that he was twisting. 10

Q. Now, at that time where was that wire? A. On the 6 by 8.

Q. Was it actually around it or not? A. Yes, twisted.

Q. Entirely? A. Yes, sir.

Q. Was there any end of the wire loose? A. I would say maybe something like that (indicating). 20

*By Mr. Broadhurst:*

Q. Indicating how much? A. Well, if you want inches, I would say six or eight inches.

*By Mr. Kremer:*

Q. Was any of that wire reaching out to the high tension wires? A. No, sir.

Q. Was there any of it hanging down into the street? A. No, sir. 30

Q. And the boy's hand was where? A. In the wire as he was twisting it.

Q. What did you do then? A. I took him off the fire wall, laid him on the concrete roof and hollered, and by that time I got some help up there. I can't remember just who I got up there; took him down and took him to the hospital.

Q. How long did the boy live? A. Why, he was hurt on the 5th and I think it was the 15th, if my memory serves me, that he died. 40



*Archie Heyer, cross.*

Q. The 15th that he died? A. Yes.

Q. Beside his hand being burned there has been some reference here to his head. Was his head badly burned? A. Not in the front. The back was, the ear here and on down was very bad.

10 Q. On which side? A. On the right.

Q. Was that the side nearest to the wires then or not? A. Yes, sir.

Q. He was lying then on his left side when you saw him? A. Just in that shape when I found him on the wall (indicating).

Q. And his right— A. That threw the right side, exposed the right side to the wires.

*Cross examination by Mr. Broadhurst:*

20 Q. How long had you been working on this building, Mr. Heyer? A. Why, we had just started back that morning. We had been away from there—

Q. When did you start your work on that building? A. Why, early in the season. We were there practically all summer.

Q. When was that? A. Well, I just couldn't give you the dates exactly.

30 Q. Well, the month. A. I think it was the latter part of April, if my memory serves me right, some time in April.

Q. You had a contract to do the tile work? A. Yes, sir.

Q. You say that you had been off the building for a couple of weeks previous? A. I don't remember just how long we were off. We went off for a while waiting for them to get the fire escapes ready.

40 Q. In other words, you were only one contractor on this job, only one of a number of contractors



*Archie Heyer, cross.*

on this job? A. Well, I don't know how many contractors was on the job. I contracted—

Q. I say you were one of a number; you were not doing the whole work, were you? A. No, sir.

Q. And I take it that as the work progressed you had to wait till it got to a certain point or had to wait till the others got to a certain point before you could go on again with your work; isn't that so? A. Yes, sir. 10

Q. In other words, you would carry along your work to a certain point and then you would have to cease until the other contractors got up to the end of their work so you could go on, is that the idea? A. Yes, sir.

Q. Now, didn't that very procedure prevent you from working as steadily as you say, losing only about one day a week? A. Well, if my memory serves me right I had four other jobs. 20

Q. Oh, you worked on other jobs? A. Yes, sir.

Q. Did you keep any record yourself as to the days you worked and days you wouldn't work and so forth? A. Well, I keep books.

Q. Have you got them with you? A. No, sir.

Q. But they are available at Little Silver? A. Yes, sir.

Q. Would they show the number of days your son worked? A. I think they would. 30

Q. Don't you know, Mr. Heyer? A. I didn't keep the books myself. My wife keeps the books.

Q. What do they consist of? Don't they show the number of days the men work and how much you pay them? A. Yes, sir.

Mr. Kremer: If the Court please, we will produce the books for Mr. Broadhurst.

The Court: Well, I think as a matter of fairness you should in the circumstances. 40



*Archie Heyer, cross.*

Q. Do you know whether or not your son filed an income tax return for the year previous to his death? A. I do not.

10 Q. You mean you don't know or he didn't? A. I don't know. He was only out of his time practically not quite a year.

Q. About when did he get out of his time, some time in 1926? A. The last of 1926.

Q. Did you file a return as his representative for the year 1927? A. No, sir.

Q. He was single, was he not? A. Yes, sir.

Q. Of course you know that if he earned over \$1,000 or \$1,500 he would have to file a return? A. Well, I don't know about that.

20 Q. You don't know? A. I didn't go into that, no, sir.

Q. Now, you say that your son turned his money over to your wife each week? A. Yes, sir.

Q. How was he paid, in cash or checks? A. In cash; pay all men in cash.

Q. And your wife would use this money for what? A. Household expenses.

30 Q. And in addition to your own working was the other boy, who you say is now twenty-one, also working at the time? A. He was learning the automobile trade, yes, sir.

Q. And did he also turn his money into the house? A. Yes, sir.

Q. And you turned yours in? A. Yes, sir.

Q. Do you know whether or not your wife saved any of the moneys that were turned in by your sons? A. Not a great deal.

Q. That is rather indefinite. Do you know whether she did or not? A. Very little.

40 Q. Didn't she save some? A. Very little.



*Archie Heyer, cross.*

Q. And do you know exactly how much she did save of his earnings? A. I do not, no, sir.

Q. Have you bank books which would show that? A. I think the bank books is here also. I don't know.

Q. Now, of course, your son had his board at home, didn't he? A. Yes, sir. 10

Q. And you say that outside of the purchase of his clothes he spent very little or took very little back from his mother? A. Yes, sir.

Q. Did he own an automobile? A. Him and his brother owned one between them.

Q. What kind of a car was that? A. Chevrolet sedan.

Q. New or second hand? A. It was new when they got it. 20

Q. How long previous to the accident did they buy it? A. I think it was seven or eight months.

Q. You say he and his brother bought it; do you know in what proportion they bought it? A. No.

Q. You don't? A. It was supposed to be fifty-fifty between them. I suppose if one didn't have the motor and the other one did, why—

Q. Where did your son get the money to pay for that, from your wife? A. Naturally.

Q. Now can you give us any idea as to about how much he spent a year for his clothes? A. I can't. 30

Q. Can't even approximate it? A. Usually about two suits a year.

Q. And how about his working clothes and other apparel? Can you give an approximation as to what they cost? A. Working clothes don't cost a great deal, outside of shoes.

Q. You can't approximate then in dollars and cents? A. No. 40



*Archie Heyer, cross.*

Q. And where did he get the money for the gas and oil for his car and its upkeep and running around, from your wife? A. Naturally he took that out of whatever he wanted to use Saturday, whatever he wanted to use.

10 Q. Then I take it he didn't turn over his entire salary to his mother on Saturday. A. I said \$4 or \$5 a week if he wanted it.

Q. Do you know yourself just what he turned over to your wife? That is what I am trying to get at myself. A. Not positively, no.

*By the Court:*

Q. What would it cost now to clothe him, I mean hats and shoes, clothes, underclothing and so forth?

20 A. Usually, your Honor, he bought fairly good clothes, and as I say, he had two suits a year.

Q. What would that mean, say \$100 or \$125 a year? A. Well, I think it was somewhere around it.

Q. Between \$100 and \$125 a year would clothe your son? A. I think that would cover it.

*By Mr. Broadhurst:*

30 Q. Now you say that for a period of perhaps ten days or so previous to the date of this occurrence you had been working on the building, on this particular building? A. No, sir; we hadn't been there for a few days, I don't know just exactly.

Q. And your son hadn't been working? A. No, sir.

Q. Your son was employed by you as a foreman, was he? A. Yes, sir.

40 Q. And had he been working with you on this building off and on when there was work to be done from the time you started in April up to the



*Archie Heyer, cross.*

time this accident happened? A. Yes, when I didn't need him somewhere else. I had two different gangs.

Q. But I mean he had worked on this job for a considerable period of time? A. Yes, sir.

Q. Now as I understand it, on the one side of this building which would be, as I take it, the east side of the building, is the railroad right of way of the New Jersey Central Railroad Company or some other railroad company? A. No, sir; not on the east side. 10

Q. On which side of the building is the railway right of way?

Mr. Kremer: Objected to unless this witness knows that there was a right of way on which this was constructed. 20

Q. Well, the railroad tracks, on which side of the building? A. They are on the station side, the road station side.

Q. I know, but as to the points of the compass. A. I am not familiar with the points of the compass.

Q. Well, you contradicted me when I said east. I thought—is it on the west side? A. It is on that side from the building. 30

*By the Court:*

Q. You know where the tracks are? A. Yes, but east and west or north and south, it is one—

*By Mr. Broadhurst:*

Q. Monmouth Street runs along the front of the building? A. Yes, sir.

Q. The poles that held the wires which we are discussing here today, they were located between 40



*Archie Heyer, cross.*

the railroad tracks and the building, were they not? A. Yes, sir.

Q. And those wires ran parallel with the side of the building? A. Yes, sir.

Q. Nearest the railroad tracks? A. Yes, sir.

10 Q. Is that right? A. Yes, sir.

Q. Now, you say that on this particular day you were going to plaster a fire escape? A. Yes, sir.

Q. And where was that fire escape located, on the side of the building nearest the railroad tracks? A. Yes, sir.

Q. And on what floor, the top floor? A. The fire escape?

Q. Yes; on the top floor of the building? A. We started from the top and worked down.

20 Q. Well, I mean on this particular day were you going to fix all the fire escapes on that side? A. We were starting on the top.

Q. On that particular side? A. Yes, sir.

Q. Those fire escapes are to the rear of that building, are they not? A. Yes, sir.

Q. On the side, of course? A. Yes, sir.

Q. And as I gather, the purpose of erecting this pulley was to hoist up material that you had on the street? A. Yes, sir.

30 Q. Is that the idea? A. On the railroad.

Q. Yes, on the railroad property there. And what time did this happen? A. I would say somewhere around nine o'clock, I couldn't just tell.

Q. And about how long had you been on the job or at the job previous to it happening? A. Well, I had been working there when the other pulley broke.

40 Q. Oh, a pulley broke, did it? A. But whether that was on the—



*Archie Heyer, cross.*

Q. About what time of day did you start work?

A. Around eight o'clock.

Q. How many men did you have there working on this day? A. I had two laborers, my son and myself.

Q. Two laborers, your son and yourself; that would be four? A. Four, yes, sir. 10

Q. How were they working fixing the plastering for this fire escape? Were they standing on the fire escape themselves or did they have a scaffold?

A. Had a swinging scaffold.

Q. Had a swinging scaffold? A. Yes, sir.

Q. On the side of the building? A. Yes, on the side of the fire escape.

Q. How was that scaffold supported, by ropes that went over the roof? A. I don't just remember how—the carpenters had made up this for me on the fire escape. It was a block and fall that we used. 20

Q. In other words, it was one of those like painters use, with a block and fall going up and down?

A. Yes, sir.

Q. Do you recollect at what floor that scaffold was just previous to the accident happening? A. We were at the top.

Q. The top of the fire escape? A. The top of the fire escape, yes, sir. 30

Q. Was it above the highest fire escape or the fifth floor? A. No, it was what we could reach standing on the scaffold, could reach the top of the plaster.

Q. Could reach and plaster on the top of the fire escape? A. Yes, sir.

Q. Just what were you plastering, where the up-rights or supports go into the building? What part of the fire escape were you putting this plaster 40



*Archie Heyer, cross.*

on? A. One started on one end and the other on the other end.

Q. What were you doing, putting a coating on the building or filling in the parts where these supports went in? A. We were coating the entire fire escape, metal lath.

Q. That is, this fire escape was made of metal, was it? A. Yes, sir.

Q. And you were putting the coating over it? A. Yes, sir.

Q. Of what? A. Of cement.

Q. Had you done the cement work in the building of this parapet or fire wall that went around the building? A. No, sir.

Q. You didn't do that? A. No, sir.

Q. Did you build this parapet? A. No, sir.

Q. Were there any men on this scaffold at the time the accident happened? A. No, sir.

Q. You mean they hadn't yet started work on it? A. We had been there, my son and I, and it dropped and the wheel broke. I went down to fix it again.

Q. So the men hadn't started to do the work on this fire escape? A. We had started and brought up a few pails when the pulley broke.

Q. The men hadn't entered actually the scaffold? A. Yes, we had been there.

Q. Oh, you had been there? A. Yes, when the wheel broke, yes, sir.

Q. Now, this beam that you had over the parapet, that is what that fire wall is called, was fastened to the roof how? A. Sand bags.

Q. That is, on one end, the end that was on the roof, there were a number of sand bags laid over it; is that the idea? A. Yes, sir.



*Archie Heyer, cross.*

Q. And about how long a timber was it? A. I would say sixteen feet.

Q. Sixteen feet? A. Something like that.

Q. And the other dimensions, you say, were 6 by 8? A. I think it was, yes, sir.

Q. That would be then six inches wide and eight inches the other way, would it? A. Yes, sir. 10

Q. And on the end of it you had a pulley with a hook on, I suppose, or a pulley of some kind to hoist the rope up? And what kind of a pulley was that to carry? A. A well wheel.

Q. A well wheel? A. Yes, sir.

Q. About how large in circumference, a foot or so? A. Twelve to fourteen inches.

Q. And the rope would go through that pulley under a guard, I suppose? A. Yes. 20

Q. How was it to be operated, from the street? A. Yes, sir.

Q. So you would put your pail on this hook which was on the rope and pull it up from the street? A. Yes, sir.

Q. Where would it be taken off? A. By the men on the scaffold.

Q. So that in the course of the work this morning, while the work was going on, this pulley fastened to this timber came loose or broke? A. Yes, sir. 30

Q. Did it fall down to the street? A. Yes, sir.

Q. How had it been fastened previous to its breaking, with a wire? A. Yes, sir.

Q. I show you a piece of wire and ask you if that is the type of wire that was used to fasten it. Is that the type of wire that was used to fasten it? A. Yes, sir.

Q. It was, eh? A. That is the type, yes, sir. 40



*Archie Heyer, cross.*

The Court: Is that a copper wire, Mr. Broadhurst?

Mr. Broadhurst: No, sir; iron.

The Court: Iron wire?

Mr. Broadhurst: Yes.

10

Q. So when this broke you sent your son up or he went up himself to the roof to fix it; is that the idea? A. Yes, sir.

Q. And you stayed down on the ground? A. Yes, sir.

Q. How did the colored man happen to be up there? A. Took the rope and another wheel up.

Q. In other words, the rope had come on down, of course, when it broke? A. Yes, sir.

20

Q. And he carried the rope back upstairs to put it in the wheel; is that the idea? A. Yes, another wheel and the rope.

Q. Did the previous wheel itself break when it fell? A. I think the wire broke.

Q. Of course the wheel broke when it fell? A. On the ground.

Q. Well, that is what I mean, when it fell that shattered? A. Yes, sir.

30

Q. And this wheel that was taken up, was that an iron wheel also? A. Yes, sir.

Q. You say you looked up to watch your son as he was fastening this? A. Yes, sir.

Q. About how far over the end of the parapet did this beam extend? A. I would say two feet.

Q. Two feet? A. Yes, sir.

Q. So it would just about clear a pail going up, clear the side of the building? A. Yes, sir.

40

Q. With reference to the fire escape where this scaffolding was located, where was the pulley? Was it toward the front of the building or toward the rear of it? A. Toward the front of it.



*Archie Heyer, cross.*

Q. And about how far from the front of the building or from the fire escape? A. Very close to the fire escape.

Q. So that as the pulley came up it could be reached over the end of the scaffold; is that the idea? A. Yes, sir. 10

Q. And about how wide was this scaffold on which the men were working? A. We had three ten-inch planks.

Q. So it would be thirty inches or more? A. Yes, sir.

Q. Your truck, you say, was located on Monmouth Street toward the front of the building? A. Yes, sir.

Q. Was it pulled off the street onto the railroad property there or was it standing on Monmouth Street? A. On Monmouth Street. 20

Q. And at the time you heard this explosion you were walking from the rear of the building toward the front of the building then, I take it? A. I was out at the truck when I heard it.

Q. At the truck? A. Yes, sir.

Q. About how long is the building, can you give us an idea? A. I would say in the neighborhood of a hundred feet.

Q. A hundred feet? A. Something in that neighborhood. 30

Q. So that you had walked approximately one hundred feet to the truck or seventy-five feet to the truck? A. Approximately seventy-five feet, something like that.

Q. When you heard this explosion? A. Yes, sir.

Q. And you say when you looked up you saw the smoke; did you see any flame at all? A. I did not, no, sir. 40



*Archie Heyer, cross.*

Q. And the smoke was coming from the place where this beam went over the edge of the roof, was it? A. Yes, sir.

Q. And you say you saw a body leaning over or on the parapet? A. Yes, sir.

10 Q. And then, I suppose, you ran right upstairs? A. I did, yes, sir.

Q. About how wide is the parapet wall? A. Why, I would say twenty inches to two feet. I never measured it. I would say something like that.

Q. When you got upstairs to the roof you say that you found your son leaning, as you described it, over the parapet wall? A. Yes, sir.

20 Q. On his left side against the wall? A. His right side.

Q. His right side against the wall? A. In that shape, yes (indicating).

Q. And his right arm extended out and over the wall; is that right? A. On the timber that was used for the hoist.

Q. His right arm extended out on the timber? A. Yes, sir.

Q. That you were using for a hoist? A. Yes, sir.

30 Q. And you say the wire was fastened or caught on his thumb? A. Yes, sir.

Q. Just what do you mean, he had hold of it or a piece of it was bent around his thumb? A. The two ends were so twisted (illustrates with wire). It was around the 6 by 8 in that shape and these two ends were twisted.

Q. And the ends were twisted? A. Yes, sir.

Q. Twisted together? A. Yes, sir.

40 Q. And what part was under his thumb? A. This thumb was under the twisted end of the wire.



*Archie Heyer, cross.*

Q. You say that when you got up to the fifth floor you found a colored man running down? A. Yes, sir.

Q. Did he come back to the roof with you? A. No, sir.

Q. He didn't? A. No, sir.

10

Q. He went on down? A. Yes, sir.

Q. And you, as I take it, in order to get your son free from that position, had to remove his hand or his thumb from that wire first before you could carry him away from the parapet? A. I didn't hesitate to pull him away.

Q. In other words, you took hold of his body and pulled him away. A. Yes, sir.

Q. Lifted him up and pulled him away? A. Yes, sir.

20

Q. From the position he was in? A. Yes, sir.

Q. And laid him on the roof? A. Yes, sir.

Q. And carried him on downstairs afterward? A. Yes, sir.

Q. Now, after he had been taken away, did you or any of the men continue to work that day? A. My two laborers stayed there until I came back from the hospital and then they went home.

Q. Then they went home? A. Yes, sir.

30

Q. About how long, do you know, was it, before this occurred that the roof had been completed with this parapet wall? A. Oh, it was quite some time. I couldn't tell you just—

Q. You mean a matter of months? A. Oh, I wouldn't say months.

Q. Well, you mean a month or several weeks? A. Practically maybe a month the fire wall had been completed.

Q. Did you observe whether the end of the tim-

40



*Archie Heyer, cross.*

ber was burned or not? A. I did not; I didn't have time.

Q. I mean after. A. No, sir; when I got back from the hospital some one had removed it.

10 Q. Some one had moved the piece of timber?  
A. Yes, sir.

Q. And the wire? A. Yes, sir.

Q. These wires, these three wires, were above the top of the roof, were they not? A. Yes, sir.

Q. And did you ever measure how far at this point they were from the building itself? A. I had it measured, yes, sir.

Q. You didn't measure it yourself but somebody else measured it? A. I saw it measured.

20 Q. And did you have measured how high they were above the top of the roof? A. Yes, sir.

Q. Is that man here who made those measurements? A. No, sir.

*By the Court:*

Q. Were you present when the measurements were taken? A. Yes, sir.

The Court: He may answer it.

30 Q. How far did the measurements show the wires were from the side of the building? A. Four feet seven.

Q. Four feet seven? A. Approximately.

Q. And by that you mean four feet seven inches, of course? A. Yes, sir.

Q. How high were they above the roof of the building? A. From the fire wall six feet.

Q. That is, from the top of the fire wall six feet? A. Yes, sir.

40 Q. You say the fire wall at this point was two feet eleven inches? A. Two feet eleven inches.

Q. That would put it about eight feet nine inches above the top of the roof? A. Yes, sir.



*McKinley Flippin, direct.*

*Redirect examination by Mr. Kremer:*

Q. Just about two questions, Mr. Heyer. Referring to Exhibit P-1, showing the building, at the side of the building where the pole is located carrying these wires, is there a roadway? A. Yes, sir. 10

Q. You can drive along beside the railroad track? A. Yes, sir; open to the public from Monmouth Street to West Street.

Q. How long have you lived in Red Bank? A. In Red Bank and vicinity practically all my life.

Q. Has that roadway always been there? A. Yes, sir.

Q. Now, you said it was four feet seven inches from the edge of the building out to the wires? A. Yes, sir. 20

Q. The nearest wire, I suppose? A. Yes, sir.

Q. Was that measured on an angle from the edge of the fire wall to the wire? A. It was measured with a linen tape. The electrician took a linen tape, put a lead weight on it and threw it over and it hung down plumb, and it was measured from the fire wall to the linen tape. Then that measured four feet seven, because I recall—

Q. That is directly off? A. That was directly off; off from the building, yes, sir, four feet seven inches directly. 30

---

McKINLEY FLIPPIN, sworn for plaintiff.

*Direct examination by Mr. Kremer:*

Q. Where do you live, Flippin? A. Red Bank.

Q. And how long have you lived there? A. About two years.

Q. What is your trade? A. Mason. 40



*McKinley Flippin, direct.*

Q. And do you work for Mr. Heyer here? A. Yes, sir.

Q. Working for him now? A. Yes, sir.

Q. How long have you been working for him? A. About three years off and on.

10 Q. Were you working for him on the 5th of October, 1927? A. Yes, sir.

Q. And where did you go to work on that day? A. S. S. Thompson Building.

Q. At the building on Monmouth Street, Red Bank? A. Yes, sir.

Q. What time of the morning did you go? A. Half past seven.

Q. And who did you go with? A. By myself.

20 Q. I mean did you meet anybody else there? A. Sure.

Q. Who did you meet there? A. Mr. Heyer.

Q. Mr. Heyer that is here? A. Yes, sir.

Q. Well, how about his son, was the son there? A. Yes, sir.

Q. What was the son's name? A. Clarence Heyer.

30 Q. What did you and Clarence do when you got to the building? A. Well, I went on to the mortar bed.

Q. Did you go up on the roof at all? A. Sure I went up there.

Q. Who did you go up on the roof with? A. With Clarence.

Q. Anybody else? A. No.

Q. How soon after you got there did you go up on the roof? A. I couldn't exactly tell you.

Q. Well, was it still in the morning? A. Sure.

Q. Soon after you got there? A. Sure.

40 Q. Was the roof dry or wet or damp or what? A. It was damp.



*McKinley Flippin, direct.*

Q. And there is a fire wall at the side of the roof which Mr. Broadhurst called a parapet? A. Sure.

Q. There is the wall there? A. Sure.

Q. Did you notice some wires up above the fire wall, some wires of the power company that ran along on poles? A. Yes, sir. 10

Q. Did you see those wires there that day? A. Sure.

Q. What did Clarence do after he got up on the roof? A. Tied the wire on the beam.

Q. Tied the wire around the beam? A. Yes, sir.

Q. What kind of a wire did he have? A. Wrapping wire.

Q. Was it the kind of wire Mr. Broadhurst had here a moment ago? A. Sure. 20

Q. Was it that kind of wire? (Wire shown witness.) A. Yes.

Q. Can you tell us whether that is the wire or not? A. I couldn't swear that is the wire.

Q. Does that look like it? A. Yes, looks something like it.

Q. But you are not sure whether that is the one or not? A. I couldn't swear to it.

Q. It is the same kind of wire, is it? A. Yes, sir. 30

Mr. Kremer: As a matter of fact is that the one you found there?

Mr. Broadhurst: I don't know yet. I will connect it up.

Q. You said he put the wire around the beam; where was the beam? A. Over the wall.

Q. Over the fire wall? A. Yes.

Q. And how long a beam was that? A. I don't know how long it was.

Q. What? A. I don't know. 40



*McKinley Flippin, direct.*

Q. Well, from where you are sitting was the beam as long as from where you are to that brass railing, or not? A. About fifteen feet, something like that.

Q. About fifteen feet long? A. Yes, sir.

10 Q. And where did that beam—the other end of the beam was on the floor of the roof? A. One on the roof and one over the wall.

Q. One over the wall? How far over the fire wall did it extend? A. About two feet.

Q. Now what was Clarence doing with the wire he had in his hand? A. Wrapping it around the beam.

Q. For what purpose, do you know? A. To put the pulley on.

20 Q. A pulley? A. Yes.

Q. What was he going to do with that wheel and pulley? A. Pull up the mud.

Q. What? A. Pull the mud up.

Q. From the street? A. Yes.

Q. By mud you mean mortar? A. Sure.

Q. Where were you standing while he was wrapping that wire around the plank? A. I was standing beside him.

30 Q. How far away? A. Oh, about a foot.

Q. You saw everything Clarence did then? A. Sure. I was there.

Q. At any time did he throw that wire that he had in his hand up over the power company wires? A. No, sir; he didn't.

Q. Never did? A. No, sir.

Q. You are sure of that? A. Sure.

Q. Now while he was wrapping that wire around the plank or the beam what position was he in?

40 A. He was leaning over the wall.

Q. Now will you just indicate to the jury—just



*McKinley Flippin, direct.*

place your own self in the position— A. He was leaning over something like that, tying the wire around the beam. (Indicating.)

Q. Where did he have his right hand? A. He was wrapping with his right hand.

Q. Where was his left hand? A. I don't know. 10

Q. Was it over the beam, I mean? A. Sure, it was on the beam.

Q. And he was standing on the floor of the roof? A. Yes.

Q. He was not standing on the fire wall? A. No.

Q. His body was over the fire wall and over that beam; is that right? A. Yes.

Q. Now what happened then? A. The explosion went off then.

Q. Well, what did you see? A. Smoke and fire. 20

Q. Where did the fire come from? A. From the electric wire.

Q. From the electric wire, that is, the one up above? A. Yes, sir.

Q. Did you see them? A. Yes, sir.

Q. Well, did you see a blaze or flash or what? A. Sure, a blaze.

Q. A blaze? A. Yes, sir.

Q. And did you hear any noise? A. Sure.

Q. What kind of a noise? A. I don't know exactly what kind of a noise it was. 30

Q. Well, did it sound like a gun off or was it a dull explosion or what? A. Sure, just like a—

Q. Which was it, like a gun or was it dull? A. Dull.

Q. Like a gun? A. No, sir.

Q. Oh, it wasn't like a gun? A. No, sir.

Q. And you say there was smoke? A. Sure.

Q. Where did the smoke come from? A. From the wires. 40



*McKinley Flippin, direct.*

Q. From the wires? A. Yes.

Q. The blaze and the smoke both came from the light wire? A. Yes.

10 Q. Now when you say from the wire do you mean from the wire that Clarence had in his hand or the wire up above? A. The wire up above.

Q. All right. Then what did Clarence do? A. He fell over the fire wall.

Q. Fell over it? A. Yes.

Q. What did you do? A. I put the fire out.

Q. Did he catch fire? A. Yes.

Q. What part of him caught fire? A. It started up around his shoulders here.

Q. Started in his shoulder? A. Yes, went on down.

20 Q. But the first fire started in his shoulder; is that right? A. Sure.

Q. And you put that out? A. Yes.

Q. How did you put it out? A. With my hand.

Q. Then what did you do? A. I went down on the next floor then.

Q. Now Flippin, as the fire caught hold of his shoulder did he say any thing that you heard? A. No.

30 Q. Didn't say a thing, eh? A. No.

Q. Just fell over on the beam? A. Yes.

Q. You ran downstairs? A. Sure.

Q. Who did you get? A. Met Mr. Heyer.

Q. Then what did you do? A. I told him about it and then I kept on down.

Q. Now you said that the floor of the roof was damp. Was the fire wall dry or wet or damp? A. I don't know.

Q. Don't know? A. No.

40 Q. When were you born? A. 1908.



*McKinley Flippin, cross.**Cross examination by Mr. Broadhurst:*

Q. McKinley, what were you doing while you were standing there watching him doing this work, just standing by? A. Just standing by and looking.

Q. How did you happen to go up on the roof?  
A. I took the rope and the wheel up.

Q. And on which side of him were you standing, the side nearest the rear of the building or the side nearest the front of the building? A. I was standing on the left side.

Q. That would be the side nearest the front of the building? A. The right side.

Q. Which is it? Which side of him did you stand on? A. The right side.

Q. Is that the side nearest the front of the building or the side nearest the rear of the building?  
A. Nearest the rear of the building.

Q. Were you leaning over him on the wall watching him? A. No, sir.

Q. What? A. I was standing up straight.

Q. How close to the fire wall were you standing? A. I don't know. I couldn't tell that.

Q. Well, give us an idea. Were you standing as far as from where I am to you? A. No, about a foot, something like that.

Q. What? A. About a foot.

Q. A foot from the fire wall? A. Yes.

Q. What were you doing, looking right at him?  
A. Sure.

Q. How long had you been standing there before this happened? A. I don't know.

Q. What? A. I don't know how long I had been standing there.

Q. Well, had you been standing there a minute or five minutes? A. About five minutes.

10

20

30

40



*McKinley Flippin, cross.*

Q. And where was this rope that you had brought up? Where did you leave that? A. It was laying on the roof.

Q. About how far from where you were standing? A. About three or four feet.

10 Q. In back of you? A. Yes, sir.

Q. And was there anybody else on the roof? A. Nobody but me and Clarence.

Q. Was that the first time you had been up there on the roof that morning? A. Yes, sir.

Q. Sure about that, eh? A. Yes, sir.

Q. And is that the first Clarence had been up on the roof that morning? A. Yes, sir.

Q. Now you say that Clarence was leaning out over the parapet onto this pole; is that right? A. Yes, sir.

20

Q. And fastening this iron wheel onto this pole? A. Wrapping the wire.

Q. Well, the wire was wrapped around the pole, and where did it go then, in the wheel? A. He didn't put the wheel on.

Q. You saw him going to fasten the wheel onto this wire, did you not? A. No, I don't know how he was going to put it. He was going to wrap the wire around the wheel.

30

Q. You say he was going to try to wrap the wire around the wheel? A. He was going to wrap it around the wheel.

Q. He was going to? A. Yes, sir.

*By the Court:*

Q. What was he doing that for? A. To pull the mud up, the mortar.

Q. In other words, to hold the block and fall, or at least the—what do you call it—the wheel that he was going to put in? A. Yes, sir.

40



*McKinley Flippin, cross.*

*By Mr. Broadhurst:*

Q. This wheel was in a frame, was it? A. Yes, sir.

The Court: Pulley, I was trying to think of.

10

Q. This pulley was in a frame, was it not? A. Yes, sir.

Q. And the top of that frame had to be tied some way and fastened onto that pole, didn't it? A. Yes, sir.

Q. Now, you say he didn't have the wheel in his hands when this happened? A. No, sir.

Q. That he had this wire? A. Yes, sir.

Q. Well, how much of this wire had he wrapped onto this pole? A. I don't know how much he had.

20

Q. How long a wire was it? A. About three feet.

Q. Three feet long? A. Yes, sir.

Q. Then it couldn't have been this wire, could it? What? A. I don't know.

The Court: That is more than three.

Q. Is this your idea of three feet? Would you say this was three feet long? A. It is more than three feet.

30

Q. More than three feet? So it couldn't have been this wire? A. Well, I don't know.

Q. Well, you say the wire he was using was three feet long? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

Q. Now, how was the wrapping, one end of it around the pole? A. Yes, sir.

Q. And the other end was hanging loose? A. It wasn't flying about, wasn't waving about.

40



*McKinley Flippin, cross.*

Q. I didn't ask you about it being flying about yet, did I? A. No, sir.

Q. He was tying one end of it to this pole, eh? A. Yes, sir.

10 Q. And the other end he was probably going to fasten into this pulley in some way. A. Yes, sir.

Q. Now, how much of this wire did he have tied onto this pole when this happened? How much of this wire did he have tied around the pole? A. I don't know how much he had.

Q. What? A. I don't know.

Q. Can you show us on the wire? A. I can't show you.

Q. Well, one end of it was loose, wasn't it? A. Yes, sir.

20 Q. And he hadn't yet started to put this pulley on; is that right? A. Yes, sir.

Q. Now, do you think the wire was this long? A. No, the wire wasn't that long.

Q. It wasn't that long? You are sure of that? A. Yes, sir.

Q. Positive? A. Yes, sir.

Q. And you say when you heard this noise, was that the first that attracted your attention, the noise? A. I seen it.

30 Q. What? A. I seen it.

Q. You heard the noise?

The Court: "I saw it."

*By the Court:*

Q. You heard a noise and saw a flash, is that what you mean? A. Yes, sir.

Q. Saw the flash and heard the explosion? A. Yes, sir.



*McKinley Flippin, cross.**By Mr. Broadhurst:*

Q. You say then he caught fire? A. Yes, sir.

Q. You were right alongside of him? A. Yes, sir.

Q. On his right-hand side? A. Yes, sir.

Q. And his right-hand side was the side nearest to the wire, wasn't it? He was leaning out with one hand on the pole and the right hand he was working the wire with, wasn't he? A. Yes, sir.

Q. Then you immediately slapped your hands on where the fire was and put it out? A. Yes, sir.

Q. Right away? A. Yes, sir.

Q. And when you slapped your hands on and put out the fire he was then lying over on the fire wall? A. Yes, sir.

Q. On his left side? A. Right side.

Q. Right side? A. Left side.

Q. On his left side then; is that right? A. Yes, sir.

Q. And was the upper part of his body, his head and neck, hanging over the outside of the building? A. Yes, sir.

Q. When you slapped it with your hands, is that the idea? A. Yes, sir.

Q. Put it out? A. Yes, sir.

Q. How long did it take you, do you think, to put it out? A. I don't know how long it took me to put it out.

*By the Court:*

Q. A matter of seconds? A. Yes, sir.

*By Mr. Broadhurst:*

Q. Very quick? A. Sure. I put it out in a little while.



*Mrs. Annie Heyer, direct.*

Q. And then you ran downstairs? A. Yes, sir.

Q. And you met Mr. Heyer coming up on the fifth floor; is that right? A. Yes, sir.

*Redirect examination by Mr. Kremer:*

10 Q. Now, Flippin, you have referred to a wheel that was going to be fastened to this wire. Was there a hook on the wheel? A. Yes, sir.

Q. And you say that he was wrapping a wire of the character that Mr. Broadhurst has, around the beam? A. Yes, sir.

Q. How many times did he wrap it around? A. I don't know how many times.

Q. Well, was the hook going to be fastened in the wire? A. Yes, sir.

20 Q. And to do what? A. Pull the mud up.

The Court: Hold the pulley.

Q. To hold the wheel or pulley; is that right? A. Yes, sir.

Q. And then you would put an ordinary hemp rope around the wheel and that would make the pulley? A. Yes, sir.

30 Q. Now, while Clarence was wrapping a wire like Mr. Broadhurst has, around the beam, did any of that wire go up and touch the electric wire? A. No, sir.

Q. Sure of that? A. Yes, sir.

Mr. Kremer: That is all.

Mr. Broadhurst: That is all.

---

MRS. ANNIE HEYER, sworn for plaintiff.

*Direct examination by Mr. Kremer:*

40 Q. Mrs. Heyer, you are the wife of Archie Heyer? A. Yes, sir.



*Mrs. Annie Heyer, direct.*

Q. You are the mother of Clarence Heyer? A. Yes, sir.

Q. How old was Clarence at the time that he died? A. Twenty-two and a few months. Let me see. No, he wasn't quite twenty-two.

Q. And he lived at your house? A. Yes, certainly. 10

Q. Where do you live, Mrs. Heyer? A. Rumson Road, Little Silver.

Q. And Clarence was single? A. Yes, sir.

Q. He lived home all his life? A. Yes, sir.

Q. Now, there has been some reference here to his earnings. Did he give you his money or not? A. Absolutely; he kept about \$5 out of the week and gave me the rest.

Q. What day of the week would he give it to you? A. Saturday, the very day he got it. 20

Q. Did he give it to you in cash or check? A. He gave it to me in cash.

Q. And did you use the money yourself? A. Yes, for whatever I saw fit to use it for.

Q. And you say that he kept back money, he kept back money for his own use? A. Yes, he generally kept \$5 a week out and gave me the rest.

Q. Then when he would need anything like clothes what would he do then? A. He always came to me and I went with him and bought them and paid for them myself and picked them out. 30

Q. Out of those funds? A. Yes, out of money that I kept.

Q. Did he buy an automobile? A. Him and his brother together bought an automobile.

Q. How much did Clarence pay? A. Half and half. They both paid half.

Q. Did he work regularly through 1927, up to the time he was hurt? A. Well, I can't say reg- 40



*Mrs. Annie Heyer, cross.*

ularly. He worked whenever there was work, but two or three months out of the winter in that trade he couldn't work.

Q. And the rest of the time did he work pretty steadily? A. Yes, sir.

10 Q. But he lost some days, of course? A. Well, naturally, but in the summer time he didn't lose many days.

Q. Mrs. Heyer, could you tell us on an average how much money Clarence gave you per week through 1927? A. Yes, on an average of—well, on an average of—well, \$45 or \$50. When he lost a day he wouldn't give me so much. Some weeks he made \$77, some weeks again he only got \$70. I told you he gave me all but \$5 he kept for him-  
20 self.

Q. And he gave you on an average \$45 or \$50 a week? A. Yes, he certainly has.

Q. You were not present at the accident, of course? A. No.

*Cross examination by Mr. Broadhurst:*

Q. Mrs. Heyer, you own your own home, do you, where you live? A. Paying for it.

30 Q. Well, I mean is the title in your name? I mean the title of the property in your name, or Mr. Heyer's? A. Yes.

Q. In your name? A. Yes.

Q. And when you say paying for it you mean there is a mortgage on it? A. Naturally.

Q. And how long have you lived there? A. Well, moved there in October the year before Clarence was killed, one year.

Q. October of 1926? A. Yes, sir.

40 Q. And how much of a mortgage is there on the place? A. \$3,500.



*Mrs. Annie Heyer, cross.*

Q. How is that, in a Building Loan? A. No.

Q. Straight mortgage? A. Yes.

Q. So that you have the interest on that to pay; is that the idea? A. Yes, sir.

Q. Six per cent., is it? A. Yes, sir.

Q. And your family consisted of yourself, your husband, Clarence and one other son? A. Yes, sir. 10

Q. Now, did your husband also hand in his earnings to you? A. Yes, sir.

Q. And what would they approximate a week?

Mr. Kremer: If the Court please, I don't want to shut any of this off but I don't know what application the earnings of Archie Heyer could have. It is a question of how much he made a week. 20

The Court: Well, it goes to the question of credibility, whether the boy gave as much as they say, whether he was allowed to use more than they say; merely testimony, that is all. It is admissible. Go on. Cross examine.

A. Well, that is hard telling. Mr. Heyer was working by contract and of course that was different. He didn't draw wages like the boy either. 30

Q. In other words, he didn't make as much as he paid his son? A. Sometimes yes and maybe sometimes no. I couldn't exactly say.

Q. That is what I am trying to find out from you, whether it is sometimes yes and sometimes no. A. Well, it is very hard for me to say, because on some jobs Mr. Heyer would make actual wages and some jobs he wouldn't.

Q. So he didn't hand in regularly any particular amount? A. No, I couldn't say. 40



*Mrs. Annie Heyer, cross.*

*By the Court:*

Q. What did your family consist of? A. Mr. Heyer and me and the two boys.

Q. Two young men sons? A. Yes, sir.

10 Q. He was twenty, did you say? A. William is two years younger than Clarence. I think he will be twenty-one this coming May.

*By Mr. Broadhurst:*

Q. Was he working also? A. Yes, sir.

Q. What wages did he earn? A. Well, I think at that time he was making \$30 a week.

Q. And did he also hand that in to you? A. All but \$5. He always kept \$5 of his money.

20 Q. Were you able to save anything from the moneys that were handed in to you by your husband and the two boys? A. Well, under the circumstances hardly.

Q. Well, I don't quite understand the circumstances. If you would answer it yes or no, is the thing I want. A. Well, we had just built a new home. We were not able to work at the mason business.

30 Q. I thought you had lived in this place from October, 1926? A. We had, but Mr. Heyer built that place himself.

Q. Previous to that? A. Yes.

Q. Oh, I see. Then I take it you were not able to save any money? A. No.

Q. You didn't save any money? A. No, because I was trying to pay for the home, but Mr. Heyer built the home.

40 Q. I didn't ask the reason. I am just trying to find if you did. You didn't save any money? A. No.



*Mrs. Annie Heyer, cross.*

Q. Did your son go around with any young ladies at all? A. Occasionally.

Q. And what did he do for the wherewithal when he had to take the young ladies out? A. My boy didn't run around with girls so much, only once in a while for an automobile ride.

10

Q. Well, that is perfectly proper. I am just trying to find out. He went to dances, didn't he?

The Court: I am wondering about his pin money, how much he spent.

A. Well, he generally spent \$5 a week. If he needed any more during the week he would ask me for it and I would give it to him.

Q. That is what I am trying to find out; about how much did you give him that he asked for? A. If he was working steady he might ask for a little more than if he wasn't working steady.

20

Q. That doesn't answer my question.

*By the Court:*

Q. Well, take it generally. Usually he retained about \$5 a week, then in addition to that during the course of years, for emergencies, such as going about socially and so on, how much would he get?

A. You mean including the automobile?

30

Q. Automobile upkeep and so on, gasoline; \$5 or \$10 a week? A. Yes, no more than that.

*By Mr. Broadhurst:*

Q. Now, can you give us any idea as to about how much you expended for clothes for him? A. Yes, he used to buy two suits of clothes a year, in the spring and in the fall.

Q. You say you went there and you paid for it.

40



*Mrs. Annie Heyer, redirect.*

Can you give us some idea of what they cost? A. Yes, the last two suits I paid \$35 for one and \$45 for the other.

Q. Was that about the average as to clothing?

A. That was.

10 Q. Previous to that he bought less expensive or more expensive? A. Less expensive. He was learning a trade and wasn't making the money.

*Redirect examination by Mr. Kremer:*

Q. Now, you have testified that he did give you his wages regularly; you say your husband was doing business by contract. Now, as a regular thing which one gave you the most at the end of the week, your son or your husband? A. That  
20 is a hard question to ask.

Q. Well, don't be embarrassed. A. Well, of course I could always look for my boys' steady money every week. Of course with Mr. Heyer I couldn't.

*By Mr. Broadhurst:*

Q. Of course if your husband didn't make the money to pay your boy, then, of course it wasn't steady either, was it? A. No, that is right too, but  
30 Mr. Heyer always paid his boy his wages.

The Court: You see it becomes necessary, Mrs. Heyer, to make these personal inquiries because of the nature of this suit. The rule is that if there is any recovery at all in this case it would be on a reasonable expectation of what you had a right to—such financial aid as the boy might render to his family or next of kin. That is the reason for this examination.



*George Smith, direct.*

*By Mr. Kremer:*

Q. Were there weeks that the boy would pay you and your husband wouldn't? A. Yes, sir.

---

GEORGE SMITH, sworn for plaintiff.

10

*Direct examination by Mr. Kremer:*

Q. Where do you live, Mr. Smith? A. 292 Edgemere Drive, West Allenhurst, New Jersey.

Q. What is your business? A. Electrical work.

Q. How long have you been engaged in that business? A. Ten years.

Q. And was all of that time in New Jersey or elsewhere? A. New York and New Jersey.

Q. And when did you start in the electrical business in New York? A. Well, 1921. 1920, I started in that business. 20

Q. And what concern were you connected with in New York? A. In New York?

Q. Yes. A. With the National District Telegraph Company.

Q. For how long a time? A. Four years.

Q. And that was located in New York City? A. No, Brooklyn. It checks New York.

Q. The work that you did for the National District Telegraph Company you say? A. Yes, sir. 30

Q. Did that involve any work on high tension wires? A. It did.

Q. Did you take any courses in electricity? A. I did take a course.

Q. For how long a time? A. Well, it lasted for about a year, over a year, before the course was through.

Q. Did you study voltages? A. I studied voltages, yes. 40



*George Smith, direct.*

Q. Did you familiarize yourself with the value of voltages in that course? A. I did.

Q. Did you study safety appliances in electricity? A. I did.

10 Q. Did you familiarize yourself with wire construction and maintenance? A. I did.

Q. And you say you worked with high tension wires? A. I have.

Q. During those four years? A. Yes.

Q. It was, you said, the name of it was the National District Telegraph Association? A. Yes.

Q. Now after that you came to Jersey to work? A. Yes, I came to Asbury Park after that.

20 Q. And where were you employed in Asbury Park? A. By the Eastern New Jersey Power Company.

Q. In what capacity? A. Lineman.

Q. How long were you with the Eastern New Jersey Power Company? A. Well, around a year and a half; around a year and a half steady.

Q. Did you do any work then, during that time, on high tension wires? A. I did, yes, sir.

Q. And did you familiarize yourself with the construction of high tension wires outside? A. I did.

30 Q. You say you were with the Eastern New Jersey Power Company a year and a half? A. Yes, around that.

Q. And then where did you go? A. I went from there with the Jersey Central for a short time.

Q. The Jersey Central Power and Light Company? A. Yes.

Q. That is this company, this defendant in this suit? A. That is right.

40 Q. You were employed by them? A. Yes, sir.

Q. How long a time? A. Well, probably three months I was with them.



*George Smith, direct.*

Q. What kind of work were you doing there?

A. Line work.

Q. From there where did you go? A. P. S. Production Company in Jersey City.

Q. What is that? A. That is the Public Service Production Company.

10

*By the Court:*

Q. Public service, it is one of the subsidiaries of Public Service, isn't it, of New Jersey? A. That is right, the construction end.

Q. The construction end? A. Yes, sir.

*By Mr. Kremer:*

Q. You were engaged in the construction end of the business there? A. Yes, sir.

20

Q. Where was your place of employment? A. Well, in the power house and the switch house and the outdoor substations.

Q. And did you take any further courses in electricity while you were there? A. Only safety courses, under safety devices.

Q. What do you mean by safety courses? A. Well, for instance, having an hour—we had an hour a week all the time that I was there to teach each and every man that was on the job that had had to work on those high tension supplies how and what precautions to take under safety devices on electricity.

30

Q. Under employment? A. Under employment, yes, sir.

Q. And did you also study and familiarize yourself with wire construction and maintenance? A. In that place, yes.

Q. You said you worked in the power house? A. Yes, sir.

40



*George Smith, direct.*

Q. That is where the electricity of the Public Service Production Company was generated? A. Yes, sir.

Q. Did you have to do with high voltages? A. Yes, sir.

10 Q. Are you familiar with high voltages and what you call the value of voltages? A. Yes, sir.

Q. Would you consider a wire containing 33,000 volts a high tension wire? A. It certainly is.

Q. What voltage, Mr. Smith, running through a wire, if transmitted to the human body is sufficient to kill, do you know? A. Well, 2,300 volts will kill you.

Q. 2,300, you say? A. Yes, 2,300 will kill you.

20 Q. And would 33,000 volts? A. Well, you know, you can imagine about that.

Q. Would do the trick more successfully? A. Yes, sir.

Q. Have you ever had any experience with construction of transmission lines? A. Yes, sir; I have.

Q. Did you ever work on the construction of transmission lines? A. I have.

30 Q. Where? A. I was with the Eastern New Jersey Power Company of New Jersey when they built the line from Hightstown to Jamesburg and Old Bridge and Spotswood and up through to that.

Q. You helped build those transmission lines? A. Yes, sir.

Q. Were those high tension wires? A. Yes, sir.

Q. What voltage did they carry? A. 33,000.

Q. You worked on the construction of those lines? A. I did.

Q. Have you examined the wires at Red Bank



*George Smith, direct.*

at the building that has been referred to in this suit? A. I have.

Q. You made an inspection of those wires? A. Yes, sir.

Q. How are they supported, Mr. Smith? A. They are supported—

10

Mr. Broadhurst: May I have the time of the inspection?

*By Mr. Kremer:*

Q. Yes, when did you do it? You examined them for the purpose of testifying in this suit, didn't you? A. Yes, sir. I can tell you, at the time of the snowstorm; it started that day, snowed so hard.

20

*By the Court:*

Q. Last month? A. Yes, sir.

Q. December? A. It was December. It was on a Sunday, the day it snowed so hard.

*By Mr. Kremer:*

Q. Within the past month? A. Yes.

Q. You examined them for the purpose of testifying in this trial? A. I did.

30

Q. How are those wires carried, Mr. Smith? A. Well, they are copper wires, carrying 33,000 volts, on wood poles with wooden cross arms and porcelain pole petticoat insulators.

Q. How near to the wall of the building is the nearest wire?

*By Mr. Broadhurst:*

Q. Did you measure it? A. No.

Mr. Broadhurst: I object to it.

40

Mr. Kremer: Just a minute.



*George Smith, direct.*

*By Mr. Kremer:*

Q. Did you make an observation? A. I did make an observation on what it would be. It seems to be—

10           Mr. Broadhurst: I object. The witness didn't measure it.

The Court: Well, his impression. Of course his statement in that regard would depend on what weight the jury would give it. A man might look and see and give his notion as to the result of his looking.

Mr. Kremer: If there is objection I withdraw that question.

20           The Court: Well, you are not required to go up and accurately measure and take a tape. He might look and say it is about four feet, five feet or eight feet, whatever it may be. I will allow you to ask him that question if you want to.

Mr. Kremer: If he observed?

The Court: Yes.

30           Q. Did you make an observation as to how far the nearest wire was from the wall of the building? A. I did. I judge, my opinion, about three or four feet from the building.

*By the Court:*

Q. It is not your opinion, Mr. Smith, it is the fact. Now, you looked at it and you say that that wire was what? A. Four feet.

Q. Four feet? A. West of the—

Q. West of the parapet? A. Of that building.

Q. Of the building? A. Yes, and six feet high.

40           Q. Six feet above it? A. Yes.



*George Smith, direct.*

Q. But you didn't measure it accurately? A. I didn't measure it, no.

*By Mr. Kremer:*

Q. You say that wire carried 33,000 volts? A. Yes, sir.

10

Q. Now, what do you call that kind of wire in the language of construction? A. It is a transmission line.

Q. Is it what is known as primary? A. They are primaries, yes.

Q. A transmission line carrying current from where to where? A. Well, it comes from Keyport; yes, comes from Keyport. It comes from the P. S. Production Company; I mean from up in Newark, and feeds all these little substations such as Red Bank and Freehold here and also to Lakewood, and it then branches off and feeds Long Branch and all those other little towns.

20

Q. Now, is that wire on that pole grounded? A. No, it can't be grounded.

*By the Court:*

Q. Why? A. Unless something happens.

Q. Is it insulated? A. It is insulated from the—it is bare copper wire, insulated from the poles.

30

Q. Oh, I see; they protect it on the poles? A. Yes, with a petticoat insulator.

Q. But between the poles there is no insulation? A. There is no insulation on those wires, like telephone wire—

Q. Is it telephone wire? A. No, it is message wire.

Q. Why don't they insulate a wire like that? A. Well, they try to insulate them.

40

Mr. Broadhurst: I object to that and ask to strike it out.

The Court: Strike it out.



*George Smith, direct.*

Q. Is such wire ordinarily insulated? A. Not carrying 33,000 volts.

10 Q. Why? A. Because they usually carry them so high there is no use in insulating them. Where they are carrying them in low places, in towns, they should be insulated.

Q. Well, are they, in fact? A. Not these special wires, no, sir.

Q. Suppose they were insulated; what would happen to the insulation, anything? A. Well, it probably would do some good in case of an accident—

Q. Did you ever see such wires insulated? A. I have.

20 Q. Where? A. In the P. S. Production Company.

Q. In the Public Service? A. Yes, sir.

Q. You mean transmission wires, high tension transmission wires? A. Well, either place, yes.

Q. Where they have them in place? A. No, no; they may be from the place—

Q. But I am making inquiry as to in the air. A. Oh, I haven't in the air; I don't know of any that is—

30 The Court: Proceed.

*By Mr. Kremer:*

Q. Do you know of any place where wires carrying 33,000 volts are carried where anybody might come in contact with them?

Mr. Broadhurst: Objected to as immaterial.

Mr. Kremer: I think it just pursues your Honor's inquiry as to lack of insulation.

40 Mr. Broadhurst: He never saw them.



*George Smith, direct.*

The Court: No, of course it probably wouldn't be pertinent.

Q. In your opinion should a wire carrying 33,000 volts be insulated if it is in a place where any one is likely to come in contact with it?

10

Mr. Broadhurst: Objected to, on the ground that until there is a standard proved with which we have to comply his opinion would not make any difference.

The Court: I think his isolated opinion would not count unless he could prove a standard of practice and it must have been brought home to the defendant company.

Mr. Kremer: That is why I asked the question before, which was overruled, if he knew of any place.

20

The Court: That does not prove a standard. That is the difficulty, an isolated circumstance. For example, S. S. Thompson & Company, had they known this situation, might have asked the defendant company to do some specific thing, but it would not establish a practice.

Mr. Kremer: If the Court please, I do not consider that the S. S. Thompson Company was under any duty to protect these wires.

30

The Court: You just stated that in such circumstances they may be; it could have acted and established a practice.

Q. Can you tell us whether or not it is the established practice in the construction and maintenance of high tension wires to put uninsulated wires where a person might come in contact with them?

40



*George Smith, direct.*

Mr. Broadhurst: Objected to on the ground that there is nothing to show that this witness is able to answer.

10 The Court: I will allow you to reframe that question and then you will answer it yes or no. Reframe it and ask whether there is any recognized practice among electrical construction men as to insulation in such circumstances as you are trying to bring out—"Do you know whether there is any such practice?" and then ask.

Q. Do you know whether there is any recognized practice in electrical construction having to do with the insulation of high tension wires containing—

20 *By the Court:*

Q. Or transmission wires at or near buildings; do you know whether there is a recognized practice? A. Yes.

Q. What is that practice?

Mr. Broadhurst: I object, on the ground that this witness has not qualified from the experience that he has given to us to establish a practice.

30 The Court: I will allow you to examine him.

Mr. Broadhurst: I don't—

The Court: Desire to? All right. I will find out myself, since I am independent in this matter.

*By the Court:*

40 Q. You have answered that question in the affirmative, you say there is such a practice? A. Yes, sir.



*George Smith, direct.*

Q. How do you know there is? A. By line construction myself.

Q. Well, from whom did you obtain such instruction? A. Well, through the P. S. Construction Company and the Eastern New Jersey Power Company is most of my experience along those lines.

10

Q. How about your training at the electrical school? A. Well, they taught me along those lines.

Q. Did they give you instruction on practical insulation in such circumstances? A. No practice, but I got my practical experience by going out and working.

The Court: The objection is overruled. He may answer.

Mr. Broadhurst: Allow me an exception?

20

The Court: I will allow an exception to the question.

(Objection noted for defendant as ground of appeal.)

Q. What is the practice?

Mr. Broadhurst: The objection goes to that question?

The Court: Yes, the objection is overruled. You may have an exception.

30

(Objection noted for defendant as ground of appeal.)

A. In places of this particular class should be higher poles or steel towers, where there is a high tension of line of 33,000 volts going through a town as close to buildings as that.

Mr. Broadhurst: In order to preserve my status on the record I will move to strike out the answer on the ground that it is not a proof of any standard of practice but

40



*George Smith, direct.*

merely the witness' opinion as to what in this particular case the defendant should have done. He says that the practice in this particular case was to have a different type of pole.

10

The Court: Higher pole or steel tower. The objection is overruled. I think it comes within that.

Mr. Broadhurst: Allow me an exception?

The Court: You may have an exception.

(Objection noted for defendant as ground of appeal.)

Q. Now you say that is the practice?

20

Mr. Broadhurst: Does my exception extend to your Honor's question?

The Court: Yes, object to me as well as the other fellow. Objection overruled. You may have an exception.

(Objection noted for defendant as ground of appeal.)

A. Yes.

*By Mr. Kremer:*

30

Q. You say the practice would be higher poles; you mean carrying the wire at a greater height over the building?

Mr. Broadhurst: My objection extends to this?

The Court: Yes, objection overruled.

(Objection noted for defendant as ground of appeal.)

A. Yes.

40

Q. How high above the fire wall do you say the



*George Smith, direct.*

standard practice would dictate that a 33,000 volt wire should be carried in order to render a situation safe for persons who are about the fire wall?

A. Well, it should be at least twelve or fourteen feet.

Q. In your opinion is the maintenance of that wire from six to seven feet above the top of the fire wall safe and good construction? 10

Mr. Broadhurst: Objected to on the further ground—

The Court: Well, that assumes the fact that perhaps may not have been proven, I don't know.

Q. I will ask if it is a standard practice. A. Yes.

Q. Would that be standard practice? 20

Mr. Broadhurst: My exception goes to this line?

The Court: Yes.

(Objection noted for defendant as ground of appeal.)

A. No.

Q. You say it would not? A. No.

Q. You say ten or twelve feet would be standard practice? A. Yes, and more than twelve or fourteen feet. 30

*By the Court:*

Q. And in that event that does not mean that the wire is insulated? A. No, the wire is not insulated.

Q. Therefore the question is a matter of height of the pole or support? A. Yes, sir.

The Court: That is on the question involving the recognized practice? 40

Mr. Kremer: Yes.



*George Smith, direct.*

*By Mr. Kremer:*

10 Q. Why is it necessary, according to the recognized practice, as you tell us, to carry that wire twelve or fourteen feet above a point on the building where a person might be?

Mr. Broadhurst: My objection goes to this entire line, your Honor.

The Court: Yes, it is so understood.

(Objection noted for defendant as ground of appeal.)

20 Q. Why is it necessary, as I say, in standard practice, as you have described it, to carry a wire and maintain a wire carrying 33,000 volts at a distance of twelve to fourteen feet from the point where a person might be? A. Because those wires, that is, carrying 33,000 volts, are dangerous any closer than twelve or fourteen feet.

Q. What could happen that makes them dangerous? A. Well, it might happen that the arc could jump in damp conditions, or if closer, they under dry conditions, could jump.

Q. Arcs could jump? A. Yes, sir.

30 Q. You mean by that the current could jump? A. Jump to ground?

Q. To ground? A. Yes.

Q. Now what is a ground? A. The grounded portion of anything which the current comes in contact with and makes a light or explosion.

Q. Is concrete an insulator or is it a conductor of electricity? A. It is a conductor of electricity.

40 Q. You said something about damp conditions. What effect does dampness or wetness in the atmosphere have upon the transmission of electrical current? A. Well, it causes it to jump easier.



*George Smith, direct.*

Q. Will it jump further or a shorter distance in wet weather than it will in dry? A. A further distance.

*By the Court:*

Q. In other words, water is a conductor? A. 10  
Yes, sir.

Q. Right? A. Yes, sir.

Q. If you don't want to be shocked keep away from the water? A. Yes, sir.

*By Mr. Kremer:*

Q. Now you have told us that the current would jump out of this wire containing 33,000 volts and the arc would jump. Assuming that Clarence Heyer was standing on the floor of this roof, which 20  
was damp, and that he was leaning against the fire wall and over a plank or beam and that he had in his hand a wire coil wrapped around and that some part of his body came within six feet of a wire carrying 33,000 volts: would, in your opinion as an expert, it be reasonably probable that the current might be transmitted to his body without his doing anything further?

Mr. Broadhurst: I object, on the ground 30  
that it contains an unwarranted assumption of facts. There is no evidence here to indicate that he was within six feet of the wire.

Mr. Kremer: I am only basing it upon what the people say, that the wire was six feet above the fire wall and the man was standing over the fire wall.

The Court: Put it in a hypothetical situation: if such a wire or a wire were suspended within six feet— 40



*George Smith, direct.*

*By the Court:*

10 Q. If such a wire, that is, one containing 33,000 volts, were suspended within six feet from a part of the human body which was standing upon a surface which was wet or damp, would there be communication of current? Is it reasonably probable that there would be communication?

Mr. Broadhurst: I object because it assumes a fact that it was six feet, and there is no testimony in this case.

The Court: Objection overruled. You may have an exception.

(Objection noted for defendant as ground of appeal.)

20 A. Well, it is possible.

Mr. Broadhurst: That is objected to and I ask that it be stricken out.

The Court: It is not responsive.

*By Mr. Kremer:*

Q. Is it reasonably probable?

*By the Court:*

30 Q. Is it reasonably probable?

Mr. Broadhurst: My objection goes to this question.

*By Mr. Kremer:*

Q. Is it reasonably probable that such a thing could happen within recognized practice and your knowledge and experience in electrical matters?

A. Yes, it is.

40 Q. Would the current be transmitted a greater



*George Smith, direct.*

distance on a wet day than it would on a dry day?

A. It would jump a greater distance.

Q. It would jump a greater distance? A. Yes, on a wet day than on a dry day.

Q. Now if that wire were suspended twelve or fourteen feet—

10

The Court: Why don't you ask him this question: if the deceased was seen working on the building at or about the parapet, leaning over and about to affix a pulley wheel to a beam extended two feet beyond the parapet wall, if a high tension wire constructed six feet above the roof—

Mr. Kremer: It is six feet above the fire wall, if the Court please.

20

The Court: —was strung or swung in such a position and there was an explosion and a flash, what in all reasonable probability would be the cause of such an explosion and flash?

Mr. Kremer: I am glad to adopt your Honor's suggestion.

Mr. Broadhurst: May I note my objection to that? In the first place, it contains an unwarranted assumption of fact, that this wire was six feet above the roof; in the second place, it is mere speculation on the part of this man as to what caused it. In the third place, I don't think he is qualified, from the facts he has given, to testify on an electric spark jumping or not jumping.

30

The Court: Change that part of the question and say the wire was swung from six to eight feet above the top of the building.

40



*George Smith, direct.*

Mr. Kremer: Now may I have that question?

Mr. Broadhurst: May my objection be noted?

10 The Court: Yes, overruled. You may have an exception.

(Objection noted for defendant as ground of appeal.)

20 (Question repeated as follows:) If the deceased was seen working on the building at or about six or eight feet above the parapet, leaning over and about to affix a pulley wheel to a beam extended two feet beyond the parapet wall, if a high tension wire constructed six feet above the roof was strung or swung in such a position and there was an explosion and a flash, what in all reasonable probability would be the cause of such an explosion and flash?"

The Court: You may answer that.

30 A. That is caused from an arc jumping from the transmission line to the ground which this fellow was standing on, the roof, and he made a ground right out to the end of the plank which was leaning over where he was standing on the roof, you see, the rough beam, naturally, this ground, it would travel right through his body—it was dead grounded—laying on the plank which was laid back on the roof and on this ledge that we have—we have got three or four names for that—leaving the wire which has made this dead ground so much closer to the high tension line, which such the case was not before, it made it a closer distance to the line, and that is what made  
40 an arc, brought an arc.



*George Smith, direct.*

*By the Court:*

Q. What effect did the wire have? A. Well, the wire had no more effect than the man. The man, he had a wire in his hand.

Q. It didn't make any difference that he was holding a wire? A. It wouldn't make any difference whether he was holding a wire, I wouldn't think, your Honor.

10

Q. Assuming now, for the purpose of this question merely, would he have been shocked just the same? A. If he hadn't had a wire in his hand, yes, sir, he would have been shocked just the same; unless he got the wire nearer to the transmission line. You don't have to have steel in your hand every time you get a shock, you know.

20

*By Mr. Kremer:*

Q. In order for that arc to have occurred in the manner you have described, in the manner which has been testified in this case, would it be necessary for any part of Heyer's body or for anything he had in his hand to come in contact with the electric wire?

The Court: Physical contact.

30

Q. Physical contact with the electric light wire?

Mr. Broadhurst: My objection goes to that question.

The Court: Objection overruled.

(Objection noted for defendant as ground of appeal.)

A. Well, it wouldn't be necessary for the—the arc would jump—well, naturally the arc would jump probably to him if he was the nearest part to the live wire, it would hit him first.

40



*George Smith, direct.*

Q. Would it jump six feet? A. Well, I don't say that it would jump six feet, I don't say it will jump twelve feet, but it will jump. I have saw it jump three feet across an insulator.

10 *By the Court:*

Q. Did you ever see it jump more than three feet in your experience? A. Well, to be exact it is at least three feet, under damp conditions in the main plants, in an outdoor supply. You see it would jump over insulators through a damp morning.

20 Q. Three feet is the most you have seen it, however? A. Well, three or four feet, myself I have seen it. I don't know exactly, but it could be nearer four.

*By Mr. Kremer:*

Q. Then you say that the current could jump to him without his coming in physical contact, anything that he had in his hand, with any part of the high tension wire? A. I do, yes.

30 Q. And I understood you to say that the likelihood of that current jumping or arcing would be increased in damp weather or wet weather? A. Damp condition.

Q. You said that you were familiar with transmission lines? A. Yes, sir.

Q. And that you had worked on the construction of transmission lines? A. I have helped build them, yes, sir.

Q. Will you tell us what is the standard practice in the carrying of high tension wires through country districts?

40



*George Smith, direct.*

Mr. Broadhurst: That is objected to on the same ground, if your Honor please.

The Court: What do you want to show?

Mr. Kremer: I want to show that this line at this particular point was not carried according to standard practice in a municipality. 10

The Court: Well, Red Bank is not a country district.

Mr. Kremer: No, I know, but when you come into municipalities a different thing happens.

The Court: No, I think it is too remote.

Q. Is it standard practice to carry a 33,000 volt wire in a municipality? 20

Mr. Broadhurst: Objected to on the ground that this witness is not qualified to testify to standards. There is no evidence of standards.

*By the Court:*

Q. Is there any standard? A. There is a standard code, your Honor.

Mr. Broadhurst: Answer that question yes or no. 30

Q. Yes, you answer that yes or no. Is there a standard? Well, never mind. I will withdraw it. Now repeat the question.

(Question repeated as follows: "Is it standard practice to carry a 33,000 volt wire in a municipality?")

Mr. Broadhurst: Objected to.

The Court: Objection overruled. 40



*George Smith, direct.*

(Objection noted for defendant as ground of appeal.)

The Court: Answer that yes or no.

A. No.

10 *By the Court:*

Q. How do you know? A. They do it all along. It should not be standard practice.

Q. Then your answer is there is no standard?

*By Mr. Kremer:*

Q. They do it or they don't do it? A. They don't do it—except they have them high enough—

*By the Court:*

20 Q. In other words, you are getting back now to what you said a little while ago, that in through a municipality such as that in which this building was erected—you saw that building there; you have been there? A. Yes, sir.

Q. You know what it is like? A. Yes, sir.

Q. And how it is built up there? A. Yes, sir.

Q. In the Borough of Red Bank? A. Yes, sir.

Q. Near the railroad station, as I understand it?

30 A. Yes, sir.

Q. And you say the recognized practice there, or at least in such a situation, involves a higher pole or a steel tower? A. That is what I say.

Q. That is right? A. That is right.

The Court: Well, that is his answer.

*By Mr. Kremer:*

40 Q. In the absence of a higher pole or a steel tower how is current, according to standard practice, usually transmitted through municipalities?



*George Smith, direct.*

Mr. Broadhurst: Objected to on the ground that it is immaterial in this case, and secondly, that there is no evidence of any standard as to how it is carried, and this witness is not qualified to testify to a standard.

Mr. Kremer: He has worked right on the wires. I don't know how we could get any one better qualified than one who has studied and who has actually done the work. (After argument.) 10

The Court: That is another thing. I don't follow you on that. We are talking about the recognized pole current and how it is carried, how it is transmitted.

Mr. Broadhurst: Until a standard is proved there is no simile between the degree of care. 20

The Court: All I know, he says there is a standard. You may not agree with him, your witnesses may not agree with him; they may rebut this testimony, but I can't help that; it merely goes to the weight of the testimony. I will allow this last question: Is there any alternative to a higher pole or a steel tower?

A. There should be a higher pole or a steel tower used. 30

*By the Court:*

Q. I know, but if they do not use in carrying high tension wires, carrying 33,000 volts through a municipality, a built-up section such as that we are talking about, now if they do not use higher poles or steel towers, what is the standard practice with regard to carrying such wires? Is there any alternative? A. Well, it is dangerous if they don't use higher poles. 40



*George Smith, direct.*

*By Mr. Kremer:*

Q. What do they do to eliminate that danger?

A. Well, there is nothing to do only put them higher.

10 Q. What is stepping down? A. Oh, if that is what you want, through towns or cities, that is, in sub-stations, they go there and fix transformers, which step down, and then they distribute the current out through the towns.

Q. What is stepping down? A. That is reducing the current from 33,000 volts to 2300.

Q. And is that done in the sub-station or transformer? A. That is done on the tanks, the transformers, in the sub-stations.

20 Q. And then the voltage is carried through the municipality in the lesser degree? A. In the smaller voltage.

Q. And is that the standard practice? A. That is the standard practice.

Q. Carrying smaller voltage through towns? A. It is.

Q. Or nearer buildings? A. Sure.

Mr. Kremer: That is all, I think.

30 (Recess till 1:20 P. M.)

---

Trial of the cause resumed at 1:20 P. M.

*By Mr. Kremer:*

Q. Now, Mr. Smith, you told us this morning that you had, in your experience, observed a voltage of 33,000 volts jump three feet? A. Yes, sir.

40 Q. To what did it jump? A. Jumped to the ground.



*George Smith, direct.*

Q. And what was on the ground? A. A steel girder.

Q. And that ground happened to be three feet away? A. Yes, sir.

Q. And the current jumped to that? A. Yes, sir.

Q. You couldn't state, as a matter of fact, whether or not that current at that particular place would have jumped further if the ground had been further away? 10

Mr. Broadhurst: Objected to as immaterial.

Mr. Kremer: Well, I will withdraw it.

Q. Assuming that this high tension wire carrying 33,000 volts was suspended above the fire wall of the building in consideration in this case about six feet, and that a man was standing leaning over the fire wall or parapet and against a plank and leaning against a wall having in it lines of reinforcement of metal; under normal conditions would it be reasonably probable that if there were 33,000 volts of electricity in that wire it would be attracted to his body as a ground? 20

Mr. Broadhurst: That is objected to on the ground that there is nothing to indicate that this witness has sufficient experience to answer that question. 30

*By the Court:*

Q. Are you able to answer that question? A. I am, sir.

Q. You feel that you are? A. Yes, sir.

Q. Why do you? A. Because I have saw it jump three feet to ground.

Q. Based upon your practical observation and 40



*George Smith, direct.*

experience? A. Yes. If that ground in proportion where I saw it jump three feet, if it would have been six feet away maybe it would have jumped the six feet.

10

Mr. Broadhurst: I ask that that be stricken out. He says maybe it would, maybe it wouldn't.

The Court: Well, of course we are talking about reasonable probabilities, not possibilities, but reasonable probabilities. That is the test. I think I will allow him to answer. You may have an exception.

(Objection noted for defendant as ground of appeal.)

20

Q. Would it be reasonably probable that under ordinary conditions it would jump six feet and be arced to his body as a ground?

Mr. Broadhurst: Objected to.

The Court: Objection overruled.

(Objection noted for defendant as ground of appeal.)

A. Yes.

30

Q. Your answer is yes? A. Yes.

Q. Now, you told us this morning that you had made some study of precautions of safety requirements for workmen in and about high tension wires? A. Yes, sir.

Q. And that you had studied and familiarized yourself with them in schools or courses? A. Yes, sir.

Q. And from your practical experience? A. Yes, sir.

40

Q. Is there any standard practice set down by companies utilizing high tension wires containing



*George Smith, direct.*

33,000 volts having to do with the closeness with which their employees are supposed to work in connection with wires carrying 33,000 volts?

Mr. Broadhurst: Answer that yes or no.

A. Yes.

10

Q. What is the practice? How far away are men supposed to stay?

Mr. Broadhurst: Objected to as immaterial and irrelevant to this issue.

The Court: I am inclined to think it is not exactly pertinent here. Your theory is, of course, that certain companies will instruct their men not to go too near the wire charged with 33,000 volts, but I think that is an isolated situation. It might come within that case spoken of this morning, where one railroad company might do certain things and another might not. There is no standard of practice in that particular respect. I think you are going perhaps afield in attempting to bring this matter up.

20

Mr. Kremer: My purpose, if your Honor please, is to show that they recognize and that there is a standard practice recognizing the danger to wires, and that when men are told to stay a certain distance away which is greater, I understand, and not within the construction of these wires, it indicates that there is a practice and it is recognized in the field of electricity.

30

The Court: Yes, but that you have to bring home to their knowledge. The witness says it is a practice. A practice among whom? Authenticated by such a standard

40



*George Smith, cross.*

that you would recognize it in the profession, in the electrical business. I think the objection therefore must be sustained.

Mr. Kremer: That is all.

The Court: Cross examine.

10

*Cross examination by Mr. Broadhurst:*

Q. Mr. Smith, you say that you worked for the National District Telegraph Company in Brooklyn? A. Yes.

Q. How long have you worked there? A. Four years.

Q. Was that your first employment in the electrical line? A. No, sir.

20 Q. Where were you employed previously? A. I was employed by the Jondoe Electrical Company in Pittsburgh.

Q. In what capacity were you employed by the Jondoe Electrical Company? A. In house wiring.

Q. House wiring? A. Yes, just electrical.

Q. As a journeyman electrician? A. That is right.

Q. Engaged in common house wiring? A. Yes.

30 Q. And how long did you work for them? A. Oh, six months, I guess.

Q. And what was your schooling previously to starting the work? A. Well, general instruction on electric wires.

Q. What was your schooling? Did you go to school? A. Yes.

Q. What school did you go to? A. Brooklyn Electrical School.

Q. Did you graduate from grammar school? A. Yes.

40 Q. Did you graduate from high school? A. No.



*George Smith, cross.*

Q. Now, you say you went to a school in Brooklyn, Brooklyn Electrical School? A. Yes.

Q. When did you go there, previous to going to work with the Jondee Company? A. During the time that I worked for the Jondee Company.

Q. I thought you said this Jondee Company was a Pittsburgh concern. A. I was there. 10

Q. How did you go to school in Brooklyn? A. They had a branch store in Brooklyn.

Q. You worked in Brooklyn engaged in house wiring? A. Yes.

Q. You took this schooling when, at night? A. At night.

Q. And that schooling was in addition to house wiring, was it? A. Yes, wiring generators and motors. 20

Q. How long did you go to that school? A. Well, during the time—well, about a year I went to that school.

Q. Did you graduate from it? A. Well, yes, I took the examination. After I got through I took an examination in the municipal building in New York City.

Q. For what? A. For a licensed electrician.

Q. For a licensed electrician? A. Yes. 30

*By the Court:*

Q. Were you licensed? A. I passed, but after that I went in line work and I didn't take it, I didn't need a license and I didn't take it up.

*By Mr. Broadhurst:*

Q. And this examination was to give you a license to do house wiring in the City of New York, was it not? A. That is the idea. 40

Q. Then you went to work for the National Dis-



*George Smith, cross.*

trict Telegraph Company? A. For the National District Telegraph Company.

Q. As what, a lineman? A. Lineman, trouble lineman, in construction.

10 Q. Was that concern engaged in the use of high tension wires? A. Well, I was climbing over high tension wires.

Q. I didn't ask you that. Is the National District Telegraph Company of Brooklyn engaged in the use of high tension wires? A. They don't use them.

Q. Telegraph wires are not high tension wires, are they? A. No.

20 Q. And your experience in high tension wires while working with them was when you would meet high tension wires on the poles which you would climb for the telegraph company? A. That is it.

Q. You say you were with them how long? A. Four years.

Q. And as a lineman? A. As a lineman.

Q. While you were with them did you take any further school course? A. No, not any further.

Q. Did not? A. No.

30 Q. This school course you referred to in your direct examination was the school course you took in this Brooklyn school? A. Yes.

Q. And about a year? A. Yes.

Q. Then you went to work for the Eastern New Jersey Power Company? A. Yes.

Q. And worked about a year and a half, you say? A. Yes.

Q. As what, a lineman? A. A lineman, yes.

Q. Did they have high tension wires? A. Yes.

40 Q. Used in their business? A. Yes.



*George Smith, cross.*

Q. Then you went to work for the Jersey Central Power and Light Company? A. Yes.

Q. As a lineman? A. Yes.

Q. You worked for about three months? A. Somewhere along there, yes.

Q. How did you come to leave? A. I left the Jersey Central Power and Light Company for the P. S. Production Company. 10

Q. And you were a lineman for the Eastern New Jersey Power Company? A. Yes.

Q. Did you take any school course while you were with them? A. With who?

Q. The Eastern New Jersey Power Company. A. No, no school course with them.

Q. Then you took none while you were with the Jersey Central Power and Light Company? A. No. 20

Q. Then you went with the P. S. Production Company, Jersey City? A. Yes.

Q. That is a constructing concern? A. Yes, sir; construction concern.

Q. What was your position with the Public Service Production Company at Jersey City? A. Well, just a construction electrician, doing all kinds of work.

Q. And that company builds buildings, does it? A. Builds only electric. 30

Q. What kind of work did you do for them? A. I put up the equipment, insulators, disconnects, motors and all that sort of thing.

Q. In buildings? A. In the power house.

Q. And you have been with them how long now? A. I was with them, well, over a year.

Q. Are you still with them? A. No.

Q. Who are you with now? A. With the Crowell Electric Company of Asbury Park. 40



*George Smith, cross.*

Q. And how long have you been with them? A. With Crowell?

Q. Yes. A. Eleven months.

Q. And how long were you with the Public Service, did you say, about a year? A. Yes, a little over a year.

Q. What is your position with the Crowell Electric Company? A. Electrician and lineman. I do all his line work too.

Q. Do they deal with high tension wires? A. No, fire alarm wires.

Q. Does the Public Service Production Company deal with high tension wires?

*By the Court:*

Q. Did it? A. Yes, sir.

*By Mr. Broadhurst:*

Q. When you were with them? A. Yes, sir; when I was with them.

Q. That is, it dealt among other things; is that the idea? A. Yes, sir.

Q. So that the three concerns with which you worked on high tension wires were the Eastern New Jersey Power and the Jersey Central Power and Light Company and the Public Service Construction Company? A. That is right.

Q. Now I take it that you base your information as to the jumping of electricity on your practical experience then rather than any technical knowledge that you had from schooling? A. Well, yes.

Q. And I understand you to say that the only time or only occasion in which you saw electrical arcs or electricity jump from one wire to another was while you were engaged in the Public Service Production Company in Jersey City? A. Yes, sir.



*George Smith, cross.*

Q. And on that occasion—how many times did you see it jump while you were working for them?

A. Well, numbers of times during the time that I was there.

Q. In this one place? A. Well, in different places; near the back of the outdoor sub-station.

10

Q. That is right near the sub-station? A. The power house and sub-station are right side and side.

Q. And you say you saw it jump there about three feet from a wire to a girder, I believe you called it? A. To a ground, yes, sir.

Q. You never saw it jump on any other occasion except that occasion we are talking about?

A. Well, you see it there may times, but that is—

Q. Under similar circumstances? A. Yes.

20

Q. Now you say that there is a standard in the putting up of high tension wires near buildings; is that correct? You say there is a standard? A. Yes, there was a standard.

Q. And that standard you base on your practical experience in work in these three companies? A. Yes.

Q. Solely on your experience in working with those three companies? A. Yes.

Q. Do you say that the Jersey Central Power and Light Company, the defendant in this case, has a standard in regard to the distance that it puts high tension wires from buildings? A. Was this company a standard?

30

Q. Has it a standard? A. Has it a standard?

Q. Yes. A. It should have.

Q. I didn't ask you that. Do you know whether it actually has or not? A. I don't know whether it has a standard.

Q. So that your testimony as to a standard then

40



*George Smith, cross.*

is based upon your experience with the work of the companies, the Eastern New Jersey Power Company and the Public Service Production Company? A. Yes.

10 Q. Now all of your experience in the Public Service Production Company has been around their power house, hasn't it? A. Around their power house, yes, and sub-station.

Q. And isn't it a fact that conditions are entirely dissimilar in regard to electrical currents near power houses and sub-stations than they are near ordinary buildings which have no dynamos or motors or electrical productions? A. No, I don't know that.

20 Q. Isn't there more likelihood around sub-stations and power houses, where there is greater electrical production, than there is in ordinary buildings which you go by with an ordinary line? A. Well, no.

Q. There is not? A. No.

Q. Now is this standard which you have referred to reduced to writing in any way? A. No, not as I know of.

30 Q. Is there any law or statute that you know of which lays down this standard? A. No.

*By the Court:*

Q. You say that you were at school in Brooklyn; what did you study there? A. Electricity.

Q. Did you study its use in high tension wires? A. Along with that in low tension wires; high tension wires and low tension wires.

Q. I say did you study that subject? A. Yes, sir.

Q. At this technical school? A. Yes, high tension wires.

40 Q. You were there a year and a half?



*George Smith, cross.*

Mr. Broadhurst: A year, he said.

A. A year. I did study that.

*By Mr. Broadhurst:*

Q. How many hours a night did you go? A. I went once a week and we were there two or three hours every night. 10

Q. So that it consisted of about fifty lectures or fifty-two sessions a couple hours apiece? A. Yes, of three hours apiece.

Q. Now you say that an arc would, with reasonable probability, jump from a high tension wire to a ground if that ground was close enough to it? A. Yes.

Q. And you say that in your opinion it is reasonably probable that arc would jump as much or as great a distance as six feet or more? A. Yes, I have saw it jump three feet. 20

Q. Yes, I understand. Would the arc or would the electricity forming the arc jump from the high tension wire to this ground as long as the ground continued to stay there? A. Not—

Q. It would not jump constantly? A. No.

Q. Would it jump continually? Wouldn't it jump intermittently? 30

*By the Court:*

Q. Did it jump at intervals, on more than one occasion? A. Yes, it did.

*By Mr. Broadhurst:*

Q. In other words, as long as the ground remained there at that point and the electrical current passed through the high tension wire you would have the probability of that electricity 40



*George Smith, cross.*

jumping from the wire to the ground at intervals?

A. At certain times, yes.

10 Q. Now can you explain to us why in this particular case if the man had been working there for approximately an hour before this occurrence happened, would this pole sticking out over the parapet and that held an iron pulley and that iron pulley fastened to the pole by means of a wire, that no arc or no jumping of the electricity occurred during that hour that they were so working?

20 Mr. Kremer: I object to that, if your Honor please. There is no testimony here that they had been working out on that parapet for an hour.

Mr. Broadhurst: The examination of the father showed that they had been there approximately an hour before and had been using an iron pulley to hoist up material previously.

30 Mr. Kremer: But I think it is quite an unwarranted assumption that because they got to the job in the neighborhood of eight in the morning that he was standing in this identical position for an hour.

The Court: Why argue it? Didn't your man die of electricity?

Mr. Kremer: Yes, but I think it is fair—

The Court: Objection overruled. He may answer.

Mr. Broadhurst: Repeat the question.

The Court: He is asking why somebody wasn't electrocuted or shocked sooner than they were.

40 Mr. Broadhurst: Or jumped to the pulley, forming an arc and an explosion.



*George Smith, cross.*

The Court: Why wouldn't it jump to the pulley? I can anticipate what he is going to say to that.

(Question repeated as follows: "Now can you explain to us why in this particular case if the man had been working there for approximately an hour before this occurrence happened, would this pole sticking out over the parapet and that held an iron pulley and that iron pulley fastened to the pole by means of a wire, that no arc or no jumping of the electricity occurred during that hour that they were so working?") 10

A. It was not an iron pole, in the first place.

Q. Do you mean that wood is a conductor or non-conductor? A. Wood is a conductor. 20

Q. Well, then the wood was grounded against the parapet, wasn't it? A. The concrete. The concrete had steel in it.

*By the Court:*

Q. Is concrete a conductor? A. Yes, sir.

*By Mr. Broadhurst:*

Q. Now then, why is it, if the pulley was on a wooden conductor to the parapet that such a phenomenon would not occur? A. Because the man that was laying on the conductor plank was closer to the wires than the pulley was. 30

Q. A difference maybe of six or seven inches, wouldn't it be? A. Well, electricity jumps to the nearest point of ground, as we all understand.

Q. Well, now you say that the reason then was because the man's body would be six or seven inches, or the width of his body, nearer to the wires than the pole was? A. Than the pulley was? 40



*George Smith, cross.*

Q. Than the pulley was, yes. A. That is right.

Q. Now if that is a fact, how do you reconcile your statement that the pole on which the wires were should have been at least ten feet higher in order to give a margin of safety?

10

The Court: Fourteen to sixteen feet.

The Witness: Twelve to fourteen feet high.

*By the Court:*

Q. How do you reconcile that statement now in view of what you just said? A. Because it would put the wires that much further away.

*By Mr. Broadhurst:*

20

Q. Oh, yes, but if the pulley would not cause an arc, being six inches or eight inches lower than the man's body, if he was leaning out on the pole, what would be the necessity of the telegraph pole being ten feet higher? What would be the necessity of it being ten feet higher in order to give a margin of safety? A. Because it would put it that much further away, so it wouldn't get in contact with it.

30

Q. Well, then, your estimate or your opinion that the thing should be ten feet higher is merely based on your idea that if it was ten feet higher there would be that much less chance of electrical arc? A. That is right.

Q. So after all it is not a matter of standard at all, is it? A. Well, the standard is, what I have been taught in safety schools, in the public service, you stay ten or twelve feet away from it when around it, when you are at the grounded portion.

40

Q. So that your testimony as to what is the stan-



*George Smith, cross.*

dard practice is based on the precaution which the Public Service Production Company gives to its men to stay ten feet or more away from high tension wires while they are grounded? A. Yes, while the man is grounded, while he is on the grounded portion.

10

*By the Court:*

Q. What kind of instruction was that you got from the public service? A. Well, instruction from superintendents and engineers.

Q. Did they give you any books to study there? A. Well, yes, all the foremen, every foreman had books.

Q. Did you have one? A. No, I wasn't a foreman. I was taught by the foreman that had the books though, and he read those things to us.

20

*By Mr. Broadhurst:*

Q. And that is the safety measure which the Public Service Production Company adopts for the safety of their men? A. Yes, sir.

Q. Do you know how far apart those three wires were on this cross-arm, the three high tension wires? A. How far apart they were?

Q. Yes. A. Well, I don't know just exactly the inches.

30

Q. About three feet? A. Three and a half to four feet.

Q. Now can you explain to us why it is that the electricity did not jump from one high tension wire to the other high tension wire, if only three feet apart? A. Well, they are running right along, running parallel to one another; and they do jump and are across when the wind is blowing and ice is hanging on them.

40



*George Smith, cross.*

Q. Now can you give us any explanation why they did not at this place? A. Well, the chances are the water didn't stay on those copper wires. When water hits those wires it either drops or dries off.

10 Q. Well, there was no water on Mr. Heyer, who was injured? A. Well, it is probable he was standing on wet ground and probably perspiration was on his body that would help form a ground.

Q. Why is it that an electric arc would jump more than six feet or more than reach here and it would not jump three feet to reach a wire traveling parallel with it? A. Well, that is under conditions.

20 *By the Court:*

Q. How do you know it didn't? A. It probably did.

*By Mr. Broadhurst:*

Q. And if it did jump it would be visible, wouldn't it? A. The chances are it would jump.

Q. I say if it did jump it would be visible? A. What do you mean by visible?

30 Q. You could see it. A. You could see it if it jumped.

Q. Now, then, didn't you say that the reason why the arc would form between this wire and the body of Mr. Heyer and not between the pulley and the wire was because Mr. Heyer was closer to it? How do you explain the fact that the man who picked him up and pulled him away did not receive a shock? A. Well, they probably didn't get over the ledge, over on the plank, to get him away.

40 Q. Do you know in this case that his body, the left side of his body, was lying across this parapet,



*George Smith, cross.*

with his head over the side of the building? Now in order to lift him off wouldn't you have been subject to the same condition that he was subject to?

A. Subject?

Q. Why is it, can you explain to us, that they did not receive any shock? A. Well, electricity would jump further at one time than others, or if it didn't it would just have stayed on him. It jumps and flashes. 10

The Court: What time of day was this?

Mr. Kremer: Between eight and nine

A. M.

Q. If the current did jump to him and his body and they had hold of him they would get a shock, wouldn't they? A. If it had jumped? 20

Q. Yes. A. Yes.

Q. Can you explain to us why it is that they did not receive any shock? A. Because he was not charged when this man that pulled him away, he was not charged with electricity then.

Q. He was not charged with electricity then? A. No.

*By the Court:*

Q. Would it depend when the current was turned on and where? Suppose there was no current, then it was suddenly turned on. A. Not necessarily. 30

Q. Wouldn't make any difference? A. No.

*By Mr. Broadhurst:*

Q. Can you explain to us why, with this continuous current going through these wires, it didn't affect this man and touch him immediately with a shock? Why didn't that complete an arc, com- 40



*George Smith, cross.*

plete a ground? A. I don't know why that didn't get it.

Q. Now, it is a fact, of course, that if he touched that high tension wire with a wire such as this, he would complete the ground, wouldn't he? A.

10 Yes.

Q. Without question? A. Yes.

Q. And there would be no necessity of any electricity jumping and forming an arc in order to go out to him if he touched the high tension wire with that? A. No, it would be right through there.

Q. Now, you spoke also in your direct testimony about there being some custom or practice of having, in cities, sub-stations to reduce the amount of the current. What company did you ever work for that had sub-stations to reduce the amount of the current? A. All three companies that I have previously worked with.

20

Q. The Jersey Central Power and Light? A. Yes.

Q. Then they have it? A. They have such things.

Q. Who did you work under when you worked for the Jersey Central Power and Light? A. I hired out under Mr. Rose.

30

Q. Who was your superior when you were working there? A. Giles.

Q. Mr. Giles? A. Giles.

Q. Was Mr. Finch with the company at that time? A. I don't recall.

Q. He was not?

Mr. Kremer: He didn't say he was not; he said he doesn't remember.

40

Q. Don't recall? A. I don't recall that he was.



*George Smith, redirect.*

*Redirect examination by Mr. Kremer:*

Q. Now, Mr. Smith, I understood you to say in answer to a question of Mr. Broadhurst that the transmission of that current from the wire to a person would be intermittent, did you, it would not occur all the time, the entire time? A. No, it would be intermittent.

10

*By the Court:*

Q. At intervals? A. At intervals, yes.

*By Mr. Kremer:*

Q. If the current arced or jumped to Heyer's body and burned him as has been testified here, would it necessarily keep on charging his body or would it stop? A. Not necessarily.

20

Q. Would it be reasonably probable that it would stop and not jump again for a while? A. Yes.

Q. Maybe not jump again at all? A. Probably.

Q. That is probably true? A. Yes.

Q. In your opinion, for the person, Heyer's father or whoever it was, to be shocked at the time they took hold of his body, would it or not be necessary that the body be charged and that the arc be in full transmission at that particular time? A. Well, he was in danger when he touched this dead man, so at that distance he was in danger.

30

Q. But if the arc was not jumping at that particular instant then he would not get shocked? A. He would not get it.

Q. And if it was jumping he would get it? A. Yes.

Q. Is that right? A. Yes, sir.

40



*George Smith, redirect.*

Q. Now, you testified to the fact that there was a pole out there over the parapet and the boy was just a little above the pole? A. Yes.

10 Q. Now before the boy approached the pole and took hold of it and took hold of the rope that is coiled around it, I believe you stated that that pole was a conductor? A. Yes.

Q. Would it have been reasonably probable that the current from the wires might not jump to the pole? A. Yes; it would jump to the man, it wouldn't jump to the pole, for he was on top of it. It jumped to the nearest point first.

20 Q. But assuming he was not on the pole at all: might it or might it not have jumped to the pole, in your opinion? Could it? A. It could.

Mr. Broadhurst: I object to could.

The Court: No, it is the reasonable probability.

Q. Is it reasonably probable that it might jump to the pole? A. It might.

Mr. Broadhurst: I object and ask to strike it out. It is reasonable probability.

30 The Court: You are trying to show that the pole might have been charged when he crawled out on it?

40 Mr. Kremer: I don't know whether the pole was charged or not. The electricity jumped at intervals and Mr. Broadhurst tried to establish, and I think it made some impression upon your Honor, that the pole was not touched by this current; and yet he said they had to put their wires ten feet further away from that pole to avoid hitting this man if the man was only a few inches



*George Smith, redirect.*

above the pole. Now the current does not jump all the time and that pole might be in danger, as I want to show, that transmitting that electricity right where they stood, I think it might not have occurred until the boy got there. That is what I am trying to establish. 10

The Court: You ask a question and I will rule on it.

(Question repeated as follows: "Is it reasonably probable that it might jump through the pole?")

Mr. Broadhurst: I object to that again.

A. Well, that it would.

*By the Court:* 20

Q. What, jump to the pole first? A. Yes.

*By Mr. Kremer:*

Q. As a matter of fact you don't know whether it did jump to the pole or not, do you? A. No, I don't know whether it did or not.

Q. But you told us that in order to prevent that jumping from taking place those wires should have been carried twelve to fourteen feet above the parapet? A. That is right. 30

Q. Now you told Mr. Broadhurst in answer to a question of his that the Jersey Central Power and Light Company, the defendant in this suit, has sub-stations to reduce the current when it comes into municipalities? A. They do.

Q. Will you tell us where some of those sub-stations are located? In and around Asbury Park, right? A. Well, there is none in Asbury Park. I know of half a dozen, I guess. There is one right over here, one of their sub-stations, right on this road going to Englishtown. 40



*George Smith, redirect.*

*By the Court:*

10 Q. What about Red Bank? A. And there is one in Red Bank. That is that line that goes along the S. S. Thompson Building, goes on down the railroad track, through a spur—

Q. Well, is there such a transformer, or whatever you call it, on that particular line? A. Yes, there are tanks and transformers.

*By Mr. Kremer:*

Q. Now does the one near Freehold reduce the current to come into the town of Freehold? A. Yes.

20 Q. So that they do not carry any 33,000 volt wires through Freehold? A. No, not through the town.

Q. They do until they come to this sub-station? A. Yes.

Q. Where is it located? A. I believe it is on the Englishtown road, just outside of Freehold, right about here, as far as I know.

Q. And they go as far as the sub-station with 33,000 volts? A. Yes.

30 Q. And then they reduce it before they come into the streets of Freehold? A. Yes.

Q. For how much? A. Well, reduce down to 2,300.

Q. And that is done, you say, for the purpose of safety? A. For the purpose of safety.

Q. For lighting? A. For lighting.

Q. And they reduce the current purely for the purpose of safety? A. Purely for that, and feeding the town for light and power.

40 Q. They do have sub-stations at other points? A. Yes, sir.



*George Smith, recross.*

Q. But this wire was carried across Monmouth Street, Red Bank, with 33,000 volts in it? A. Yes, sir.

*Recross examination by Mr. Broadhurst:*

Q. Of course the 2,300 volts that it would be reduced to would kill a person anyway, wouldn't it? 10

A. Yes.

Q. Now I just want to ask you once again, if you say that this electricity could, with reasonable probability, be transmitted from this wire to the pole on which this pulley was fastened, can you explain to us why it is that there were not explosions and flashes previous to this occurrence between that wire and this pole? A. I can't answer that question. 20

*By Mr. Kremer:*

Q. Is it because the current is not transmitted all the time?

Mr. Broadhurst: Objected to.

The Court: No, you are suggesting now.

Mr. Kremer: That is all.

Mr. Broadhurst: If your Honor please, I think that it has appeared that this witness has not qualified to testify the standard of practice from the cross examination, certainly. He says he has worked for three companies, the Jersey Central Power and Light, the Eastern New Jersey Power Company and the Public Service Production Company. He says the Jersey Central Power and Light had no standard; that the Public Service, the other two that he worked for, one for a year and a half as a lineman, and 30 40



*George Smith, recross.*

10

the other for about a year, the Public Service Production Company as an electrician at their power house or doing work of that kind, and a night school education of fifty-two sessions, two or three hours apiece, and as a result of taking an examination for a municipal electrician in New York.

20

The Court: I will tell you, Mr. Broadhurst, I am going to strike the testimony so far as it refers to any standard of practice. I shall grant your motion to that extent. I will not strike the testimony of the witness, however, with regard to care and degree of safety and caution required in conveying high tension wire in a locality such as that where this accident happened, with regard to degree of care and safety required. Now he can testify as to that. Of course the weight of his testimony, he may be regarded as one hundred per cent. expert or only seventy-five per cent. expert. That is a matter for the jury. But of course he acquires his ability to speak on the subject either from practice and study or study without practice, of course not by mere observation. In any event, he does qualify, in my opinion, as an expert, excepting possibly as to the standard that he speaks of, what is the standard practice. I am going to allow his testimony to stand in other respects.

30

Mr. Broadhurst. So that I will be protected on the record I will note an exception.

(Objection noted for defendant as ground of appeal.)

40

The Court: Yes. Of course, Judge Kremer, I incline to the view before such tes-



*George Smith, recross.*

timony could come in and stay in that he would have to show that that practice is so well known and established as to be brought home to the defendant company and that, of course, you may not be able to do.

Mr. Kremer: Your Honor will readily appreciate the fact that in a community like this the only engineers that are available are those employed by the defendant company themselves. We are in a position that we cannot get the engineer of the Jersey Central Power and Light Company.

10

The Court: Here is a witness who says that in a locality such as we are talking about the element of safety is in having the transmission wire or wires as far away as fourteen to sixteen feet. Now in all these cases that have been decided in the Court of Errors, all seem to hold that it is for the jury to say, after all, whether there was a proper degree of care and caution that would relieve this company from the charge of negligence. It is a question of fact for the jury.

20

Mr. Kremer: I am only offering his testimony for what it is worth. He is not the most brilliant college graduate in the world.

30

The Court: Yes, I say I have stricken that part of his testimony about standards. I am going to allow the rest of his to remain, about the degree of care required in the immediate circumstances.

Mr. Kremer: In other words, as I understand your Honor's ruling, his statement as to the degree of care that should be used in this case was that that wire should be sus-

40



*Phineas Proctor, direct.*

pended twelve to fourteen feet above that fire wall, remains?

10

The Court: That remains. The jury will disregard the witness' testimony as to standard of practice. I might suggest to you that you had better take an exception, if you have not taken an exception on it.

(Objection noted for plaintiff as ground of appeal.)

---

PHINEAS PROCTOR, sworn for plaintiff.

*Direct examination by Mr. Kremer:*

20

Q. Where do you live, Mr. Proctor? A. Ocean Grove.

Q. What business are you in? A. Electrical business.

Q. Oh, a contractor? A. A contractor, yes.

Q. How long have you been in business? A. About twenty-four years.

Q. Have you had experience during that time with low tension wires? A. Yes.

Q. Have you had any experience with high tension wires? A. Yes.

30

Q. Are you familiar with the value of voltages? A. Yes.

Q. Are you familiar with wire construction and maintenance? A. Yes.

Q. By the way, what is a volt? A. What is a volt?

Q. Yes; is it pressure or is it power? A. Pressure.

40

Q. Is it distinguished from an ampere? Is an ampere power? A. Ampere would be quantity.



*Phineas Proctor, direct.*

*By the Court:*

Q. An ampere is the unit of pressure of electricity; a volt is the unit of pressure of the transference of electrical energy; is that right? A. That is right.

10

*By Mr. Kremer:*

Q. When you say that a wire carries a certain amount of voltage you mean that it carries a certain amount of pressure or a certain quantity of electricity? A. When we speak of voltage that means pressure.

Mr. Kremer: Do you object to his qualifications?

Mr. Broadhurst: I haven't heard them. I don't know what you are going to qualify him for. You have got to put him on high tension wires first.

20

Mr. Kremer: I did that.

Mr. Broadhurst: You haven't done that.

Mr. Kremer: I asked him if he had experience with high tension wires, maintenance and construction.

*By the Court:*

30

Q. Have you had experience with high tension wires involving the transmission of 33,000 volts, Mr. Proctor? A. No, sir.

Q. What is the limit of your experience in that regard? A. 2,300.

*By Mr. Kremer:*

Q. Well, is 2,300 volts sufficient to kill any one who comes in contact with it? A. Yes.

Q. Do the same principles apply in the main-

40



*Phineas Proctor, direct.*

tenance and construction of wires containing 33,000 volts as in the 2,300?

Mr. Broadhurst: Objected to.

*By the Court:*

10

Q. Do you know anything about that? A. It is only a matter of degree.

The Court: A matter of degree, of course. You may examine him as to the 2,300 voltage.

20

Mr. Kremer: If the Court please, I think that as he says now it is only a matter of degree, we would not have to show that a man, in order to be an expert, would have to deal with a wire carrying any particular voltage.

The Court: Don't argue it, Judge. You can consider and ask your questions. Mr. Broadhurst will object to them and then I will rule on them. Don't stop until you are told to.

*By Mr. Kremer:*

30

Q. In your opinion, Mr. Proctor, is it safe construction from the standpoint of any person who might be in and about a roof having a fire wall with reinforcing of metal, that fire wall coming within six feet of a suspended electric light wire carrying 33,000 volts of electricity, in your opinion, is the suspension of that wire within six feet of the wall of the parapet safe and proper construction for a person who might be in and about the parapet?

40

Mr. Broadhurst: Objected to unless there are some standards proven. Unless there is



*Phineas Proctor, direct.*

some standard proven I do not think that this witness' opinion one way or the other makes or does not make toward negligence.

The Court: I am not so sure, standard or no standard. The objection is overruled. You may answer.

10

(Objection noted for defendant as ground of appeal.)

The Court: We are merely dealing with the question of reasonable care and caution, using a deadly current.

A. It is not safe construction.

*By the Court:*

Q. Why isn't it, Mr. Proctor?

20

Mr. Broadhurst: May I have my exception to the entire line, so I won't keep bobbing up?

The Court: Yes.

(Objection noted for defendant as ground of appeal.)

Q. What is the danger? A. Well, the higher the voltage is the larger spacing should be used between ground and wire.

30

*By Mr. Kremer:*

Q. How far away, in your opinion, should that wire be maintained in order for it to be safe for a person to work in and about the parapet?

Mr. Broadhurst: Objected to.

The Court: You will reframe that question. Ask him what would be the reasonable degree of care in the construction.

40



*Phineas Proctor, cross.*

Q. What, in your opinion, would be the reasonable degree of care upon the part of the company maintaining the wire as to the distance from the parapet or fire wall that the wire should be placed at?

10

Mr. Broadhurst: I ask an exception.

The Court: It will be allowed.

(Objection noted for defendant as ground of appeal.)

A. Ten to twelve feet.

*By the Court:*

Q. Now why do you say that, Mr. Proctor? A. Because to get a greater spacing between the wire and the possible ground.

20

Q. In other words, it would not create what they call an arc that way as quickly as if it were— A. Closer.

Q. Closer? A. That is right.

Q. In other words, the closer the construction, the wire construction, the greater the danger? A. That is it.

*By Mr. Kremer:*

Q. And you say that if it were ten or twelve feet away it would be safe from any transmission or arcing? A. Yes, sir.

30

Mr. Kremer: Cross examine.

*Cross examination by Mr. Broadhurst:*

Q. You say that you have never had any experience with high tension wires beyond 2,300 volts?

A. No, sir.

Q. And is the distance of a high tension wire carrying 2,300 volts—

40



*Phineas Proctor, redirect.*

The Court: The same as one carrying thirty—

Q. The same as one carrying 33,000 volts, in order to be reasonably safe? A. No.

Mr. Broadhurst: That is all.

10

*Redirect examination by Mr. Kremer:*

Q. You said the greater the voltage the greater distance it might demand? A. Yes, sir.

*By the Court:*

Q. How far should a tension wire be from a building in case it carried 2,300? A. Six feet.

*By Mr. Kremer:*

20

Q. When you string high tension wires on the same pole where low tension wires are strung isn't there a standard practice as to the distance that the high tension wires should be away from the low tension wires?

Mr. Broadhurst: Objected to as immaterial in this case. There are no low tension wires in this case.

Mr. Kremer: Well, it compares the same thing. Mr. Broadhurst suggested this might jump from the one to the other and I think we can show there is a standard in the field of practice about stringing wires.

30

The Court: Yes, counsel did not indicate any construction on that subject. I will allow it.

Mr. Broadhurst: There is nothing to show that there were any low tension wires on this pole.

The Court: Yes, and it is not shown that

40



*Phineas Proctor, redirect.*

the witness has any knowledge. I would not press the question now. There is no use in preparing a case for the Court of Errors in advance.

10

Mr. Broadhurst: Before this other witness is sworn I would like to strike out the testimony of this witness as to his opinion as to how far the wires would have to be from this building in order to be reasonably safe, because it appears that the only experience he has had is with 2,300 volts, and that that is six feet, and he never had any experience with any other.

20

The Court: I am going to strike his testimony on the 33,000 volt proposition, involving ten feet, for the reason that his experience has been entirely with a 2,300 volt wire, which involves six feet distance; but I will allow that part of his testimony to stand that the danger increases with the degree of increased voltage.

Mr. Broadhurst: Allow me an exception to the part which you refuse?

30

The Court: Yes. I will strike out that part of his testimony in regard to the degree of danger increasing with the degree of voltage. I will strike that out. So it will simply stand that the 2,300 volt tension wire involves a distance of six feet and the exercise of ordinary reasonable care. I will allow that to stand. The rest of his testimony, with regard to any higher degree than 2,300 volts, will be stricken. The jury will disregard it.

40

(Objection noted for defendant as ground of appeal.)



*Lionel W. Lancaster, direct.*

LIONEL W. LANCASTER, sworn for plaintiff.

*Direct examination by Mr. Kremer:*

Q. Where do you live, Mr. Lancaster? A. Fair Haven, New Jersey.

Q. Fair Haven, in this county? A. Yes, sir.

10

Q. What is your business? A. Construction engineer, S. S. Thompson Company.

Q. Did you build the building which is at Monmouth Street near the railroad tracks, referred to in this suit? A. S. S. Thompson Company built the building but I had charge of the plans, that is, the preparation of the plans and the construction of the job.

Q. Can you tell us how high the building is from the base on the ground to the top of the parapet? A. From the sidewalk grade to the top of the parapet is 61 feet 11 inches.

20

Q. Practically 62 feet? A. Practically so, yes, sir.

Q. During the construction or before the construction and erection of that building was there a wire or wires carried by the Jersey Central Power and Light Company on poles at that point? A. Yes.

Q. Did they or did they not interfere with the erection of the building? A. Well, when they existed in the beginning, before we started the work, they did not interfere because the building did not exist; and prior to our starting the work the Jersey Central Power and Light Company was informed of our intention to build a building at that place, and if the wires had been left there in their position at that time they would have encroached on the building and they were asked to remove them, which they did.

30

Q. Did you furnish them with copies of your

40



*Lionel W. Lancaster, cross.*

plans and specifications? A. I don't recall that they were furnished with a copy of any plans, but they were notified of the outside dimensions of the building, which guided them in their installation of the wires, I presume.

10 Q. Who did you notify of the Jersey Central Power and Light Company? A. The Red Bank office.

Q. Well, who was that? A. I believe Mr. Finch at the time.

Q. What was his position, do you know? A. I don't know exactly what his title is, no, sir.

Q. Did you tell Mr. Finch the height of the top of the parapet of your building? A. That information was given to them at that time.

20

*Cross examination by Mr. Broadhurst:*

Q. Mr. Lancaster, there was a discussion, was there not, between some one connected with the Jersey Central Power and Light Company and with your concern or yourself relative to where the new wires were to be put, that is, on how high a pole and how far from your building? A. Yes, sir; there was some discussion of that kind.

30

Q. And the Jersey Central Power and Light Company agreed to put it on a sixty-five foot pole, did they not, that carried it above your building? A. The information we had at the time was that they had some poles in existence which were new and they wished to use them; the exact height I don't recall. But they made the statement that they would put these poles up, which would give us six or seven feet clearance with the wires from the building. And that was the understanding and I believe that was—

40



*Lionel W. Lancaster, redirect.*

Q. Followed out, was it not? A. To my—

Q. As a matter of fact the wires are about eight and a half feet above the roof of your building, are they not? A. I couldn't tell you the exact dimensions, no, sir.

Q. And adjacent to your building on the west is the right of way of the New Jersey Central Railroad Company? A. I understand that belongs to them, yes. 10

Mr. Kremer: I object unless he knows.

A. I don't know who hold title to the property but it is a right of way used by—

Q. A railroad company? A. The railroad company and the public, I understand.

Q. Is there a street on the west side of your building? A. It is a street as a right of way; it is not a street in that sense of the term. 20

Q. In other words, people go over it; is that what you mean? A. Oh, yes.

Q. Vehicles or just pedestrians? A. Vehicles, yes.

Q. Along the side of the railroad track there? A. That is right.

Q. There is a side track there, is there not, and a main track? A. It is a siding that is very active. 30

Q. In other words, people that go in there take their stuff from the cars on the side tracks? A. That is correct.

*Redirect examination by Mr. Kremer:*

Q. You say that you had some discussion with Mr. Finch or with one of the members of the company as to the height that they were going to put that pole? A. Yes, we discussed that feature.

Q. As a matter of fact, didn't they say they were 40



*Lionel W. Lancaster, redirect.*

10 going to put it seventy-five feet? A. I don't believe there was ever an estimate made of the exact height the wires were to be. I think there was mention made of a pole that they were going to use being a seventy-five foot pole; but you know that pole goes into the ground a certain number of feet. Just how many feet it goes in the ground I couldn't say.

*By the Court:*

Q. That would involve the height above ground?

A. Yes, sir; I never measured that.

*By Mr. Kremer:*

20 Q. So when you say a seventy-five or sixty-five foot pole it usually means the height above ground, doesn't it? A. Not necessarily, no, sir.

Q. But they did make some reference to a seventy-five foot pole? A. I understand it; mention was made of a seventy-five foot pole which they had in existence.

30 Q. Of course your company knew nothing about electricity in discussing the distance those wires were to be above your building, did you? A. No, sir; we didn't.

PLAINTIFF RESTS.

MOTION FOR NONSUIT.

Mr. Broadhurst: If your Honor please, I wish to move for a nonsuit at this time in favor of the defendant on the ground that there is no evidence of any negligence on the part of the defendant as alleged in the complaint.

40 The Court: The Court inclines to the view that a *prima facie* situation has been de-



*Charles Le Maistre, direct.*

veloped here which would not justify the Court in granting this motion. It will be denied without prejudice, of course, and the jury will not regard it as an expression of opinion as to what the verdict should be in this case; but with that statement the motion is denied and you may have an exception. 10

(Objection noted for defendant as ground of appeal.)

---

DEFENDANT'S TESTIMONY.

CHARLES LE MAISTRE, sworn for defendant.

*Direct examination by Mr. Broadhurst:*

Q. Mr. LeMaistre, you are an employee of the Jersey Central Power & Light Company? A. Yes, sir. 20

Q. As what? A. Clerk.

Q. And did you get notice in some way of an accident occurring on the Thompson Building? A. Yes, sir.

Q. And did you go from the office to the Thompson Building yourself? A. Yes, sir.

Q. Was the young man still there at the time or not? A. No, sir; he was gone. 30

Q. Did you go to the roof? A. Yes, sir.

Q. And did you learn at what time the accident happened? A. I didn't know exactly. I heard it was about nine o'clock.

Q. And about what time did you get there, how soon after? A. About fifteen minutes.

Q. And when you got to the roof did you observe any mark on the parapet which would indicate 40



*Charles Le Maistre, direct.*

where the electric current had passed over the parapet?

Mr. Kremer: I think that calls for a conclusion.

10 Q. Did you observe any mark on the parapet?

A. There was a mark there but I couldn't say whether it was from the current or not.

Q. What kind of a mark was it? Will you describe it to us? A. It looked like the mark of the current.

Q. Where was it with relation to this beam and where did it extend over the parapet? A. About a foot from it.

20 Q. Which way, towards the front or rear? A. Front or rear?

Q. This beam, did it have a pulley on it when you got there? A. I don't recall.

Q. How far out did it stick over the end of the parapet? A. About two feet.

Q. Did you discover anything else there besides the beam? A. I saw a piece of wire there.

Q. This piece of wire I have here in court, is that the piece of wire that you observed there? A. That looks just like it.

30 Q. What did you do with the wire that you found there? A. I took it and rolled it up and brought it down and took it down to my superior.

Q. Who was that? A. Mr. Finch.

Mr. Broadhurst: I will connect it that this wire came from Mr. Finch, has been in his custody.

40 Q. Will you tell us how this wire was situated on the roof? Where was it? A. It was laying in



*Charles Le Maistre, direct.*

the position which you have it there, with about two feet sticking out over the edge of the building.

Q. Over the edge of the building? A. The parapet.

Q. Over the parapet? A. Yes.

Q. About two feet of it? A. Approximately, I 10  
wouldn't say.

Q. And the rest of it lying over the parapet, with the end on the roof? A. Yes.

Q. Was it north or south? Will you point out on this diagram and show the mark now just where it should be? A. Somewhat further south.

Q. In other words, it might have had a little curve off from this? A. Yes.

Q. Where was this wire with reference to this current mark that you saw on the parapet? A. 20  
Well, it was about five or six inches away from it.

Q. Five or six inches away from it? A. Yes, sir.

Q. Did you observe the timber itself, as to whether it had any marks on it or not? A. Yes, I did. There was a little discoloration on it.

Q. Where was the discoloration? A. Just over the end, and I think there was one down further.

Q. And when you speak of the end you mean the end that was over the roof or the end that was on the roof? A. The end that was over the roof. 30

Q. And that discoloration was what? A. Well, I couldn't say.

Q. What did it appear like? Was it a red paint mark or what? A. No, it appeared as if it had been hit with something but burned—

Mr. Kremer: Objected to as calling for a conclusion.

By the Court: 40

Q. You may describe the mark, not as it ap-



*Charles Le Maistre, cross.*

peared but what was it, what did it look like? A. Well, looked like a burn.

Q. Do I understand that that wire was straightened out about as Mr. Broadhurst has it now? A. Why, something in that order, yes.

10 Q. When you picked it up? A. Yes, your Honor. I picked a coil up.

*By Mr. Broadhurst:*

Q. You didn't see this occurrence, of course? A. No, sir.

Q. Was there anything else you know about it outside of what I asked you? A. No, sir; there is not.

20 *Cross examination by Mr. Kremer:*

Q. You are not sure, of course, that this is the wire at all? A. Well, I haven't saw the wire since I turned it in that day.

Q. You said it was a wire of this character? A. Just a wire just like that.

Q. You got there at 9:15? A. Approximately.

Q. And where was the beam? A. The beam? Why, it was still sticking out over the parapet.

30 Q. And where was the other end of the beam, on the floor? A. Yes, sir.

Q. Now where was this wire when you say you found it? A. Why, it was laying right near the beam, sticking out the same direction as the beam.

Q. The end of it was on the floor of the— A. Of the roof.

Q. Of the roof? A. Yes, sir.

Q. And a little of it was sticking out over the beam? A. Yes, sir.

40 Q. Did you notice any wire coiled around the beam? A. No, I didn't.



*Irving Finch, direct.*

Q. You don't know whether there was or not?  
A. That is the only wire I saw there.

Q. Did you look at the end of the beam? A.  
The end of the beam?

Q. Yes. A. You mean the end that extended  
out? 10

Q. Yes. A. Yes, I looked at it.

Q. You don't know how long it had been since  
the accident took place till you got there? A. No,  
I don't.

Q. And you don't know who had been there in  
the interval? A. No, I don't.

Q. And you don't know whether it was necessary  
to uncoil any wire to get him away, do you? A.  
Well, I couldn't say, no, sir.

Q. No, you don't know what position the wire  
was in at the time the accident took place? A.  
No, sir. 20

Q. You don't know anything about that? A. No,  
sir; I don't.

---

IRVING FINCH, sworn for defendant.

*Direct examination by Mr. Broadhurst:*

Q. What is your occupation, Mr. Finch? A. 30  
Superintendent of distribution.

Q. Of what company? A. Jersey Central Power  
& Light Company.

Q. How long have you been superintendent? A.  
Nearly four years.

Q. And previous to that what were you, previous  
to the four years? A. Well, the same position,  
with the Public Service Electric Company.

Q. How long were you with them? A. About  
fourteen years. 40



*Irving Finch, direct.*

Q. And did you have any other experience besides those two, fourteen years with the Public Service and four years with this company? A. Well, with the Shore Electric Company.

10 Q. How long were you with them? A. About twenty years.

Q. In what capacity? A. Lineman and superintendent.

Q. And did all three of those companies deal with high tension wires? A. Only the Jersey Central Light & Power Company.

Q. That is the only one of the three that dealt with high tension wires? A. Yes, sir.

Q. Do you know where this Thompson Building is located? A. Yes, sir.

20 Q. And did you have anything to do with the changing of the poles on the west side of the Thompson Building? A. Yes, sir.

Q. And how did that change come about? A. Why, we were notified that they were going to construct a building there and gave the height of it, so naturally we procured higher poles and reconstructed the line parallel with the building.

30 Q. And what was the height of the pole above the ground, approximately, previous to the one that was in when the accident occurred? A. Approximately fifty-six feet.

Q. How much higher pole did you put in previous to this accident? A. From the ground?

Q. Yes. A. Sixty-six.

Q. Sixty-six feet? A. Sixty-six feet; approximately ten feet higher.

Q. And the pole, I suppose, would be in the ground about how much? A. About eight feet.

40 Q. So it would be a pole approximately seventy-



*Irving Finch, direct.*

four or seventy-five feet high? A. Yes, seventy-five feet.

*By the Court:*

Q. Sixty-six above ground? A. A sixty-five foot pole was replaced with a seventy-five, two of them. 10

*By Mr. Broadhurst:*

Q. So that it made the distance there above the ground a difference of from fifty-five to sixty-five feet, approximately ten feet? A. Yes.

Q. How many wires on this pole? A. Three.

Q. Three high tension wires? A. Yes.

Q. How far apart are they? A. Three feet.

Q. Do you know on what property those poles are located? A. Central Railroad Company of New Jersey. 20

*By the Court:*

Q. What voltage was carried through those wires? A. To my knowledge 33,000.

Q. 33,000 volts? A. Yes, sir.

*By Mr. Broadhurst:*

Q. And those poles were located, I suppose, pursuant to a license agreement with the Central Railroad Company? A. Yes. 30

Mr. Kremer: I object to that.

*By the Court:*

Q. Was the current on on the morning of the accident? A. Yes, as far as I know.

Q. What was the custom as to turning on and turning off the current on the tension wires in question? A. Only in the event that we have 40



*Irving Finch, direct.*

trouble on the line and have to repair it; otherwise it is—

Q. Continuously charged? A. Continuously charged, twenty-four hours a day.

*By Mr. Broadhurst:*

10

Q. Now, Mr. Finch, when were these new poles put in, about, do you recall? This accident happened in October, 1927; about how long prior to that? A. In May.

Q. And if there were any complaints made of any kind about the wires or the operation of the wires would they or would they not come to your attention?

20

Mr. Kremer: Objected to. I don't think the fact that there might or might not have been complaints would bear upon the question of whether these wires were properly constructed. I don't think knowledge makes any difference.

The Court: No, it probably would not.

Mr. Broadhurst: Your Honor overrules the question?

The Court: Yes. Let me have that question again.

30

(Question repeated.)

The Court: I will allow you to reframe the question so that he may develop, or at least you may develop, any affirmative knowledge that he had.

Mr. Broadhurst: I will withdraw the question for the present and put another question.

40

Q. What were your duties as superintendent, sir, with reference to taking care of high tension wires, of course? A. Well, of course my superior's



*Irving Finch, direct.*

office is in Asbury Park. He has direct charge of the transmission work.

Q. What is his name? A. L. C. Van Inwegen. But, of course, any trouble that would occur on the line, naturally it would be reported at our office first, through some of the clerks and through myself, and be transmitted to the production department.

10

Q. Whose duty would it be to take care of any trouble which was reported? A. Well, it might be the duty of some of the Red Bank employees and it might be from another outside gang.

Q. Well, who would give them the instructions what to do? A. They would be given from Asbury.

Q. But not from your office? A. No; that is, after it was decided what should be done.

20

Q. When you say we decided who do you mean? A. After it was decided.

Q. Who would do the deciding? A. The Asbury Park office usually.

Q. Then it would not come under your supervision? A. No. Then we would work under orders, and of course we might have the work to do or some other gang.

30

*By the Court:*

Q. Some outside gang? A. Some outside gang, either from Keyport or from Long Branch.

*By Mr. Broadhurst:*

Q. Did you have anything to do with the construction of this—putting up of these poles and the construction of this line by this building? A. Yes.

Q. Was it done under your supervision? A. Done under my supervision.

40



*Irving Finch, cross.*

Q. In your opinion, based on your experience, was this line and the wires properly constructed?

Mr. Kremer: Objected to. If the Court please I would like to question him about his experience and the character of it.

10

*Cross examination by Mr. Kremer:*

Q. Are you an engineer? A. No.

Q. Not an electrical engineer? A. Not an electrical engineer.

Q. You say you have had thirty years' experience; what kind of experience has that been? A. Well, in constructing both distribution and transmission lines.

20

Q. Not all for the Jersey Central Power & Light Company? A. Transmission only for the Jersey Central Power & Light Company.

Q. How long has that company been in existence? A. Three years.

Q. When lines are constructed what do you have to do with them? A. Simply direct the men who are under me as to the type of construction.

Q. You stay in the office? A. No, I am outside generally.

30

Q. Who lays out the course of the transmission lines? A. Well, that is laid out by the construction department from Asbury.

Q. And that is not yours? You are not the construction department? A. No.

The Court: He says the construction department from Asbury.

Q. From Asbury? A. The line was laid out and the line was constructed under my supervision.

40

Q. So the questions of propriety of construction of any particular character of construction are de-



*Irving Finch, redirect.*

cided by an entirely different department from you? A. No.

Q. And it is not your knowledge or judgment that determines those things at all, is it? A. No.

Mr. Kremer: Then I object to his opinion on the subject.

10

Mr. Broadhurst: May I ask some further questions?

*Further direct examination by Mr. Broadhurst:*

Q. Have you anything to do with the height of poles or the distance the poles should be from the buildings or anything of that kind? A. No, I have not.

Q. That is laid out in the Asbury Park office, I take it? A. Yes.

20

Q. Now did this last witness that was on the stand bring you a wire that was purported to have been found on this roof? A. Yes.

Q. And is this wire that I have here in court today the wire which he brought to you? A. Yes.

Q. You handed it to me this morning wrapped up? A. Yes.

Q. Has it been in your custody ever since he gave it to you? A. Yes.

30

Q. Labeled with an envelope, "Wire removed from S. S. Thompson Company building—"

Mr. Kremer: That is a self-serving declaration. I don't think that that should be read into the record. We are not responsible for what they allege.

Q. Did you write that yourself? A. Yes.

Q. Does that refresh your memory as to when the wire was given to you?

40



*Irving Finch, redirect.*

The Court: He doesn't require to refresh his memory.

The Witness: It remained there until it was brought here.

10 *By the Court:*

Q. And that was the day of the accident? A. Yes, sir.

Mr. Broadhurst: I am going to repeat that question now and have a ruling on it.

Q. Will you tell us whether or not the construction of this line under your supervision on these poles in your opinion was good practice?

20 Mr. Kremer: I object, if the court please, for the reasons already developed, that the witness has not shown that he is an expert.  
The Court: I don't know. I am not so sure about that.

*By the Court:*

Q. You have had thirty-three years' experience, you say, Mr. Finch? A. Yes, sir.

30 Q. What kind of experience have you had? A. Experience in constructing both distribution and transmission lines.

Q. What does that cover, the resort to recognize practice with regard to safety and so on? A. Yes.

Q. And using the general standard of equipment? A. Yes, sir.

The Court: Proceed.

Mr. Kremer: May I question him further as to his qualifications?

40 The Court: Yes.



*Irving Finch, recross.*

*Cross examination by Mr. Kremer:*

Q. When you go out on the job and wires are to be constructed you have a force of men working under you? A. Yes.

Q. And you have written directions from your construction department? A. No. 10

Q. Well, how do you know that the wires are placed and the poles are erected at the places which the construction department has decided upon? A. Well, from verbal instructions.

Q. You simply receive word from someone as to where these poles are to be put and where the wires are to be put? A. Yes.

Q. And it is the judgment of that department that determines where they are to be put? A. Yes. 20

Q. And not yours? A. Not always.

Q. You say you are not an electrical engineer? A. No.

Q. Have you any familiarity at all with the values of voltage? A. Only from practical experience.

Q. Did you ever work on a line yourself? A. Yes.

Q. You have been a lineman? A. Yes.

Q. For how long? A. Twenty years. 30

Q. You worked outside as an electrician on the line? A. Yes.

Q. Stringing high voltage wires? A. Yes.

Q. And you had handled high voltage wires yourself? A. Yes.

Mr. Kremer: I will withdraw the objection.



*Irving Finch, redirect.*

*Further direct examination by Mr. Broadhurst:*

(Question repeated as follows: Will you tell us whether or not the construction of this line under your supervision on these poles in your opinion was good practice?)

10

*By the Court:*

Q. Was it? A. Yes.

*By Mr. Broadhurst:*

Q. Were the wires high enough above the top of this roof or parapet to provide reasonable safety to anyone using that roof? A. Yes.

20

Q. Now there has been testimony here by Mr. Smith that it would be reasonably probable for an arc to be formed by the electricity jumping from the high tension wire to a person standing at this parapet, a distance of six feet or more. Have you had any experience with electricity jumping from high tension wires to a ground? A. Why, they—

Mr. Kremer: Answer yes or no, please; have you had any experience?

30

Q. Have you ever seen it, ever seen the electricity jump from high tension wires to a ground? A. Yes.

Q. What is the greatest distance you ever saw electricity jump from a high tension wire to a ground? A. About twelve inches.

Q. In your opinion—

40

Mr. Kremer: If the court please, I don't want to keep objecting, but that question does not tell us anything. It does not show how much electricity. It might be a hundred volts—



*Irving Finch, recross.*

Q. How many volts were in the high tension wire that you observed the arc jump twelve inches?  
A. 33,000.

Q. In your experience did you ever see electricity jump as much as five or six feet to a ground? A. No.

10

Q. In your opinion, based on your experience, is it reasonably probable for an electric current to jump from a high voltage wire containing 33,000 volts to a ground six feet below? A. I couldn't say.

Q. You couldn't say one way or the other? A. No, sir.

Q. In other words, you never saw it? A. No, sir.

Mr. Kremer: I object, may it please the court. That is leading him. He says he doesn't know.

20

*Cross examination by Mr. Kremer:*

Q. You wouldn't deny that that might happen then, Mr. Finch? You wouldn't deny it because you don't know; is that so? A. I never saw it.

Q. But you don't know, you said, whether it would happen? A. No.

Q. So you wouldn't deny that it might happen, would you? A. I wouldn't say that it would.

30

The Court: He wouldn't say one thing or the other.

Q. You wouldn't say that it would and you wouldn't say that it wouldn't; that is right, isn't it? A. Yes.

Q. I suppose the time that you saw the juice jump twelve inches it jumped to something that was twelve inches away, didn't it? A. Merely

40



*Irving Finch, recross.*

jumped around an insulator because the insulator was broken and gave it some conductivity.

Q. Jumped about twelve inches? A. Yes. If it didn't have conductivity naturally it wouldn't jump that far.

10 Q. You say that these wires in Red Bank to your knowledge were strung fifty-five feet high before this building was built? A. Yes.

Q. And was that somewhere along there that transmission line constructed under your supervision? A. Yes.

Q. But you regarded it as proper to put them fifty-five feet in the air? A. Yes.

Q. How high was the building that stood on that site at that time when you had the fifty-five foot wire? A. Probably forty-five.

Q. What? A. About forty or forty-five.

Q. Sure of that? A. No, I am not sure.

Q. Do you remember what stood there? A. A wooden building.

Q. How many stories? A. About two and a half stories.

Q. And you say it was forty-five feet high? A. I would say so approximately.

30 Q. You know as a matter of fact that a two-story frame building is not forty-five feet high, don't you? A. No. This was a very high story.

Q. And is that why your wires were fifty-five feet high? A. I don't know just how high they were from there.

Q. You were carrying that fifty-five feet all along that territory, weren't you? A. Well, there especially, I mean crossing a main street, we carried them ten feet higher than ordinarily.

40 Q. And to eliminate the danger of anybody in the street coming in contact with them; is that so? A. Yes.



*Irving Finch, recross.*

Q. And they were forty-five feet above the highest point of anybody that would be in an automobile or would be walking along the street, were they not? A. Approximately that.

Q. But there was a clearance of perhaps twenty or twenty-five feet from the roof of any frame dwelling, in fact, wasn't there? A. I wouldn't say how high above the roof. 10

Q. But you considered that the fact that people might have been walking along the street that fifty-five feet above the level of the street was necessary for safety? A. No.

Q. You put them that high, didn't you? A. Yes, on account of high obstacles which might be moved up and down the street, but not for safety as far as the voltage was concerned. 20

Q. What obstacles would be fifty-five feet high that would be moved up and down the street? A. Well, they often move trees, buildings, in Red Bank, and churches.

Q. How much clearance do you say there should have been between the wire and the wires around that might come in contact with it to be perfectly safe practice? A. What do you mean, just so a person could not touch it, that is, how near a person could come to the wire without touching it? 30

Q. No, I didn't ask you that. How much clearance did you, in putting those wires fifty-five feet high, deem it advisable to establish between your wires and the nearest top of any building or any person that might be going along there? A. I would say ten feet.

*By the Court:*

Q. By the way, what was the height of the wires above the Thompson Building where this accident 40



*Irving Finch, recross.*

occurred? A. They were approximately six or seven feet.

Q. On the day of the accident, I mean. A. Yes.

Mr. Broadhurst: I have an engineer who will give the exact measurements.

10

The Witness: About six to seven feet.

*By Mr. Kremer:*

Q. And you say that you believed that a clearance of about ten feet ought to be established when you put your pole up there? A. Yes.

Q. That is what you had in mind, to establish a clearance of ten feet above the roof of any building or anybody?

20

*By the Court:*

Q. Was it?

Mr. Kremer: He said ten feet when your Honor asked the question.

A. He asked what my judgment would be and I said approximately ten feet.

*By Mr. Kremer:*

30

Q. Ten feet? A. Yes.

Q. Ten feet clearance? A. Yes.

Q. Now in your experience in construction of transmission lines isn't it a fact that in approaching municipalities or towns you usually step down the current? Do you know what I mean by stepping down? A. Yes.

The Court: Reducing it. You do reduce the voltage when you go through a town, don't you?

40



*Irving Finch, recross.*

A. Reduce the distributed current for the use of the town.

Q. It is standard practice to reduce to distribute, isn't it? A. Yes.

Q. But you didn't reduce at Red Bank to distribute, did you? A. Yes, we did.

10

Q. Well, don't you reduce also for safety?

Mr. Broadhurst: What do you mean by safety, Judge Kremer, safety in distribution?

The Court: Safety to the public.

Mr. Kremer: Safety to the public.

Mr. Broadhurst: I think it is still ambiguous. Do you mean safety to the public in distribution or safety to the public of coming in contact?

20

The Court: Coming in contact, of course; a question of contact.

Mr. Kremer: That is what I mean.

Q. Don't you reduce when you come to a town as distinguished from the amount of voltage you carry through a country right of way, in order to safeguard the public or any person who might come in contact or near the wires? A. Yes, for safety in distribution.

30

Q. But it is the general practice of your company throughout Monmouth County, for the purpose of safety as well as distribution, when you come to a town or place where there might be a thickness of population to reduce your voltage, isn't it? A. If you are going to distribute it through a town you would reduce it.

Q. Yet despite the fact that it is the general practice to do it you did not, for the purpose of safety,

40



*Irving Finch, recross.*

reduce the voltage in this wire when it crossed Monmouth Street, Red Bank, did you? A. No, we went here.

10 Q. You thought that instead of reducing the voltage you would put the wire up high? A. We placed it higher and it couldn't be reduced anyway.

Q. It could have been reduced by the use of a sub-station or transformer, couldn't it? A. It wouldn't be practical on a transmission line to reduce it and step it up again.

Q. You said you did reduce it? A. For distribution in a town.

20 Q. You could have reduced it before coming into Red Bank for distribution by putting your sub-station out of town somewhere, couldn't you?

Mr. Broadhurst: Objected to as immaterial, what could have been done.

Mr. Kremer: He said it was impracticable. I want to try and contradict him on that and show that it was practicable.

The Court: Why don't you ask him?

*By the Court:*

30 Q. You say it couldn't be reduced? A. The transmission line couldn't be reduced; it was not practicable.

Q. Why wasn't it practicable? A. Because the line is serving a large territory.

Q. Exactly. If you reduced the current it wouldn't serve the territory? A. Wouldn't serve the territory.

*By Mr. Kremer:*

40 Q. Now you don't carry any 33,000 volt wires through Asbury Park, do you? A. I don't know anything about that territory.



*Irving Finch, recross.*

Q. Oh, don't you? You don't know anything about your company's system in Asbury Park? A. No.

Q. You told me a moment ago that in approaching any town, for the purpose of safety as well as distribution, you reduced the voltage.

10

Mr. Broadhurst: I object. He didn't say that.

Mr. Kremer: I insist he did. He said safety and distribution.

Mr. Broadhurst: No, he said safety in distribution.

*By the Court:*

Q. Which was it, Mr. Finch? A. Safety in distribution, in distributing.

20

Q. You say it was safety in distribution and not safety and distribution; is that right? A. Yes.

*By Mr. Kremer:*

Q. Safety in distributing; and you said that for the purpose of safety to the people who might be at or near those wires you would either have reduced the voltage or put the wire up high? A. No, not for safety to people.

30

Q. You did say that a few minutes ago, didn't you? You said you put it up high so people couldn't come near it and therefore it was not necessary to reduce the voltage, you told me that, didn't you? A. The transmission line, yes.

Q. So that is the safety that I am referring to in putting that wire up high, as you have to do with safety in distribution, is it? A. No.

Q. It is safety to the public, isn't it? Isn't it?

The Court: Why don't you ask him why he raised the wire?

40



*Irving Finch, recross.*

10 Mr. Kremer: He told me, if your Honor please. I think he gave very complete reasons and answers for what I am trying to establish, until Mr. Broadhurst suggested to him safety in distribution instead of safety and distribution.

The Court: Let's see if we can clear it up in four words.

*By the Court:*

Q. Why did you raise the wire on the Thompson Building? A. Because they increased the height of the building.

20 Q. Well, why did that make it necessary to raise your wire? A. Because the former wires were nearer the building; in fact, they were practically over the building when the line was first constructed, and this being a higher building than the poles, naturally we had to put higher poles up to clear the building and also to move the wires out from where they were over the Thompson property.

Q. What for? A. To clear the height of the new building.

30 Q. Was it done for the safety of the public or any one who used the roof of the building? A. Yes.

*By Mr. Kremer:*

Q. And you say the ten foot clearance in your opinion is the right thing? A. That would be a great plenty.

Q. Six feet wouldn't do then, would it? A. A person wouldn't get a shock from six feet.

40 Q. You don't know that, you said yourself a while ago, didn't you? Now you are volunteering that? A. Yes, I have been within six feet.



*John Tober, direct.*

Q. You said yourself, if I noted you correctly, that you didn't know whether currents would jump six feet or not to a ground, didn't you? A. I couldn't say because I never saw it.

Q. You are familiar with the Standard Handbook for Electrical Engineers? A. No.

10

Q. Don't know any such a book; is that so? A. Yes, I do.

Q. You do know of it? A. Yes.

Q. Isn't it a guide that is accepted by electrical utility companies in the location of rights of way and transmission lines? A. I believe so.

Q. But you are not familiar with any of the clauses or provisions of that work? A. No.

Q. You don't know then whether or not this line was constructed in conformance with the provisions of the standard books for electrical engineers or not, do you? A. No.

20

Mr. Kremer: That is all.

Mr. Broadhurst: That is all, sir.

JOHN TOBER, sworn for defendant.

*Direct examination by Mr. Broadhurst:*

30

Q. Mr. Tober you are employed as a bus driver for the Boro Busses? A. Yes.

Q. And were so employed in October, 1927? A. Yes.

Q. On the day of October 5, 1927, when this accident occurred, where was your bus standing? A. In front of the starter's booth.

Q. And that means the starter's booth of the Boro Busses? A. Yes.

Q. On what street is that? A. On Monmouth Street.

40



*John Tober, direct.*

Q. How far away from the Thompson Building?

A. Well, I should say about 150 feet.

Q. And was your bus there at that time? A. Yes.

Q. Were you in it? A. No, sir.

10 Q. Where were you? A. At the time? I was standing across the street talking to somebody; that is, across the street which runs parallel to the tracks.

Q. Did you see or hear anything unexpected happen? A. Yes, I heard a report.

Q. Like what? A. Well, like a rifle like, or lightning striking something.

20 Q. How long had you been there about? A. I had been there about two minutes, I guess. We only have five minutes lay-over.

Q. What did you do when you heard that? A. The first thing I did was look, and the noise directed my attention to the top of that building.

Q. When you looked up at the top of the building what did you see? A. I saw a smoke coming out of what looked like a log sticking over the side about that much. (Indicating.)

30 Q. Did you see anything else besides the smoke coming out of the log? A. Yes, I thought I saw a man's arm hanging over the side.

Q. The side of the parapet or wall, you mean? A. Yes; but I wasn't sure whether it was a man's arm or not, but that is what I thought.

Q. Was there much smoke? A. Yes, sir.

Q. Did you see anything of a wire hanging over—

40 Mr. Kremer: Objected to as leading. He has asked him now the shape of something, a body. I don't think he should ask him if he saw a wire.



*John Tober, cross.*

Q. Did you see anything on the pole? A. No, I didn't.

The Court: Exercising my discretion, I will allow you to ask him that directly, I think.

10

Q. Did you see anything of a wire on the pole?  
A. I can't say that I did, no.

Q. Did you go up to the roof? A. No, I didn't. I had to go out.

Q. You had to go out? A. Yes.

*Cross examination by Mr. Kremer:*

Q. You were 150 feet away? A. About that.

Q. And you were down on the street? A. Yes.

Q. And you saw this smoke? A. I heard the noise first. 20

Q. You say it was like the report of a gun? A. Yes, a rifle crack.

Q. And you looked up and saw the smoke about the boy's body? A. Well, it was coming up from this pole or from this end that was hanging over it out here. It looked like a pole to me.

Q. Where was the boy's body in reference to the pole? A. Well, I couldn't see his body very well, but I think his body was on the other side of the pole furthest to me. 30

Q. You thought you saw an arm hanging over? A. Yes.

Q. Of course you didn't take any particular notice of the pole, did you, at that distance? A. No, I was looking at what I thought was an arm and I was trying to attract this cop's attention to it.

Q. It might have been possible that there was some wire wrapped around that pole and you wouldn't have seen it at that distance? A. It might have been; I don't know whether it was or not. 40



*Irving Finch, cross.*

Q. You don't know whether it was or not? A. No.

---

IRVING FINCH, recalled.

10 By Mr. Kremer:

Q. Mr. Finch, when you received this wire it was coiled and rolled up, wasn't it, when it was brought to you? A. Yes.

---

GEORGE D. COOPER, sworn for defendant.

*Direct examination by Mr. Broadhurst:*

Q. Mr. Cooper, you are a civil engineer? A. Yes, sir.

20 Q. Did you make a map of the Thompson Building showing the roof, the location of the wires of the Jersey Central Power & Light Company at my request? A. I did.

Q. And when was that made? A. On October 7, 1927.

Q. Now referring to your sketch or print, will you give us the length or width of the Thompson Building? A. Well, the building on the ground plan was 110.68 feet by 22.

30 Q. 22 frontage and 110 was the length of the building? A. Yes.

Q. Now referring to your plan again, will you tell us how high above the roof of the building the wires of the Jersey Central Power & Light Company are, or were at that time? A. 8.52.

Q. That is, 8½ feet, approximately? A. Approximately.

40 Q. How high is the parapet that is around the roof? A. 2.93.



*George D. Cooper, direct.*

Mr. Kremer: Call that 3 feet then.

Mr. Broadhurst: Yes.

Q. How wide is the ledge of the parapet? A. About 1 foot and 3 inches.

Q. Was there any mark on the parapet when you made your sketch? A. Yes, there were some marks that were apparently burned. 10

Q. And did you measure the distance out from the place that the wires were at the point where those burned marks appeared on the parapet? A. Yes.

Q. How far out were they? A. 5.70 feet to the first wire.

Q.  $5\frac{3}{4}$  feet, substantially? A. Yes.

Q. How far was that mark from the rear of the building, about? A. 17.69 from the inside of the parapet. 20

Q. The building runs north and south, doesn't it? A. Practically.

Q. Rear toward the north and front toward the south? A. Yes.

Q. And on the west is the railroad right of way?

Mr. Kremer: Objected to unless Mr. Broadhurst establishes it is the title to that property. We say it is the public highway. Automobiles go in and out and it is a street just like any other street, although it is not paved. 30

The Court: Let me have that question.

(Question repeated.)

The Court: Of course now you are not speaking of the legal situation or of the *locus in quo*, but merely the physical situation, that is all? 40

Mr. Kremer: Railroad tracks.



*George D. Cooper, direct.*

The Court: Railroad tracks.

Mr. Kremer: But there is a space to the east of the railroad track.

The Court: A space between the railroad track and the building?

10 Mr. Kremer: That is not where this pole is located and I say it is on the right of way.

Mr. Broadhurst: We have Mr. Finch's testimony that the poles are erected on the railroad right of way.

Mr. Kremer: I don't think it is proper proof then. I object to it.

The Court: Just indicate the poles, the position and so on.

20 Q. This sketch that you have here, does that indicate the position of the poles?

*By the Court:*

Q. How far are the poles away from the nearest rail?

*By Mr. Broadhurst:*

30 Q. Can you give us that? The nearest rail would be the side track, would it not? A. I will have to give you that by scale. The pole that is nearer the north line of Monmouth Street is about 9½ feet from the nearest rail.

*By the Court:*

Q. How near is that to the Thompson Building?

Mr. Broadhurst: You mean out from it, Judge?

The Court: Yes.

40 A. About 3 feet..



*George D. Cooper, cross.*

*By Mr. Broadhurst:*

Q. Did you determine in your sketch the property line of the Thompson Building? A. No, not exactly.

Mr. Broadhurst: That is all. I offer the map in evidence. 10

Mr. Kremer: No objection.

The Court: No objection. It may be marked.

(Map marked Exhibit D-1.)

*Cross examination by Mr. Kremer:*

Q. You told us that the wire is  $8\frac{1}{2}$  feet from the droof; by that you mean from the floor of the roof? A. Yes. 20

Q. And you say the parapet is 2.93 feet high? A. Yes.

Q. So that means the wire is about  $5\frac{1}{2}$  feet above the top of the parapet; is that right? A. 5.59.

Q. Did you make measurements at the cross-arm? A. What do you mean, locating the wire?

Q. Well, your wires are carried on a cross-arm on the pole? A. Yes.

Q. Did you make the measurements from the roof or from the top of the parapet to the wire at the place where the wire was held with the cross-arm? A. No. 30

Q. Whereabouts? A. At the place of the accident.

Q. And that is where it was  $5\frac{1}{2}$  feet approximately? A. Yes.

Q. Now you say that your pole is within 3 feet of the side of this building? A. About.

Q. And then there is a cross-arm on the pole? A. Yes. 40



*McKinley Flippin, direct.*

Q. That brings the wire itself nearer than 3 feet to the side of the building? A. The wire is not parallel with the building.

Q. Now where that pole is located there is a street that runs through there, isn't there? A. No.

10 Q. There is a roadway? A. It is used by vehicles. It is not a road.

Q. It is not paved? A. Oh, no.

Q. But it is an open road that goes through from Monmouth Street to the one to the north? A. It is a roadway, that is, generally so; it is not a public street.

Q. But it is used as a public street? A. Yes, sir.

Defendant Rests.

20

---

PLAINTIFF'S TESTIMONY IN REBUTTAL.

McKINLEY FLIPPIN, recalled for plaintiff.

*Direct examination by Mr. Kremer:*

Q. Flippin, you went up on the roof with Clarence, you told us this morning? A. Yes, sir.

Q. And you saw him go over—

30

Mr. Broadhurst: I object to rehashing.

Q. How long had he been leaning over adjusting this wire when the explosion took place?

The Court: If you know.

Q. If you know. A. Well, I don't know. As near as I can get at it about two or three minutes, I guess.

40

Mr. Broadhurst: No further questions.

Both Sides Rest.



*Charge of the Court.*

## MOTION FOR DIRECTION.

Mr. Broadhurst: Now I will move for the direction of a verdict in behalf of the defendant on the ground that there is no evidence of any negligence on the part of the defendant which was the proximate cause of the accident.

10

The Court: The Court is still inclined to the view that the testimony and evidence offered here involve issues of fact for the jury rather than a question of law for the Court. The motion is denied. You may have an exception.

Mr. Kremer: I should like to read into the record or to offer in evidence the Standard Handbook for Electrical Engineers, especially section 11, paragraph 137, having to do with rights of way for high voltage transmission lines.

20

The Court: You can't do that. On what theory of law? In the first place you asked one of the witnesses about that, Mr. Finch, and he said he never saw it. You have got to bring home to the employees of the company who are responsible for the erection and raising the wire in question.

Mr. Kremer: I think that it is a series of rules and regulations that has almost the dignity of law, and is used by electric light companies themselves for the purpose of construction.

30

The Court: Not unless you show it was used by this company. You have got to show that, and you haven't been able to show that, or at least you haven't shown it.

**Charge of the Court.**

Ladies and Gentlemen of the Jury: This case is brought under what is known as the Death Act,

40



*Charge of the Court.*

10 which provides generally "that whenever the death of a person shall be caused by a wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who or the corporation which would have been liable if death had not ensued shall be liable for an action for damages notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to a felony."

20 Then again it is said that "Every action, proceeding or claim brought, instituted or made under and by virtue of the remedy given by the act in question shall be brought in the name of an administrator for the purpose of instituting the suit"; that is to say, an administrator of the estate of the deceased who is technically referred to as the administrator *ad prosequendum*. The amount recovered in every such action shall be for the exclusive benefit of the "next of kin"—as applied to this case, who are the father and mother and brother, as I recall—"and the jury may give such damages as they shall deem fair and just with reference to the pecuniary injuries resulting from such death to such next of kin."

30

Now you are to observe that but for this act there would have been no action capable of being brought against the defendant corporation for the death of the young man in question—but for the legislation that I have just read to you. And therefore their right to recover rests precisely on the same rule and definitions as if the young man had not been killed but injured, and were himself here

40



*Charge of the Court.*

asking for financial reparation, as it were, for the injury, or compensation; the difference being, however, that the rule as to damages in the event that he had not been killed and he had brought this suit would have been different from that which I will presently give you with reference to the right of recovery, if such right in fact exists here, by the next of kin.

10

Now the primary rule, therefore, is the same as if the young man had not been killed and he were seeking compensation here; and that is that the plaintiff carries the burden,—the plaintiff administrator carries the burden—of satisfying you under the greater weight of credible legal evidence that due to the negligence of the defendant company or its servants or employees the young man was injured and killed.

20

It is to be recognized, of course, that the defendant company, in stringing its wires, or maintaining its high tension wires carrying a dangerous current in proximity to the building where the young man was working at the time, was charged with the duty of exercising that degree of care which the immediate circumstances required; and if it failed to do so then it would be charged with responsibility in the event that you find the young man himself was not guilty of contributory negligence; or, indeed, if you find that there was no negligence on the part of the defendant company in stringing and constructing its wires, so that if they were used for the transmission of a deadly current, electricity, they would not in a negligent sense result in injury to persons having a lawful right to go in the proximity of the place in which such wires should be.

30

40



*Charge of the Court.*

10 Now I have had occasion to say that negligence is the failure to observe for the protection of the interests of another person that degree of care, precaution and vigilance which the circumstances, justly demand, whereby such other person suffers injury; or again, a definition sometimes given is that it is either the omission to do something which a reasonable person—which of course would apply to the defendant corporation—guided by circumstances which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable person would not do; but when negligence arises out of an act of commission or omission by one for whose conduct another is responsible, it must be with  
20 reference to some duty which the responsible person owed to the party injured.

Now what was the duty of this electric company in constructing its wires and using them for the conveyance of a deadly current or dangerous current, electricity? Our courts have had occasion to deal with the subject, and in the first instance I may say, for the purpose of the present charge, one thing which I remember is that in all cases in  
30 which any person undertakes the performance of an act which, if not done with care and skill, will be highly dangerous to the persons or lives of one or more persons, known or unknown, the law *ipso facto* imposes as a public duty the obligation to use due care and skill; or, to supplement the rule, it may be said generally that it is the duty of a corporation that maintains and controls wires charged with a deadly current of electricity in a place where there is a likelihood of human contact therewith, to use reasonable care to maintain  
40 proper construction, to the end that the current



*Charge of the Court.*

which passes through such wires shall not, as the result of negligence or the failure to use the care commensurate with the conditions immediately involved, do injury to another. And this involves reasonable care in inspection for the discovery of possible impairments or defects of construction.

10

Still in another instance this text is used: "A company transmitting a current of electricity of dangerous power through wires owes a duty to anyone lawfully using premises in the proximity with which said wiring may be strung to take reasonable care to prevent the escape of a current in case of contact with the wires without fault on the part of the injured party."

Then again it is said that "The mere fact that a person killed worked in close proximity to a wire or wires such as those with which we are here concerned cannot be said as a matter of law to be negligence barring recovery where the evidence tends to show that the wire or wires were apparently safe and the decedent was without knowledge of its or their dangerous character."

20

Now here there is a situation arising, as I see it—and I am speaking now in the way of comment—that will have to be determined by you ladies and gentlemen with regard to the pertinent facts before there can be any recovery. The point of view of the respective counsel is sharply opposed. In other words, the claim in behalf of the plaintiff is made that the proximate cause of contact of the young man with the deadly current was that the defendant company had failed in the exercise of the due care required of it to construct and string the wires in question, admittedly high tension wires, carrying a deadly current of 33,000 volts, high enough above the building where the boy was working to guard

30

40



*Charge of the Court.*

and protect him against coming in contact with them or in such proximity as to cause a communication of current from some one of the wires or the wires to the immediate spot where he at the moment was working. Therefore the claim is made  
10 that his death was due to the fact that there was a jumping of current from one of the wires in question, certainly over a space of six feet, or at least six feet, of sufficient intensity to electrocute him. Now that is the plaintiff's claim.

The defendant, on the other hand, urges and insists that not only does the plaintiff fail to prove that by a fair preponderance of the proof, as is his duty, but the only reasonable inference from  
20 all the evidence in the case is that the young man at the moment was handling a wire for the purpose of affixing a pulley to a piece of timber projecting from the side of the building in order to provide a means of pulling up, by the use of pulleys, mortar which was to be used on the top of the building; and the insistence is that such inference, eliminating all other causes in a reasonable sense, carries the fact or points to the fact that what happened was that the young man carelessly and negligently, in attempting to attach the  
30 wire, which I may say appears to have been six or eight feet in length—you have seen it; it is for you to say—that he carelessly and negligently turned it around in such a manner as to bring it in contact with the high tension wires, creating a ground, as they say, thereby, and of course the current passed down the wire which he was holding from the wires of the company through his body and killed him; in other words, he was electrocuted.  
40



*Charge of the Court.*

Now, of course, you will readily observe that it depends upon how you find the state of facts to be. If he was killed in the manner urged upon you by the plaintiff and that electricity jumped over a space of five or six feet, whatever the space may have been, then you may say that there was negligence on the part of the defendant company in failing to exercise that degree of care under the rules I have endeavored to give you, in maintaining its high tension wires and the way in which they were constructed or strung upon the poles. On the other hand, if he made that contact with the wire in his own hand, with which the company had nothing to do, and you find that in the circumstances the company could not be charged with knowledge that a person would go up on the roof and use a wire in that manner, then you would say, unfortunate as it might be, the company could not be held, because it was not the proximate cause; the proximate cause of the young man's death would be that connecting wire which made the contact. Now you will understand that is a mere matter of argument. You are the judges of the facts and it is for you to determine.

So that you will first, I should say, logically, take up and consider whether the plaintiff here has satisfied you under the greater weight of credible legal evidence, first, that the company was negligent in the manner in which it constructed and maintained the wiring on the poles in proximity to the building in question, having in mind the recognized rule as to the preponderance of proof; then, of course, if you find that it has been shown to be negligent, you would be required to take up that second question, and that is, whether the young man himself was guilty of contributory neg-



*Charge of the Court.*

ligence. And I have frequently said to juries sitting this term that contributory negligence is present in a given case when the injured person by his own negligence has contributed to the injury in such a way that but for his own negligence he  
10 would have received no injury from the negligence of the other party. So that in either event, if you find that the defendant company is not to be charged with negligence under the preponderance of proof, or if you find that it is but that the young man himself was guilty of contributory negligence, there can be no recovery.

If, on the other hand, you resolve this question in favor of the plaintiff, then you may take up the question of damages. And I may say that  
20 the rule, unlike that involving an individual who is seeking compensation for his own injuries, is this: that the recovery depends upon the reasonable expectation which the mother and father and brother here would have had of a financial benefit or advantage to have been derived from the young man had he continued to live and not been killed as he was. In other words, technically the statement is this: the plaintiff, in behalf of the next  
30 of kin, would be entitled to recover a capital fund, so to speak, which shall represent the present value of all the pecuniary loss which will fall upon the next of kin by the premature taking off of the intestate. That fund is to be ascertained by taking into account all the possibilities. The young man, had he lived, might have died in the course of nature shortly after the accident. He might have married, for example, and set up his own household and no longer have been of any  
40 pecuniary advantage or benefit to his mother or father or brother. I may say here that the evi-



*Charge of the Court.*

dence would tend to indicate that the immediate advantage was to the household. He gave, if you believe the testimony, some \$40 or \$50 a week, whatever the sum may be—you will recall what the testimony was—to his mother out of his earnings each week or during such time as he was employed. Then again as a further possibility he might, had he lived, have suffered financial reverses himself, become ill and not have been able to earn what he had theretofore been accustomed to earn. Moreover, the next of kin, in this case the mother or father, might have died long before the young man; so might his brother. In other words, in considering the fund to be ascertained you take into account all of the possibilities: the length of life of the mother or father or the brother, as well as those possibilities just indicated in regard to the young man. Of course if he had married and gone off and set up his own household he might not have been of any further advantage financially to the next of kin. So that the law requires that you take all of those possibilities into consideration.

10

20

In interpreting this rule it is said that the measure is to be determined exclusively by reference to the pecuniary injury resulting to the next of kin, and the injury has been defined to be the deprivation of a reasonable expectation of a pecuniary advantage which would have resulted from the continuance of the life of the deceased. Compensation for such deprivation is therefore the sole measure of damage in such cases. As manifest from the structure of the section of the statute in question, it was not designed to vest an arbitrary discretion in the jury to give what damages they think fair and just without refer-

30

40



*Charge of the Court.*

10      ence to any fixed standard by which to estimate  
the amount; for these words are added: "refer-  
ring to the pecuniary injury resulting to the next  
of kin"; and in conclusion is this, that you will  
bear in mind: "That nothing is to be added for  
sympathy or from emotion, loss of society or for  
anything not represented by financial compensa-  
tion." It is upon that interpretation: the depriva-  
tion of a reasonable expectation of a pecuniary  
advantage which would have resulted by the con-  
tinuance of the life of the deceased. So you will  
bear in mind you are adding nothing for sympathy,  
unfortunate as it is that this young man's life was  
snuffed out, as it were, at a very early age. We  
naturally all have a sense of emotion and spirit  
20      of humanity. But bear in mind that the plain-  
tiff here represents the next of kin, who, in ordi-  
nary circumstances, would have no right of action  
at all but for this statute; and the law confines  
the right to recover, therefore, to the injury in-  
volving that deprivation of a reasonable expecta-  
tion of financial aid from the young man in ques-  
tion. Just bear that in mind in considering the  
question of damages, if you arrive at that point.

30      Now these remarks are all predicated, of course,  
upon whether or not you find the defendant cor-  
poration guilty of negligence within the rules that  
I have given you, and likewise that the young  
man himself was not guilty of contributory neg-  
ligence. If he was, do not hesitate to find it so  
if it is the proper thing to do under the evidence,  
having in mind your oaths. In other words, de-  
cide the case in accordance with the evidence; and  
if you find that to be a fact, namely, that he con-  
tributed to his own injury and but for it he would  
40      not have been killed, you must not charge that



*Defendant's Exceptions.*

up to the company. On the other hand, if you resolve those questions in favor of the plaintiff, find there was no contributory negligence and that the defendant corporation was negligent as charged in this case by the plaintiff, and find it to be within the rules of law given you, then of course a verdict would necessarily follow. But in making that statement I express no opinion one way or the other. As I see it it becomes peculiarly one of fact for you members of the jury to decide, bearing in mind the rules of law the court has given you. 10

---

DEFENDANT'S EXCEPTIONS.

Mr. Broadhurst: I pray an exception to that part of your Honor's charge, at the outset, in which you said that the next of kin by whom recovery might be had were the father and mother and younger brother. 20

The Court: Who are they?

Mr. Broadhurst: The complaint alleges that the father is the only one who suffered any pecuniary injury.

The Court: Judge Kremer, is there any question as to who are the next of kin in this case? 30

Mr. Kremer: I stated this morning.

The Court: Who are they?

Mr. Kremer: The father and mother and the young son of twenty-one.

Mr. Broadhurst: 2. The defendant also excepts to that part of the charge in which the court charged that the defendant is charged with the duty of exercising that care which the immediate circumstances required.

3. The defendant also excepts to that part of 40



*Defendant's Exceptions.*

the charge in which the court said that the duty of the defendant was to maintain proper construction so that injury would not result due to negligence, and that this involved reasonable care in inspection and repair.

10        4. The defendant further excepts to that part of the charge in which the court said that the duty of the defendant was to use reasonable care to prevent the escape of current and without fault of the injured party.

5. The defendant also excepts to that part of the charge in which the court gave an illustration, in which the court said that if he was killed in the manner alleged in the complaint then you may  
20        say that there was negligence on the part of the defendant.

6. The defendant also excepts to the other illustration which the court gave about handling the wire, in which the court said that there would not be negligence on the part of the defendant but might couple it up with the fact, should you find that the company could not be charged with notice that he would use the wire, the company could  
30        not be held.

---

(The jury were recalled to the court room and further instructed as follows:)

The Court: As a result of certain exceptions interposed by counsel for the respective parties here I desire to say in a supplemental way that with regard to the next of kin I stated them to be the father and mother and brother, and that is  
40        true; but of course you will bear in mind the rule that it is the next of kin who had a reasonable



*Charge of the Court.*

expectation of pecuniary advantage from the continuance of the life of the decedent. It might well be that after all those next of kin would have that reasonable expectation; it depends upon the proof in the case. But there is evidence here that the young man gave his earnings directly to his mother. Now just how she used that depends upon what the evidence was again. But you will examine it in that respect. As I recall, I may say in comment that it was used by her in the family and with respect to the reduction of the indebtedness on the property which they owned. In any event you must bear in mind that the test will be the next of kin who had a reasonable expectation of pecuniary advantage from the continuance of the life of the young man. That is the test. And of course that would be regulated, if there were any award in this case, it would be regulated by the proofs under that rule. Bear that in mind.

Then with reference to the contributory negligence, I do not know whether you are going to say that what this young man did did contribute or not. You may say that even if he did handle the wire and it came in contact with the high tension wire, there was no negligence in that. I am not making an arbitrary statement about that. You may say that by doing what he did, if there is evidence here to warrant a finding of such, it was contributory negligence. That is the attitude of this defendant company. But you are the judges of the facts, no matter what the respective counsel may argue in that respect. As, for example, cases of this character not infrequently arise, and I recall one or more of them where, in order to save himself, the passenger was shown under



*Charge of the Court.*

the evidence to have grabbed a wire, not knowing it to be a highly charged wire. And in that case it was held that if the company was negligent in maintaining those wires where they could be grabbed or touched, why then of course the defendant corporation would be liable if it be the result of its own negligence in the manner of construction or in such proximity to a place where the public had a right to go as to cause the injury. And therefore just how you are going to view that question and the way that has been brought out under the evidence I am unable to say. You may say that what he did was a contribution to his own injury; in other words, negligent conduct on his own part. And of course if he had known that the wires in question were high tension electric wires and were dangerous, if there is evidence in the case from which you can conclude as a fact or infer as a fact that he knew that the wires were charged and that by placing wire carelessly or allowing a wire which he was handling carelessly to fall against or come in contact with this wire, if there is evidence in the case that would justify an inference that he knew they were high tension wires, you may very well say that he contributed to his own injury by his own negligence. If you found that, there could be no recovery. I am qualifying my main charge in that respect, bearing in mind, however, that it is left for you to determine whether the mere fact alone of the wire in question falling against the high tension wires would be an act of negligence on his part. I do not say it would be as a matter of law. I am giving you no binding instructions on that subject. It is left for you to say under the circumstances. In fact, I am not aware that there is any evidence



*Charge of the Court.*

in the case that anyone saw him do that. That is a mere comment, however. But you examine the case in that respect and give it due consideration, because it is important to both these litigants, there is no question about that; and I say that because you are required to eliminate all sympathy and emotion from your consideration of this case. 10

The Court: I understand Mr. Kremer says you also did offer that wire in evidence. I will allow it.

Mr. Kremer: I object to it. There is no evidence that this is the wire in question at all.

The Court: Yes, I think it is sufficiently connected.

Mr. Kremer: Mr. Broadhurst now is misconstruing what the witness stated. The young man from the office would not identify the wire; said that he saw a wire up there; he did not know whether this was it or not. Then Mr. Finch said the wire was given to him. Mr. Heyer could not identify it. There has been nobody on the stand to identify that wire as the wire that was there. 20

The Court: It is a circumstantial bit of testimony that is given in the case and of course the jury cannot consider it unless it has all the proofs connected therewith, but here the proof is that it is the wire in question. It will be marked and it will be allowed to go in as an exhibit, however, and the jury will take it. 30



## Grounds of Appeal.

(Filed Mar. 23, 1929.)

[SAME TITLE]

The appellant states the following grounds of appeal:

10

1. The Trial Judge erroneously refused to nonsuit the plaintiff when thereunto moved by counsel for the defendant, whereas said motion should have been granted on the following ground urged in support of said motion:

(a) There was no evidence of any negligence on the part of the defendant as alleged in the complaint, that was the proximate cause of the accident.

20

2. The Trial Judge erroneously refused to direct a verdict in favor of the defendant when thereunto moved, whereas said motion should have been granted on the following ground urged in support of said motion:

(a) There was no evidence of any negligence on the part of the defendant which was the proximate cause of the accident.

30

3. The following questions were allowed:

(a) To the witness George Smith:

"Q. What is the practice?

"Q. Now you say that is the practice?

"Q. You say the practice would be higher poles, you mean carrying the wire at a greater height over the building?

"Q. How high above the fire wall do you say the standard practice would dictate that a 33,000 volt wire should be carried in order

40



*Grounds of Appeal.*

to render a situation safe for persons who are about the fire wall?

"Q. In your opinion is the maintenance of that wire from six to seven feet above the top of the fire wall safe and good construction?

10

"Q. I will ask if it is a standard practice.

"Q. Would that be standard practice?

"Q. You say ten or twelve feet would be standard practice?

"Q. Why is it necessary, according to the recognized practice, as you tell us, to carry that wire twelve or fourteen feet above a point on the building where a person might be?

20

"Q. Why is it necessary, as I say, in standard practice, as you have described it, to carry a wire and maintain a wire carrying 33,000 volts at a distance of twelve to fourteen feet from the point where a person might be?

"Q. If such a wire, that is, one containing 33,000 volts, were suspended within six feet from a part of the human body which was standing upon a surface which was wet or damp, would there be communication of current? Is it reasonably probable that there would be communication?

30

"Q. Is it reasonably probable?

"Q. Is it reasonably probable that such a thing could happen within recognized practice and your knowledge and experience in electrical matters?

"Q. If the deceased was seen working on the building at or about six or eight feet above the parapet, leaning over and about

40



*Grounds of Appeal.*

10

to affix a pulley wheel to a beam extended two feet beyond the parapet wall, if a high tension wire constructed six feet above the roof was strung or swung in such a position and there was an explosion and a flash, what in all reasonable probability would be the cause of such an explosion and flash?

"Q. In order for that arc to have occurred in the manner you have described, in the manner which has been testified in this case, would it be necessary for any part of Heyer's body or for anything he had in his hand to come in contact with the electric wire?

20

"Q. Physical contact with the electric light wire?

"Q. Is it standard practice to carry a 33,000 volt wire in a municipality?

"Q. In the absence of a higher pole or a steel tower how is current, according to standards practice, usually transmitted through municipalities?

30

"Q. Assuming that this high tension wire carrying 33,000 volts was suspended above the fire wall of the building in consideration in this case about six feet, and that a man was standing leaning over the fire wall or parapet and against a plank and leaning against a wall having it in lines of reinforcement of metal; under normal conditions would it be reasonably probable that if there were 33,000 volts of electricity in that wire it would be attracted to his body as a ground?

40

"Q. Would it be reasonably probable that under ordinary conditions it would jump



*Grounds of Appeal.*

six feet and be arced to his body as a ground?

(b) To the witness Phineas Proctor:

“Q. In your opinion, Mr. Proctor, is it safe construction from the standpoint of any person who might be in and about a roof having a fire wall with reinforcing of metal, that fire wall coming within six feet of a suspended electric light wire carrying 33,000 volts of electricity, in your opinion, is the suspension of that wire within six feet of the wall of the parapet safe and proper construction for a person who might be in and about the parapet? 10

“Q. Why isn't it, Mr. Proctor?” 20

“Q. How far away, in your opinion, should that wire be maintained in order for it to be safe for a person to work in and about the parapet?

“Q. What, in your opinion, would be a reasonable degree of care upon the part of the company maintaining the wire as to the distance from the parapet or fire wall that the wire should be placed at?” 30

4. The Trial Court erred in refusing to strike out the following answer given by the witness George Smith:

“A. In places of this particular class should be higher poles or steel towers, where there is a high tension of line of 33,000 volts going through a town as close to buildings as that.”

5. The Trial Court erred in refusing to strike out the testimony of the witness George Smith when thereunto moved at the conclusion of his 40



*Grounds of Appeal.*

testimony, with regard to the care and degree of safety and caution that in the witness' opinion was required in conveying high tension wires in a locality such as that where the accident happened.

10

6. The Trial Court erred in refusing to strike out the testimony of the witness Phineas Proctor when thereunto moved at the conclusion of his testimony as to the witness' opinion, how far 2300 volt tension wires should be placed from a building, in order to exercise reasonable care in their construction.

7. The Trial Judge charged the jury:

20

"The amount recovered in every such action shall be for the exclusive benefit of the 'next of kin'—as applied to this case, who are the father and mother and brother, as I recall—and the jury may give such damages as they shall deem fair and just with reference to the pecuniary injuries resulting from such death to such next of kin."

8. The Trial Judge charged the jury:

30

"It is to be recognized, of course, that the defendant company, in stringing its wires, or maintaining its high tension wires carrying a dangerous current in proximity to the building where the young man was working at the time, was charged with the duty of exercising that degree of care which the immediate circumstances required; and if it failed to do so then it would be charged with responsibility in the event that you find the young man himself was not guilty of contributory negligence;"

40



*Grounds of Appeal.*

## 9. The Trial Judge charged the jury:

"It may be said generally that it is the duty of a corporation that maintains and controls wires charged with a deadly current of electricity in a place where there is a likelihood of human contact therewith, to use reasonable care to maintain proper construction, to the end that the current which passes through such wires shall not, as the result of negligence or the failure to use the care commensurate with the conditions immediately involved, do injury to another. And this involves reasonable care in inspection for the discovery of possible impairments or defects of construction."

10

20

## 10. The Trial Judge charged the jury:

"A company transmitting a current of electricity of dangerous power through wires owes a duty to anyone lawfully using premises in the proximity with which said wiring may be strung to take reasonable care to prevent the escape of a current in case of contact with the wires without fault on the part of the injured party."

30

## 11. The Trial Judge charged the jury:

"Now here there is a situation arising, as I see it—and I am speaking now in the way of comment—that will have to be determined by you ladies and gentlemen with regard to the pertinent facts before there can be any recovery. The point of view of the respective counsel is sharply opposed. In other words, the claim in behalf of the

40



*Grounds of Appeal.*

10 plaintiff is made that the proximate cause of contact of the young man with the deadly current was that the defendant company had failed in the exercise of the due care required of it to construct and string the wires in question, admittedly high tension wires, carrying a deadly current of 33,000 volts, high enough above the building where the boy was working to guard and protect him against coming in contact with them or in such proximity as to cause a communication of current from some one of the wires or the wires to the immediate spot where he at the moment was working. Therefore the claim is made that his death was due to the fact that there was a jumping of current from one of the wires in question, certainly over a space of six feet, or at least six feet, of sufficient intensity to electrocute him. Now that is the plaintiff's claim.

20 "The defendant, on the other hand, urges and insists that not only does the plaintiff fail to prove that by a fair preponderance of the proof, as is his duty, but the only reasonable inference from all the evidence in the case is that the young man at the moment was handling a wire for the purpose of affixing a pulley to a piece of timber projecting from the side of the building in order to provide a means of pulling up, by the use of pulleys, mortar which was to be used on the top of the building; and the insistence is that such inference, eliminating all other causes in a reasonable sense, carries the fact or points to the fact

30

40



*Grounds of Appeal.*

that what happened was that the young man carelessly and negligently, in attempting to attach the wire, which I may say appears to have been six or eight feet in length—you have seen it; it is for you to say—that he carelessly and negligently turned it around in such a manner as to bring it in contact with the high tension wires, creating a ground, as they say, thereby, and of course the current passed down the wire which he was holding from the wires of the company through his body and killed him, in other words, he was electrocuted. 10

“Now of course you will readily observe that it depends upon how you find the state of facts to be. If he was killed in the manner urged upon you by the plaintiff and that electricity jumped over a space of five or six feet, whatever the space may have been, then you may say that there was negligence on the part of the defendant company in failing to exercise that degree of care under the rules I have endeavored to give you, in maintaining its high tension wires and the way in which they were constructed or strung upon the poles.” 20 30

12. The Trial Judge charged the jury:

“On the other hand, if he made that contact with the wire in his own hand, with which the company had nothing to do, and you find that in the circumstances the company could not be charged with knowledge that a person would go upon the roof and use a wire in that manner, then you would say, unfortunate as it might be, the company 40



*Grounds of Appeal.*

could not be held, because it was not the proximate cause, the proximate cause of the young man's death would be that connecting wire which made the contact."

- 10      13. The Trial Judge charged the jury:

          " So that you will first, I should say, logically, take up and consider whether the plaintiff here has satisfied you under the greater weight of credible legal evidence, first, that the company was negligent in the manner in which it constructed and maintained the wiring on the poles in proximity to the building in question, having in mind the recognized rule as to the preponderance of proof; then, of course, if you find that it has been shown to be negligent, you would be required to take up that second question, and that is, whether the young man himself was guilty of contributory negligence."

20

14. The Trial Judge charged the jury:

          " And I may say that the rule, unlike that involving an individual who is seeking compensation for his own injuries, is this: that the recovery depends upon the reasonable expectation which the mother and father and brother here would have had of a financial benefit or advantage to have been derived from the young man had he continued to live and not been killed as he was."

30

                                  COLLINS & CORBIN,  
Attorneys of Defendant-Appellant.

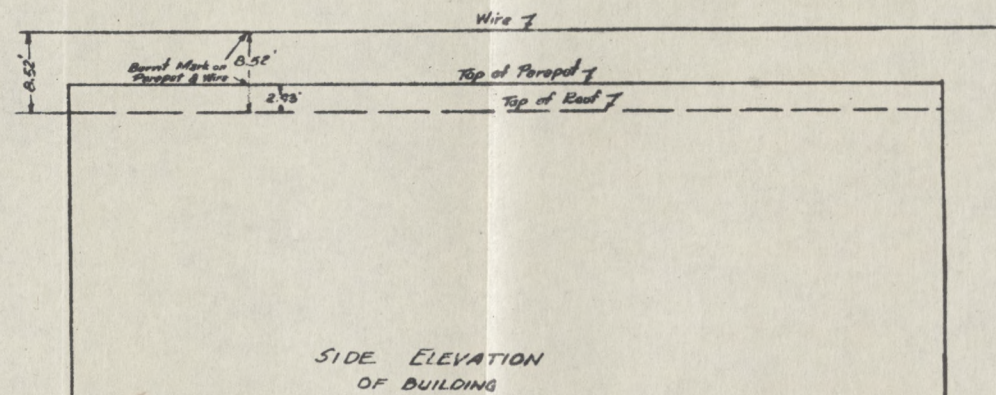
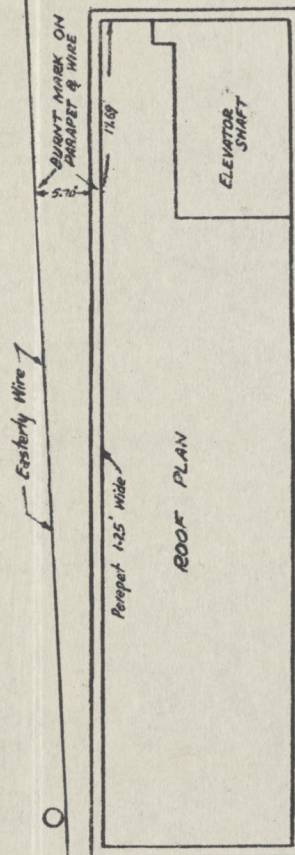
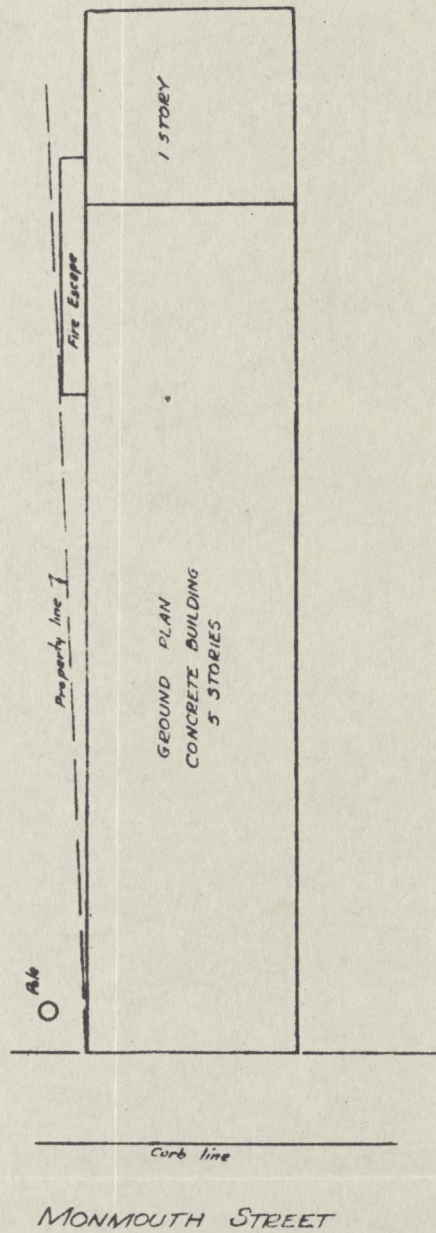
40      Service acknowledged March 20, 1929, as of  
time.

                                  WARD KREMER,  
Attorney of Plaintiff-Respondent.





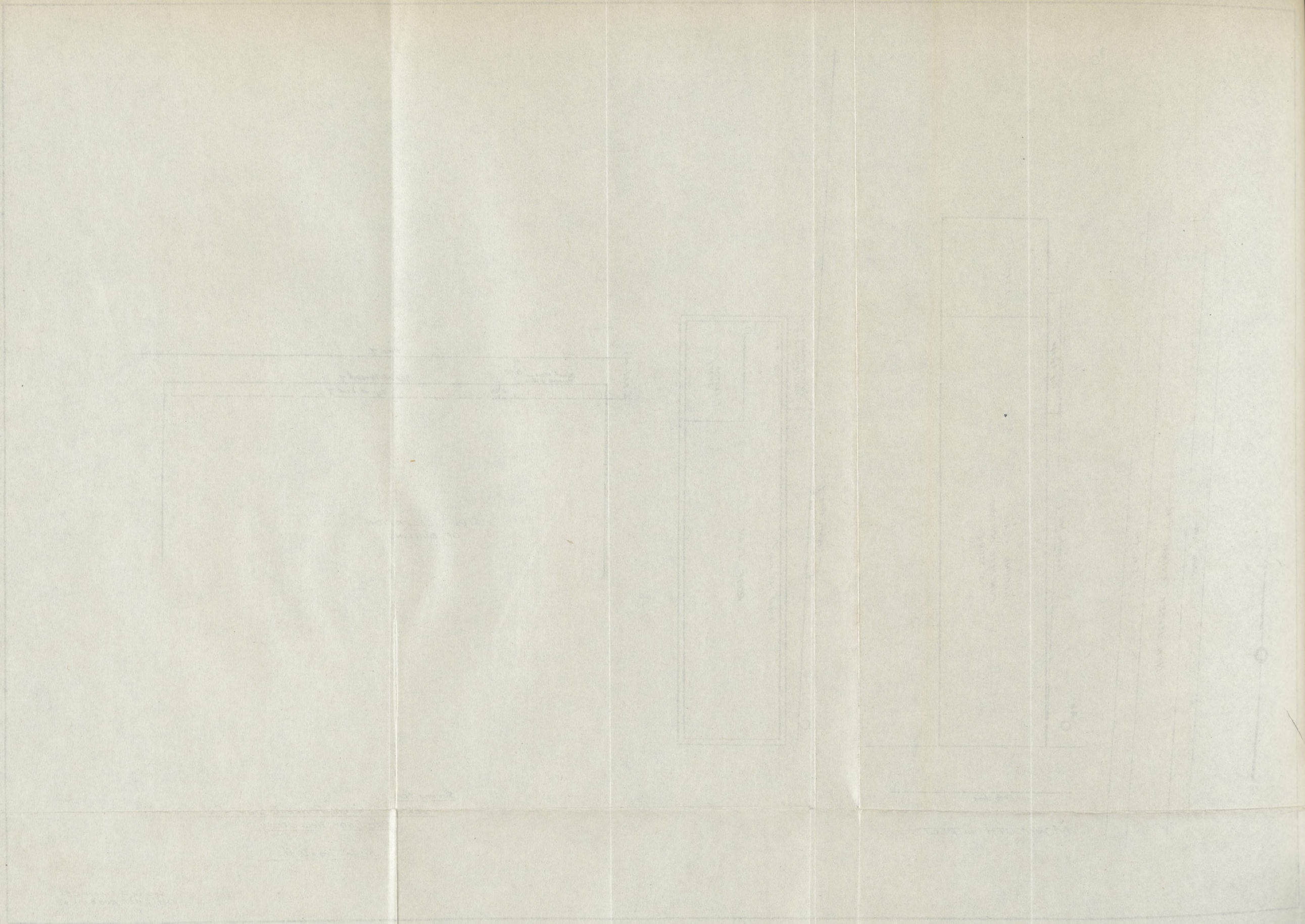
Main track  
NEW JERSEY CENTRAL R.R.  
Side track



Survey for  
JERSEY CENTRAL POWER & LIGHT CO.  
Red Bank, New Jersey  
Scale - 1 in = 20 ft.

George D. Cooper, C.E.  
Oct. 7, 1927 Red Bank, Md.

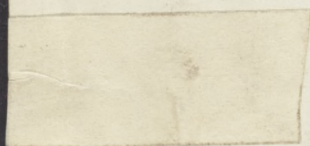








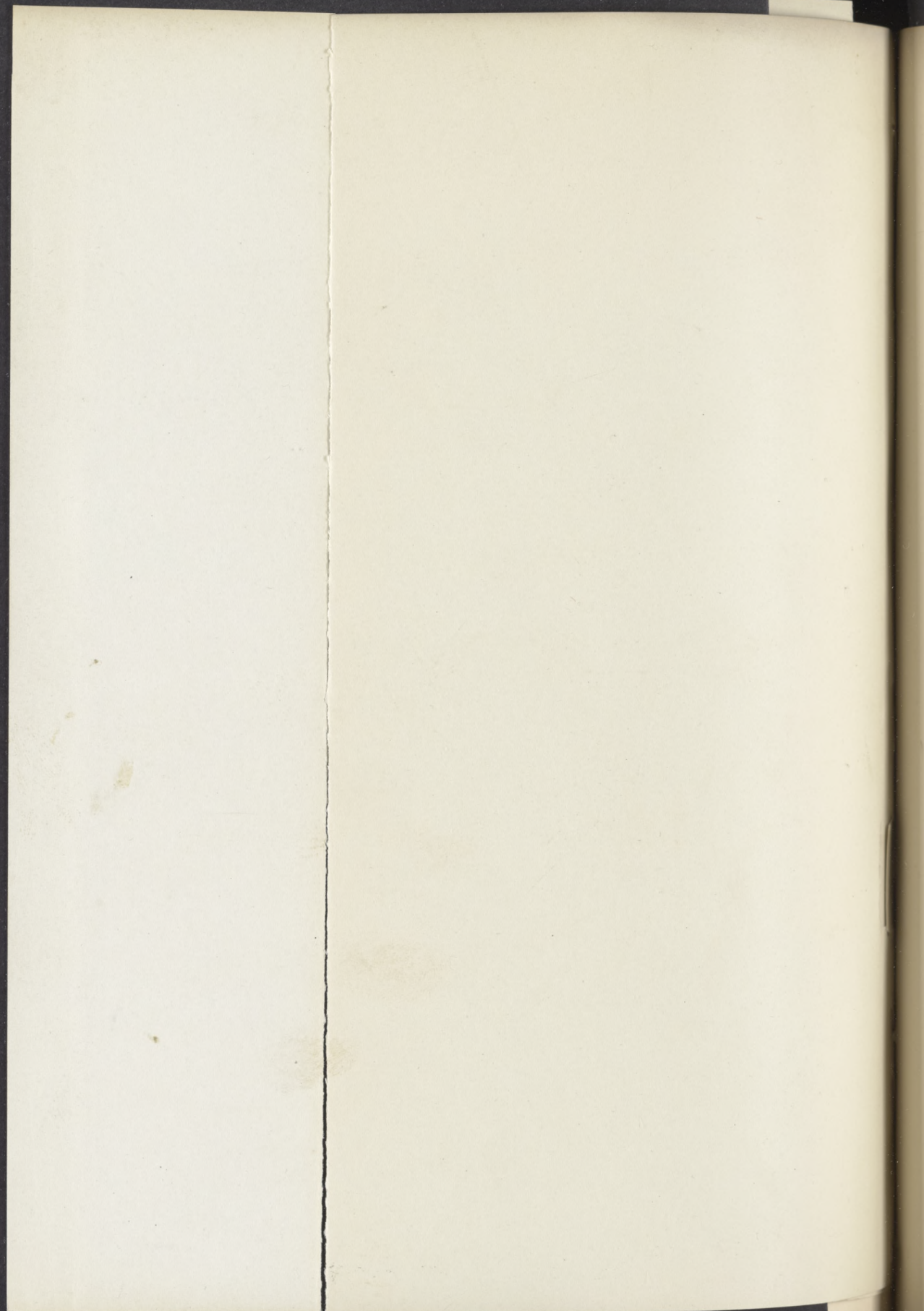














## New Jersey Court of Errors and Appeals

ARCHIE F. HEYER, administrator  
*ad prosequendum* of the estate  
of Clarence B. Heyer, de-  
ceased,

*Plaintiff-Respondent,*

*v.*

JERSEY CENTRAL POWER & LIGHT  
COMPANY,  
*Defendant-Appellant.*

Action at Law  
On Appeal from  
Supreme Court.

### BRIEF OF COLLINS & CORBIN IN BEHALF OF THE APPELLANT.

(1)

#### Statement of the Case.

This appeal brings before this Court for review a judgment of the Supreme Court in favor of the plaintiff-respondent (hereinafter called the plaintiff) and against the defendant-appellant (hereinafter called the defendant), in the amount of \$6,000 (p. 6, lines 20-40). The action was brought to recover for the pecuniary loss sustained by the next-of-kin of Clarence B. Heyer, due to his death on October 5, 1927. Decedent was the son of the plaintiff and employed by him as a mason. On the day of the accident, the decedent while engaged in his work on the roof of the S. S. Thompson & Company building in Red Bank, received an electric shock, causing injuries from which he died.



The defendant, a corporation engaged in the distribution of electric power, maintained transmission wires to the side of and above the roof of the building running parallel with the building. The complaint alleged that the electric shock received by decedent came from the wires of the defendant situated as aforesaid, as a result of negligence on the part of the defendant in the construction, location and maintenance of the said wires.

## (2)

### Grounds of Appeal.

The grounds of appeal to be argued are as follows (pp. 160, *et seq.*):

1. The Trial Judge erroneously refused to nonsuit the plaintiff when thereunto moved by counsel for the defendant, whereas said motion should have been granted on the following ground urged in support of said motion:

(a) There was no evidence of any negligence on the part of the defendant as alleged in the complaint, that was the proximate cause of the accident.

2. The Trial Judge erroneously refused to direct a verdict in favor of the defendant when thereunto moved, whereas said motion should have been granted on the following ground urged in support of said motion:

(a) There was no evidence of any negligence on the part of the defendant which was the proximate cause of the accident.

3. The following questions were allowed:

(a) To the witness George Smith:



"Q. What is the practice?

"Q. Now you say that is the practice?

"Q. You say the practice would be higher poles, you mean carrying the wire at a greater height over the building?

"Q. If such a wire, that is, one containing 33,000 volts, were suspended within six feet from a part of the human body which was standing upon a surface which was wet or damp, would there be communication of current? Is it reasonably probable that there would be communication?

"Q. Is it reasonably probable?

"Q. Is it reasonably probable that such a thing could happen within recognized practice and your knowledge and experience in electrical matters?"

4. The Trial Court erred in refusing to strike out the following answer given by the witness George Smith:

"A. In places of this particular class should be higher poles or steel towers, where there is a high tension line of 33,000 volts going through a town as close to buildings as that."

5. The Trial Court erred in refusing to strike out the testimony of the witness George Smith when thereunto moved at the conclusion of his testimony, with regard to the care and degree of safety and caution that in the witness' opinion was required in conveying high tension wires in a locality such as that where the accident happened.



## (3)

## BRIEF OF THE ARGUMENT.

## I.

**There was no evidence of any negligence on the part of the defendant which was the proximate cause of the accident.**

This point is raised by the refusal of the Trial Judge to nonsuit the plaintiff or to direct a verdict in favor of the defendant when thereunto moved by counsel for the defendant at the close of the plaintiff's case and the defendant's case respectively. An exception was noted to the ruling of the Trial Court on these motions and the grounds of appeal raise the propriety of the Trial Court's action on this appeal (p. 114, line 30, to p. 115, line 10; p. 145, lines 1-30; p. 160, lines 1-30).

The decision of this question, of course, requires an analysis of the testimony taken during the trial.

At the end of the state of case will be found a copy of a survey showing the physical situation that existed at the time of the accident. This discloses that the front or southerly end of the Thompson building faces on Monmouth Street. To the west are the tracks and right of way of the New Jersey Central Railroad Company. Between the tracks and the building are located poles upon which the defendant's transmission lines are carried. At the point where the accident occurred, the nearest wire of the defendant is  $5\frac{3}{4}$  feet from the side of the building and  $8\frac{1}{2}$  feet above the roof of the building. Around the edge of the roof of the building there is a fire wall approximately 3 feet high and  $1\frac{1}{4}$  feet wide. The plaintiff's photographs P-1 and P-2 show the building and the



relative position of the defendant's wires as described above.

The plaintiff, who is the father of the decedent, testified decedent was 22 years of age at the time of his death (p. 10, line 40, to p. 11, line 10). The witness had the contract for doing the mason work on the construction of the Thompson building. The work had been going on intermittently from April up to the time of the accident in October (p. 16, lines 20-25; p. 22, lines 20-30; p. 26, lines 30-40). The building was five stories high of concrete construction reinforced with iron (p. 16, lines 30-40). Defendant's poles and transmission wires ran parallel with the side of the building nearest the railroad tracks (p. 27, line 30 to p. 28, line 10). On the day of the accident decedent and the witness were going to plaster the fire escapes that had been erected on the side of the building and were starting with the top fire escape to work down (p. 28, lines 10-20). They had a swinging scaffold operated by block and fall at the top fire escape (p. 29, lines 10-30). In order to get the material from the ground to the scaffold they had placed a beam about 16 feet long, 8 inches wide and 6 inches thick on the roof, with one end resting on the roof proper and the other end extending about two feet beyond the side of the building resting on the fire wall. At the end of the beam extending beyond the side of the building was fastened a well wheel twelve to fourteen inches in circumference. Through this a rope passed, one end of which had a hook upon it to hold a pail. The other end was operated by a man on the ground who raised the pail of material by pulling on the rope. The end of the beam that rested on the roof was weighted down with a number of sand bags (p. 30, line 35, to p. 31, line 30). The beam was so located on the roof that when the pail would be raised to the



required height, a man on the swinging scaffold could reach it. This scaffold was about three feet wide (p. 33, lines 1-20). They had started to work at eight o'clock and at about nine o'clock the pulley fell from the end of the beam to the ground, breaking (p. 29, lines 1-10; p. 28, lines 25-40). The witness sent decedent to the roof to fasten a new pulley or well wheel to the end of the beam so the work could continue. This new wheel was of the same character and dimensions as the previous one (p. 32, lines 1-30; p. 18, lines 10-30). The witness was on the sidewalk and after seeing decedent start to wrap a piece of wire around the beam with which to fasten the pulley, he walked toward his truck located on Monmouth Street (p. 18, lines 30-40; p. 19, lines 10-30). He had gone about 75 feet when he heard an explosion, and looking up toward the roof saw smoke (p. 19, lines 30-40). This was coming from the place where the beam was located on the roof (p. 20, lines 20-30). He ran to the roof and upon arriving there, found decedent lying across the fire wall with his left side against the wall and his right arm extended out along the beam (p. 34, lines 1-20). The wire was twisted about his thumb (p. 21, lines 15-25; p. 34, lines 20-40). He lifted his body from the wall and from there decedent was taken to the hospital, where he died. He did not observe whether the end of the beam had been burned (p. 36, lines 1-10). He estimated that the fire wall was two feet eleven inches high, above the roof, and that the wires were four feet seven inches in a straight line out from the side of the building and six feet above the top of the fire wall (p. 36, lines 1-40).

Flippin, employed by the plaintiff as a laborer, was on the roof with decedent, having carried up the pulley and rope. He was standing within a foot of him and at his side (p. 39, lines 1-20; p. 40,



lines 25-35). Decedent was leaning out over the wall on the beam wrapping a wire around the end of the beam which was about fifteen feet in length and extended over the roof about two feet (p. 40, lines 1-40; p. 41, lines 1-20). While so engaged there was an explosion and a blaze that came from the defendant's electric wire (p. 41, lines 20-30). Decedent fell over the fire wall on to the beam and his clothing about his shoulders ignited. The witness put the fire out with his hands (p. 42, lines 1-20). He did not know whether the fire wall was damp or dry (p. 42, lines 30-40). He had been standing beside decedent and to his right, watching him, for about five minutes before the explosion occurred (p. 43, lines 20-40). He was within a foot of the wall (p. 43, lines 25-30). Decedent had the wire in his hands and was wrapping it on the pole when the explosion occurred (p. 45, lines 10-30). He did not know how much of the wire had been wrapped (p. 46, lines 10-20). The witness was standing up straight when the explosion occurred (p. 43, lines 20-25).

Smith, an electrician of some ten years' experience, was permitted over the objection of counsel for the defendant, to testify to a standard of practice in the erection, construction and maintenance of high tension wires, but at the conclusion of the cross examination, it having been demonstrated he was not qualified to testify to such standard of construction or practice, the Trial Court struck out all of his testimony in that regard (p. 102, lines 10-20). He did permit, however, this witness' opinion as to the degree of care and safety required in conveyancing electricity through high tension wires, to stand (p. 102, lines 20-30). We are arguing in some of the following points, the legality of this testimony. We contend under this point that his opinion as to what care and caution



was required, was in fact, nothing more than his opinion of an alleged standard, which the Trial Judge struck out. We point this out to the Court before considering his testimony, because we fear our adversary may attempt to confuse the issue by giving a summary of his testimony, which the Trial Judge had in fact stricken from the record. He testified that his schooling consisted of attendance at grammar school, from which he graduated. He attended night school for two or three hours, one night a week, for a period of a year, taking a course on house wiring (p. 82, line 30 to p. 83, line 40; p. 89, lines 1-15). He was employed by the Jondée Electric Company at house wiring, for six months (p. 82, lines 20-30). He worked for the National District Telegraph Company as a lineman for four years, but not on high tension wires (p. 84, lines 1-15). He was a lineman for the Eastern New Jersey Power Company in the installation of a high tension line, for about one year and a half (p. 84, lines 30-40). For three months he worked for the defendant as a lineman (p. 89, lines 1-10). About a year, he was employed by the Public Service Production Company in and about their power house (p. 85, lines 30-40). At the time of the trial he was working for the Crowell Electric Company, which concern did not deal with high tension wires. He admitted that there was no written rule of standard in the construction of high tension wires nor any statutory rule that he knew of (p. 88, lines 20-30). He did not claim that the defendant had any standard of construction from the three months that he worked for it. This left his only experience with high tension lines as being with the Eastern New Jersey Power Company, and of course, he was not qualified to testify to any standard of construction, as correctly ruled by the Trial Court. He testified



that 2300 volts of electricity was sufficient to cause death. He examined the defendant's wires two months after the accident, and observed that they were copper wires carrying 33,000 volts, erected upon wooden poles with wooden cross arms and porcelain pole petticoat insulators (p. 59, lines 1-40; p. 61, lines 20-30). Such wires are not ordinarily insulated (p. 62, lines 1-10). At this point he was asked a number of questions dealing with recognized practice or standard, and in answer to a question as to whether recognized practice or standard required insulation of high tension wires, he answered that in places of this kind the poles should be higher (p. 64, line 10; p. 67, line 30). Although the Trial Judge struck out his testimony as to standard, he said as follows (p. 102, lines 10-40):

"The Court: I will tell you, Mr. Broadhurst, I am going to strike the testimony so far as it refers to any standard of practice. I shall grant your motion to that extent. I will not strike the testimony of the witness, however, with regard to care and degree of safety and caution required in conveying high tension wire in a locality such as that where this accident happened, with regard to degree of care and safety required. Now he can testify as to that. Of course the weight of his testimony, he may be regarded as one hundred per cent. expert or only seventy-five per cent. expert. That is a matter for the jury. But of course he acquires his ability to speak on the subject either from practice and study or study without practice, of course not by mere observation. In any event, he does qualify, in my opinion, as an expert, excepting possibly as to the standard that he speaks of, what is the standard practice. I am going to allow his testimony to stand in other respects."

We have examined with care his entire testimony and are unable to find just what testimony



the Trial Judge had in mind that was given by this witness, which was permitted to stand, if all his testimony dealing with standard practice was stricken out. An examination of the questions and answers beginning at page 64, line 10, and continuing to page 68, line 20, on the direct examination, all deal with the recognized practice or standard practice. With this stricken out, as we contend, there is nothing in the witness' testimony which would indicate that the defendant's construction and maintenance of its wires was not perfectly proper. The witness testified that in his opinion, electricity could jump six feet from the wire to the decedent (p. 68, lines 30-40). He never saw it jump more than three feet (p. 74, lines 1-10) and on this occasion it was in damp weather (p. 74, lines 10-20). He was unable to give any explanation why the electricity did not jump from the wires to the pulley which had been previously on the end of the beam and within six inches as close to the wires as the decedent was at the time the accident happened (p. 91, lines 20-40). He could not explain why the electric current did not jump from one wire to the other, although he admitted they were only three and a half to four feet apart (p. 93, line 20, to p. 94, line 20). He was unable to explain why the plaintiff who removed decedent's body did not receive a shock, although he was closer to the wire than decedent was at the time the accident happened (p. 95, lines 1-40).

Procter, an electrical contractor of 24 years' experience, after testifying to standard for the construction of 33,000 volt wires, had his testimony entirely stricken out, due to the fact that it appeared on cross examination he was not qualified to testify to a standard (p. 110, lines 1-40).

Lancaster, construction engineer of the S. S. Thompson & Company, testified that the building



was 61 feet 11 inches above the ground. Before it was constructed the defendant was notified of the change that was to be made and given the outside dimensions of the building. He discussed with the defendant's engineers the height of the new poles and where they were to be placed. He was told that the wires would give the building a six or seven foot clearance, which was satisfactory (p. 111, line 1, to p. 112, line 40). The poles were located along the railroad side of the building. This is not a street, although it is used by pedestrians and vehicles to pass over (p. 113, lines 1-25).

With the case in this posture a motion for nonsuit was made on the ground that there was no proof that the decedent's death resulted proximately from any negligent act of the defendant. There is not a scintilla of evidence in the case that these wires were constructed in any different manner than wires were constructed by other companies or the defendant in thousands of places throughout the State. The law in this State is well settled that before a defendant can be held liable for negligence in the construction of its property, some standard must be proved to which it was incumbent upon the defendant to conform. It cannot be asserted that in a case like this, each jury may say what they deem to be the proper construction, and thus arbitrarily decide what is proper construction according to their own individual notion of the proper method in which it should be constructed.

*Feil v. West Jersey & Seashore Railroad Co.*, 77 N. J. L. 502, 504;

*Halm v. Freeholders of Hudson*, 78 N. J. L. 712, 715;

*Kingsley v. Delaware, Lackawanna & Western R. R. Co.*, 81 N. J. L. 536, 543;



*Zebrowski v. Warner Sugar Refining Co.*,  
83 N. J. L. 558, 563;

*Raub v. Lehigh Valley Railroad Co.*, 87  
N. J. L. 603, 606.

In *Feil v. West Jersey & Seashore Railroad Co.*,  
*supra*, this Court, Chief Justice GUMMERE speaking,  
said (italics ours) (p. 503):

"The degree of care which it is required to take is that which is exhibited by persons of ordinary prudence under like circumstances, and, so, the adoption of a method of platform construction which accords with that in general use by well regulated railroad companies, and which is approved by experience, is a due performance of the duty which it owes to its passengers in that regard. \* \* \* There is nothing in the present case to support the conclusion that the defendant company failed to observe the degree of care indicated in the construction of its platform at the Millville station. *There is no proof that it differs in its character from platforms in general use by the defendant and other railroad companies, and no presumption of want of due care arises from the fact that a railroad company, presumably to meet the requirements of its traffic, has constructed its platform in such a way that one portion of it is lower than another, when the difference of level is not greater than the height of an ordinary step. Negligence must be proved, and in a case like the present, that can be done only by showing that the platform is of a design which a reasonably careful judgment would disapprove as being likely to cause accident to persons using it as a way to and from trains. To hold otherwise would be to leave railroad companies to the mere caprice of juries, and subject them to the danger of being found guilty of negligence, no matter what plan of construction they might adopt.*"



In *Halm v. Freeholders of Hudson, supra*, the plaintiff was riding in an automobile being operated by his son, which came in contact with a guard rail of a bridge over a body of water that crossed the highway. The guard rail did not extend across the entire road. The plaintiff claimed a right to recover because the guard rail should have extended across the entire road. Justice VOORHEES, speaking for this Court refuting this contention, said (p. 715):

"The ordinary rule must be applied to boards of freeholders regarding the building of bridges, that is, a breach of duty must be demonstrated by proof.

"No proof has been offered that the construction was different from ordinary construction, or that it was not sufficient for the purpose for which it was intended."

In *Kingsley v. Delaware, Lackawanna & Western R. R. Co., supra*, the plaintiff endeavored to hold the defendant responsible for injuries she received while alighting from one of its trains at the Hoboken station, due to her stepping into the space between the step of the car from which she was alighting as a passenger, and the platform of the station. In this case the plaintiff's attorneys realizing that a standard must be proved, attempted to prove the same by construction experts, but failed. Justice MINTURN writing the opinion for this Court, said (p. 545):

"In the final analysis, the testimony in the case at bar demonstrates simply a difference of construction between the defendant's car and platform and some of the cars and platforms of other companies; but, upon legal principle, until that difference can be transmuted into a legal generalization indicating a variation from the existence of a standard



type, the departure from which by the defendant might be construed as imprudent and negligent, and by which a criterion of duty may be established, the damage incurred under circumstances such as are presented in the case at bar must be held to be *damnum sine injuria* and can impose no liability upon the defendant."

In *Zebrowski v. Warner Sugar Refining Co.*, *supra*, the plaintiff sought to recover for personal injuries while in the employ of the defendant, on the ground that it was the duty of the defendant to adopt rules and a safe system of operation. The point was made that there was an entire absence of a system governing the work. There was proof in the case that other defendants operated their elevators by the use of a different system, but this Court in sustaining judgment for the defendant said (p. 562):

"Whether a particular rule should be enacted should not be left to the jury arbitrarily to find, but there should be proof that the practice of promulgating such rules in similar manufactories under similar conditions is general. In the absence of proof that it is a general usage of other employers, engaged in similar lines of business, to adopt rules, claimed to be necessary, and that they would be practicable and useful, a master will not be charged with negligence for failure to make them.

"What standard was proved by way of system to which it was incumbent upon the defendant to conform? It cannot be asserted that in a case like this, each jury may say what they deem to be a proper rule, and thus arbitrarily direct the conduct of each manufacturing plant under regulations not general, but special, in their application."

In *Raub v. Lehigh Valley Railroad Co.*, *supra*, the plaintiff attempted to hold the defendant negli-



gent because a low bridge over the defendant's tracks with which the plaintiff's intestate came in contact, failed to have any illumination upon it. Justice PARKER, writing the opinion for this Court, sustaining a directed verdict for the defendant said (p. 606):

"It may be that under the circumstances of the particular case the life of deceased might have been saved by the extra precaution of lighting the bridge from without; but the test in cases of this class is not whether a particular safeguard would have been better, but whether similar safeguards were practicable and useful and according to the ordinary usage of railroads. (Cites case.) There was, consequently, no question of negligence to be submitted to the jury."

In behalf of the defendant Le Maistre was called as a witness and testified that he arrived at the scene of the accident fifteen minutes after it occurred (p. 115, lines 20-40). He saw a mark on the fire wall indicating a burn made by current, which was about a foot from where the beam was located (p. 116, lines 1-20). There was a piece of wire on the roof, two feet of which was extended over the fire wall (p. 116, lines 20-40). The other end of the wire was lying on the roof (p. 117, lines 1-10). The end of the beam had a burn mark on it (p. 117, lines 10-40). The wire was straightened out and was about eight feet in length (p. 118, lines 1-10).

Finch, the superintendent of the defendant, who had had four years' experience with the defendant, fourteen years' experience with the Public Service Company, and twenty years' experience with the Shore Electric Company, testified that when the building was constructed, the poles were changed from 55 foot poles to 65 foot poles (p. 119, line 20 to p. 120, line 40). There were three wires



on the poles three feet apart. The poles were located on the Jersey Central Railroad right of way (p. 121, lines 1-20). The wires carried 33,000 volts. They had been constructed about five months before the accident happened (p. 122, lines 1-20). According to his experience, the wires were properly constructed and had sufficient clearance from the building (p. 128, lines 1-20). In his years of experience he never saw electric current jump more than a foot (p. 128, lines 20-40). He has stood within six feet of wires of this character and testified you could not receive a shock from them (p. 136, lines 30-40).

We respectfully submit that unless it is to be held the defendant was an insurer of the plaintiff's safety, the case should not have been submitted to the jury, for there was absolutely no evidence of any negligence on the part of the defendant. Even if it be assumed that the electric current did jump six feet to the body of the decedent, there is nothing to indicate that there was anything defective with the wires or their construction which would charge the defendant to acknowledge such an occurrence might be reasonably anticipated.

We respectfully submit, therefore, that the Trial Court erred in refusing the defendant's motions for nonsuit and for direction of verdict.

## II.

**The Trial Court erred in permitting the witness Smith to testify what in his opinion constituted reasonable care in the construction of transmission lines.**

In the course of the direct examination of the witness Smith, the following questions were asked:

"Q. Do you know whether there is any recognized practice in electrical construction



having to do with the insulation of high tension wires containing—

*“By the Court:*

“Q. Or transmission wires at or near buildings; do you know whether there is a recognized practice? A. Yes.

“Q. What is that practice?

“Mr. Broadhurst: I object, on the ground that this witness has not qualified from the experience that he has given us to establish a practice.

“The Court: I will allow you to examine him.

“Mr. Broadhurst: I don’t—

“The Court: Desire to? All right. I will find out myself, since I am independent in this matter.

*“By the Court:*

“Q. You have answered that question in the affirmative, you say there is such a practice? A. Yes, sir.

“Q. How do you know there is? A. By line construction myself.

“Q. Well, from whom did you obtain such instruction? A. Well, through the P. S. Construction Company and the Eastern New Jersey Power Company is most of my experience along those lines.

“Q. How about your training at the electrical school? A. Well, that taught me along those lines.

“Q. Did they give you instruction on practical insulation in such circumstances? A. No practice, but I got my practical experience by going out and working.

“The Court: The objection is overruled. He may answer.

“Mr. Broadhurst: Allow me an exception.

“The Court: I will allow an exception to the question.

“(Objection noted for defendant as ground of appeal.)

“Q. What is the practice?



"Mr. Broadhurst: The objection goes to that question?

"The Court: Yes, the objection is overruled. You may have an exception.

"(Objection noted for defendant as ground of appeal.)

"A. In places of this particular class should be higher poles or steel towers, where there is a high tension line of 33,000 volts going through a town as close to buildings as that.

"Mr. Broadhurst: In order to preserve my status on the record I will move to strike out the answer on the ground that it is not a proof of any standard of practice, but merely the witness' opinion as to what in this particular case the defendant should have done. He says that the practice in this particular case was to have a different type of pole.

"The Court: Higher pole or steel tower. The objection is overruled, I think it comes within that.

"Mr. Broadhurst: Allow me an exception.

"The Court: You may have an exception.

"(Objection noted for defendant as ground of appeal.)

"Q. Now you say that is the practice?

"Mr. Broadhurst: Does my exception extend to your Honor's question?

"The Court: Yes, object to me as well as the other fellow. Objection overruled. You may have an exception.

"(Objection noted for defendant as ground of appeal.)

"A. Yes.

*"By Mr. Kremer:*

"Q. You say the practice would be higher poles; you mean carrying the wire at a greater height over the building?

"Mr. Broadhurst: My objection extends to this?

"The Court: Yes, objection overruled.

"(Objection noted for defendant as ground of appeal.)

"A. Yes" (p. 64, line 15 to p. 66, line 40).



The witness was then asked numerous questions relating to standard practice and testified that under standards the wire should have been carried 12 to 14 feet above the roof of the building (p. 67, line 1 to p. 68, line 30). At the conclusion of his testimony counsel for the defendant moved to strike out his testimony and the following colloquy took place:

"Mr. Broadhurst: If your Honor please, I think that it has appeared that this witness has not qualified to testify the standard of practice from cross examination, certainly. He says he has worked for three companies, the Jersey Central Power and Light, the Eastern New Jersey Power Company and the Public Service Production Company. He says the Jersey Central Power and Light had no standard; that the Public Service, the other two that he worked for, one for a year and a half as a lineman, and the other for about a year, the Public Service Production Company as an electrician at their power house or doing work of that kind, and a night school education of 52 sessions, two or three hours apiece, and as a result of taking an examination for a municipal electrician in New York.

"The Court: I will tell you, Mr. Broadhurst, I am going to strike the testimony so far as it refers to any standard of practice. I shall grant you your motion to that extent. I will not strike the testimony of the witness however, with regard to care and degree of safety and caution required in conveying high tension wire in a locality such as that where this accident happened, with regard to degree of care and safety required. Now he can testify as to that. Of course the weight of his testimony, he may be regarded as 100% expert or only 75% expert. That is a matter for the jury. But of course he acquires his ability to speak on the subject either from practice and study or study without practice, of course not by mere observation. In any event, he does



qualify, in my opinion as an expert, excepting possibly as to the standard that he speaks of, what is the standard practice. I am going to allow his testimony to stand in other respects.

"Mr. Broadhurst: So that I will be protected on the record I will note an exception.

"(Objection noted for defendant as ground of appeal.)"

Under Point I we stated that this witness' entire testimony as to standard construction or practice was stricken from the record and that there was nothing he testified to which in anywise would indicate negligence on the part of the defendant. We contend that the testimony above set forth in fact was part of his testimony on standard construction, but if it should be considered as being his opinion as to what does or does not constitute negligence in the circumstances, we contend under this point that it was improperly admitted. The question of whether the defendant was or was not negligent is either a question of law or of fact or sometimes both. If one of law, it is for the Court to decide. If one of fact, for the jury. The burden is on the plaintiff to establish negligence by competent testimony. It is fundamental that negligence cannot be established by a witness giving his opinion that it is or is not negligent. If this were otherwise then the rule requiring the proof of a standard of construction would be idle discussion. Even though the proof indicated there was no variation from standard, a witness could testify that in his opinion the construction was negligent. In an automobile accident case, for example, a witness to the accident would be entitled to say which of the parties was negligent. We respectfully urge that all of the cases cited under Point I discussing the question of standard are improperly decided if the Trial Judge is correct in this ruling. In *Feil v. West Jersey & Seashore*



*Railroad Co.*, 77 N. J. L. 502, the plaintiff's opinion that the platform was not constructed so as to prevent her fall would indicate her opinion it was not safe. In *Kingsley v. D., L. & W. R. R. Co.*, 81 N. J. L. 536, construction experts were even called to testify that the defendant's construction differed from that of other railroads, thereby giving their opinion that it was not safe to have such wide space between the car step and the platform. In *Zebrowski v. Warner Sugar Refining Co.*, 83 N. J. L. 558, the proof showed other defendants had a different system of rules for operating their elevators.

Surely, these cases which have uniformly established the rule in this State, that before a defendant can be held liable for negligence in construction, some standard must be proved to which it was incumbent upon the defendant to conform, cannot mean that where the plaintiff is unable to prove a standard a witness can then express his opinion as to whether the construction is negligent or not. If this were true why discuss standard? Why not leave the defendant to the mere caprice of each witness, and subject him to the danger of being found guilty of negligence, no matter what plan of construction the defendant might adopt. The mere statement of the contention answers it completely.

We have grouped the several questions to which objection was taken that were answered by this witness, because they involve a single legal question. The objections and exceptions appear and clearly show the Trial Judge was fully apprised of the defendant's contention. The grounds of appeal contain each and every point argued under this head (p. 160, lines 30-40; p. 163, line 30 to p. 164, line 10).

It is respectfully urged that the Trial Court erred in admitting this testimony and in allowing it to stand over the objection of the defendant.



## III.

The Trial Court erred in permitting the witness Smith to testify that in his opinion electric current could jump six feet from the wires to the body of decedent.

In an effort to explain what caused the electric current to pass from the defendant's wires to the body of the decedent and to escape the inevitable conclusion that the eight foot wire found on the roof had come in contact with them, the witness Smith was interrogated on direct examination as follows:

"Q. If such a wire, that is, one containing 33,000 volts, were suspended within six feet from a part of the human body which was standing upon a surface which was wet or damp, would there be communication of current? Is it reasonably probable that there would be communication?

"Mr. Broadhurst: I object because it assumes a fact that it was six feet, and there is no testimony in this case.

"The Court: Objection overruled. You may have an exception.

"(Objection noted for defendant as ground of appeal.)

"A. Well it is possible.

"Mr. Broadhurst: That is objected to and I ask that it be stricken out.

"The Court: It is not responsive.

"By Mr. Kremer:

"Q. Is it reasonably probable?

"By the Court:

"Q. Is it reasonably probable?

"Mr. Broadhurst: My objection goes to this question.



*"By Mr. Kremer:*

"Q. Is it reasonably probable that such a thing could happen within recognized practice and your knowledge and experience in electrical matters? A. Yes, it is" (p. 70, lines 1-40).

The objection to this testimony was that it contained an unwarranted assumption of fact, namely, that the wire was within six feet of the decedent's body. The wires were by actual measurement  $8\frac{1}{2}$  feet above the top of the roof and  $5\frac{3}{4}$  beyond the side of the building. The statement as a fact, in the hypothetical question that the wire was within six feet of the decedent, is inaccurate because it entirely overlooks the fact that the wire was beyond the side of the building  $5\frac{3}{4}$  feet as well as above the roof  $8\frac{1}{2}$  feet. It is a well recognized principle that the hypotenuse of a triangle is greater than either side, so that the decedent's body was a greater distance than the longest measurement, or greater than  $8\frac{1}{2}$  feet. The distance contained in the question was the most important factor in it. In fact, this is demonstrated by the fact that the witness never saw electric current jump more than 3 or 4 feet in all his experience and he had no technical knowledge apart from that experience.

We respectfully submit that the Trial Judge erred in permitting the witness to give his testimony in view of it containing an unwarranted fact.



(4)

**CONCLUSION.**

**We respectfully submit that for one or more  
of these reasons the judgment of the Supreme  
Court should be reversed.**

May Term 1929.

EDWARD A. MARKLEY,  
CHARLES W. BROADHURST,  
Of Counsel.

COLLINS & CORBIN,  
Attorneys of Defendant-Appellant.



## NEW JERSEY COURT OF ERRORS AND APPEALS

|                                                                                                                       |                                                  |    |
|-----------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|----|
| ARCHIE F. HEYER, administrator ad prosequendum of the Estate of Clarence B. Heyer, deceased,<br>Plaintiff-Respondent, | Action at Law<br>On Appeal from<br>Supreme Court |    |
| vs.                                                                                                                   |                                                  |    |
| JERSEY CENTRAL POWER & LIGHT COMPANY, body corporate,<br>Defendant-Appellant.                                         | Brief for Plaintiff-Respondent                   | 10 |

This is an appeal from a verdict of a jury in the Supreme Court, Monmouth County. On January 2, 1929, plaintiff secured a general verdict against the defendant in the amount of Six Thousand Dollars (\$6,000.00).

20

## FACTS OF THE CASE

The plaintiff-respondent, who will be referred to in this memorandum as the plaintiff, brought suit as administrator ad prosequendum for his deceased son, who died as the result of an injury sustained October 5, 1927. The son was twenty-two years old and worked as a mason. The accident from which the boy's death resulted happened on the roof of a building on which he was at work. On the north side of Monmouth Street, Red Bank, there was a five-story concrete building. On the roof there was a fire wall or parapet rising about two feet seven inches from the floor of the roof itself (Case, p. 36). The concrete wall was re-inforced with iron form wire funning through it (Case, p. 17, 18). On the morning in question young Heyer went to the roof with another workman named Flippin. They were

30  
40



going to do some plastering work and it was necessary to erect a pulley in order to hoist the plaster from the street to the roof (Case, p. 18). There was a beam about fifteen feet long which was on the roof and which was extending about two feet over the fire wall. Heyer was in the act of wrapping a piece of wire around the end of this beam. He was going to attach a hook to it and so construct a pulley with a wheel to hoist the mortar from the street below.

10 In doing this work he stood on the roof and leaned out with his right arm around the beam which extended over the fire wall (Case, p. 18).

Above the fire wall and practically parallel with it were the high tension wires of the defendant. They carried 33,000 volts (Case, p. 121), which is a sufficient degree of voltage to kill a human being if transmitted to him (Case, p. 58). The wires of the defendant company were supported by poles which

20 arose from the street or roadway immediately to the west of the building on which young Heyer was working. It was a corner property. There were three wires on the pole and the wire nearest the roof of the building was five and fifty-nine hundredths feet above the top of the fire wall. This was the testimony of defendant's witness as to its exact location (Case, p. 143).

While Heyer was leaning out and working on the beam and was in the act of wrapping the wire

30 he had in his hand around the beam, there was a dull explosion (Case, p. 20), some smoke and a blaze from the wire (Case, p. 41) and young Heyer fell over across the fire wall (Case, p. 21). His neck and shoulders were badly burned, also his right hand which was underneath the wire he was holding. The burns in his shoulder and neck were what were described by the physician who examined him as

40 fourth degree burns and were right down to the important vessels (Case, p. 10). Heyer died ten days



later, admittedly of the injury he sustained (Case, p. 7).

That young Heyer never threw the wire in his hand up in the air or brought it in contact with the high tension wires of the defendant company was clearly established by the only eye witness to the accident, namely, the other workman, Flippin, (Case, p. 40).

There is no claim by the defendant that the damages of Six Thousand Dollars (\$6,000.00) are excessive, and plaintiff, therefore, will not deal with that matter in this memorandum. 10

#### *THEORY OF PLAINTIFF'S SUIT AND TESTIMONY TO SUPPORT IT.*

Plaintiff brought suit for damages for the death of young Heyer on the ground that the defendant company was guilty of negligence in constructing a wire containing high voltage of this character in such close proximity to a place where people might lawfully go and might innocently come in contact with the same; and also that the defendant was guilty of negligence in constructing and maintaining its high tension wire so close to the roof and fire wall of the building in question that any person going upon the roof or the fire wall might get near enough to the wire to have the current transmitted to him, as it actually happened to Heyer. Abundant testimony was offered at the trial tending to prove: (1) that electric current of 33,000 volts, under circumstances such as existed on the day when Heyer was burned, would jump a distance of five or six feet; (2) that it was not safe construction to maintain a 33,000 volt wire within six feet of the fire wall of the building where Heyer was at work. Plaintiff produced two electrical experts who testified that in their opinion the maintenance of the high tension 20 30 40



wire of the defendant company in such close proximity to the top of the fire wall of the building was not proper construction. George Smith was one of these witnesses. He had worked on high tension wires as a practical electrician for several years and had also taken courses in electricity. His practical qualification was clearly established (Case, p. 86):

10

"Q. So that the three concerns with which you worked on high tension wires were the Eastern New Jersey Power, and the Jersey Public Service Construction ( Production) Company?

"A. That is right.

"Q. Now you say that there is a standard in the putting up of high tension wires near buildings; is that correct? You say there is a standard?

20

"A. Yes, there was a standard.

"Q. And that standard is based on your practical experience from work in these two companies?

"A. Yes."

Mr. Smith testified that, in his opinion, the wire should have been carried a sufficient distance from a place where people were likely to go so that the current would not be transmitted to them:

30

"Q. How high above the fire wall do you say the standard practice would dictate that a 33,000 volt wire should be carried in order to render a situation safe for persons who are about the fire wall?

"A. Well, it should be at least 12 or 14 feet." (Case, p. 66).

40

"Q. In your opinion, is the maintenance of that wire from 6 to 7 feet above the top of



the fire wall safe and good construction?

"A. No.

"Q. You say it was not?

"A. No.

"Q. You say 10 or 12 feet would be standard practice?

"A. Yes, and more than 12 or 14 feet."  
(Case, p. 67)

Again, Mr. Smith gave his opinion aside from the question of standard practice: 10

"By the Court:

"Q. If such a wire, that is, one containing 33,000 volts, were suspended within 6 feet from a part of the human body which was standing upon a surface which was wet or damp, would there be communication or current? Is it reasonably probable that there would be communication? 20

"A. Well, it is possible.

"By Mr. Kremer:

"Q. Is it reasonably probable that such a thing could happen within recognized practice and your knowledge and experience in electrical matters? 30

"A. Yes, it is." (Case, p. 70).

Smith also testified that it is the standard of companies carrying high tension wires through municipalities to "step down" the current, or to carry the wires at such height that there is no likelihood of them coming in contact with anybody. (Case, p. 75, 76, 77, 100).



Mr. Smith testified several times in answer to questions put to him on direct or cross-examination that there should be a higher pole or steel tower to carry this wire:

"Q. What is the practice?

10 "A. In places of this particular class should be higher poles or steel towers, where there is a high tension of line of 33,000 volts going through a town as close to buildings as that." (Case, p. 65).

"Q. Why is it necessary, as I say, in standard practice, as you have described it, to carry a wire and maintain a wire carrying 33,000 volts at a distance of twelve or fourteen feet from the point where a person might be?

20 A. Because those wires, that is, carrying 33,000 volts, are dangerous any closer than twelve or fourteen feet." (Case, p. 68).

There was also testimony tending to establish the fact that the current could jump the distance from the high tension wire of the defendant to the decedent's body:

30 "Q. Then you say that the current could jump to him without his coming in physical contact, anything that he had in his hand, with any part of the high tension wire?

"A. I do, yes.

"Q. And I understood you to say that the likelihood of that current jumping or arcing would be increased in damp weather or wet weather?

"A. Damp condition." (Case, p. 74).

Again, (Case p. 80):

40 "Q. Would it be reasonably probable that



under ordinary conditions it would jump six feet and be arced to his body as a ground?

"A. Yes.

"Q. Your answer is yes?

"A. Yes."

Mr. Smith gave it throughout as his opinion that safe construction required either that the wire should have been carried on a pole ten or twelve feet above the top of the fire wall or that it should have been carried on a steel tower. 10

"The Court: Fourteen to sixteen feet.

"The Witness: Twelve to fourteen feet high." (Case, p. 92).

At the end of Smith's testimony, motion was made by counsel for the defense to strike out some of Smith's testimony on the ground that Smith had not properly qualified to establish a standard of practice. The Court made itself quite clear in this matter and allowed sufficient of Smith's testimony upon which the jury might base a finding of negligence in its construction. 20

Judge Lawrence said:

"I am going to strike testimony so far as it refers to any standard of practice. I shall grant your motion to that extent. I will not strike the testimony of the witness, however, with regard to care and degree of safety and caution required in conveying high tension wire in a locality such as that where this accident happened, with regard to degree of care and safety required. Now he can testify as to that. . . . I am going to allow his testi- 30 40



mony to stand in other respects." (Case, p. 102)  
Again (Case, p. 103):

"The Court: Yes, I say I have stricken that part of his testimony about standards. I am going to allow the rest of his to remain, about the degree of care required in the immediate circumstances."

10       It is respectfully urged that there was ample testimony from the witness, Smith, as to the degree of care required in the immediate circumstances to warrant the jury in finding that the maintenance of the company's wire within six feet of the point where young Heyer was at work was breach of the Company's duty to exercise due care.

20       Another witness, Phineas Proctor, an electrical contractor, was called by the plaintiff and testified as follows:

30       "Q. In your opinion, Mr. Proctor, is it safe construction from the standpoint of any person who might be in and about a roof having a fire wall with a reinforcing of metal, that fire wall coming within six feet of a suspended electric light wire carrying 33,000 volts of electricity, in your opinion is the suspension of that wire within six feet of the wall of the parapet safe and proper construction for a person who might be in and about the parapet?

"Mr. Broadhurst: Objected to unless there are some standards proven, I do not think that this witness' opinion one way or the other makes or does not make toward negligence.

40       "The Court: I am not so sure, standard or no standard. The objection is overruled. You may answer.



"The Court: We are merely dealing with the question of reasonable care and caution.

"A. It is not safe construction." (Case, p. 106, 107).

"Q. What, in your opinion, would be the reasonable degree of care upon the part of the company maintaining the wire as to the distance from the parapet or fire wall that the wire should be placed at?

"A. Ten to twelve feet."

10

The opinions of these two experts called by the plaintiff were not refuted by any witness called by the defense. In fact, the defendant's own witness admitted that the high tension wire should be carried at a greater distance from the top of the wall than was actually done. Irving Finch, superintendent of distribution of the defendant Company, on cross-examination, made the following statement:

20

"Q. No, I did not ask you that. How much clearance did you, in putting those wires fifty-five feet high, deem it advisable to establish between your wires and the nearest top of any building or any person that might be going along there?

"A. I would say ten feet." (Case, p. 131).

30

It was admitted by the defendant that the wire was only 5.59 feet above the top of the parapet (Case, p. 143).

It will be seen, therefore, that the jury had the testimony of two witnesses produced by the plaintiff that a clearance of five and a half feet was insufficient, and also one witness produced by the defendant. This testimony did not deal with standards of construction, but dealt with the question

40



whether or not the Company had exercised due and reasonable care in placing its wires in such close proximity to the wall. On this testimony adduced by the plaintiff and defendant, it is hard to see how the jury could have come to any other conclusion than the one they reached.

10 It also clearly appeared in the case that the height of the new building put up by S. S. Thompson Company was brought home to the defendant Company and that it re-located its wires, on account of the increased height of the new building. Lionel W. Lancaster, the construction engineer of the S. S. Thompson Company was called by the plaintiff and testified in part as follows:

"Q. Did you tell Mr. Finch the height of the top of the parapet on your building?

20 "A. That information was given to them at that time. (Case, p. 112).

Mr. Finch, the superintendent of distribution, testified that the wires were re-located at about the time the new building went up and stated the reason why it was done:

"Q. Was it done for the safety of the public or anyone who used the roof of the building?

30 "A. Yes." (Case, p. 136).

It is quite clear, therefore, that the defendant Company recognized the necessity of keeping their wires out of the way of the new building and of placing them a sufficient distance away so that anyone upon the building would not be likely to come in contact therewith, or be reached by a jumping current. The company recognized this duty but failed to erect the pole sufficiently high to acquit  
40 itself of the obligation it was under.



## ARGUMENT

IT WAS NOT NECESSARY FOR THE PLAINTIFF TO PROVE THAT ANY STANDARD OF PRACTICE HAD BEEN VIOLATED IN ORDER TO ENTITLE HIM TO RECOVER.

The defendant, in its brief, has taken the position that it is necessary as a condition precedent to a recovery by the plaintiff in the instant case, for the plaintiff to establish that some standard must be proved to which it was incumbent upon the defendant to conform.

An examination of the cases upon which defendant relies, however, will clearly show that they are easily distinguishable from the state of facts in the instant case. Defendant cites the case of *Feil v. West Jersey & Seashore Railroad Co.*, 77 N. J. L. 502, in which Chief Justice Gummere delivered the opinion of this Court to the effect that the duty which a railroad company owes to its passengers with relation to the construction of its station platforms is to take care that the method of construction adopted by it will render the platform as safe for the use of passengers as the exigencies of its business will permit. The Court further said that the adoption by a railroad company of a method of platform construction which accords with that in general use by well regulated railroad corporations and which is approved by experience, is a due performance of the duty which it owes to its passengers in that regard.

Plaintiff respectfully urges that the defendant has entirely mistaken the rationale of *Feil v. West Jersey & Seashore Railroad Co.*, *supra*, in endeavoring to apply it to the state of facts in the instant case. The difference between the two situations is that in the railroad platform case, the Court was dealing with an agency not in itself destructive. That is,



10 bricks and mortar, and the materials used in the construction of a railroad platform are not in themselves highly dangerous, and the Court naturally held that if it were shown that the platform were constructed as other platforms are constructed and in accordance with well recognized practice, no negligence could attach to the builder of the platform. That is an entirely different proposition from the obligation which rests upon a company dealing with a highly destructive agency such as electricity.

Again, the case of *Halm v. Freeholders of Hudson*, 78 N. J. L. 712, had to do with the guard-rail of a bridge. This Court, speaking through Mr. Justice Voorhees, said:

20 "No proof has been offered that the construction was different from ordinary construction, or that it was not sufficient for the purpose for which it was intended."

The Court quoted *Feil v. West Jersey & Seashore Railroad Co.*, *supra*, with approval.

Again, it can be said that in the case of *Halm v. Freeholders of Hudson*, *supra*, the Court was dealing with a device not essentially dangerous, but having to do with ordinary construction.

30 The same may be said of all the cases cited by the defendant on its brief. They all overlook the distinction between the duty placed upon a person or corporation dealing with a highly dangerous and destructive agency, such as electricity, and that imposed upon anyone dealing with ordinary materials in ordinary building construction.

40 This principal has been too frequently enunciated to require the citation of many authorities. The rule was clearly stated, however, in *Anderson v. Jersey City Electric Light Co.*, 63 N. J. L. 387. Mr. Justice Garrison, delivering the opinion of the Supreme Court, said:



"The demurrer establishes this state of facts, namely, that the defendant used for its purpose, wires that it had placed in a light shaft where it knew that the class of laborers to which the plaintiff belonged, would enter to work; that these wires were under the control and management of the defendant who passed through them a current of electricity dangerous to a human being and that it failed to maintain a proper insulation of this current whereby plaintiff, while working in the shaft, was injured. *Now the elemental rule is that whoever uses a highly dangerous agency is held to a correspondingly high degree of care.* Care, in this sense, means more than mere mechanical skill; it includes circumspection and foresight with regard to reasonably probable contingencies."

10

20

This expression by Mr. Justice Garrison was quoted with approval in *Brooks v. Consolidated Gas Co.*, 70 N. J. L. 211, in which the Court of Errors and Appeals, speaking through Chancellor Magie, said:

"The contention on the part of the company is that when it had used that form of insulating protection which was usually employed in overhead construction, it had done its full duty, and cannot be held responsible because the insulation failed to protect. But, in my judgment, this is too narrow a view of the company's duty. . . . When it placed its converter on the side of the house, although at the owner's request and with his permission and *in a place where persons on the balcony might come in contact therewith*, the rule of duty was obviously more severe.

30

40



10 When it sent its dangerous current through the wires thus exposed, it was bound to take such care for the protection thereof as reason required to be done. As was well said by Mr. Justice Garrison in the Supreme Court, the required care demands more than mere mechanical skill and includes circumspection and foresight with regard to reasonably probable contingencies."

A valuable statement of the law is contained in Joyce on "Electrical Law," page 454:

20 "The defendant was engaged in the business of supplying electricity for lighting purposes in houses and streets of the city and considering the high voltage which it was necessary to carry over the wires thus rendering the business in the highest degree dangerous unless handled with care and skill, we think that outside of any actual relation, a duty was created on the part of the defendant, not only towards the public generally who in the streets might be likely to come in contact with the wires, but also with respect to any individual engaged in a lawful occupation in a place where he was entitled as of right to be. . . . Whenever one person is by circumstances placed in such a position with regard to another that everyone of ordinary prudence would recognize that if he did not use ordinary care and skill in his own conduct with regard to these circumstances he might cause injury to the person or property of another, a duty arises to use ordinary care and skill to avoid such danger."

40 Plaintiff respectfully urges that these decisions



are sufficient to show the well-settled state of the law in New Jersey on this subject. It is not a question of recognized standards of practice, it is a question of exercising that degree of care commensurate with the circumstances of the case and with the inherent danger involved in the kind of business being carried on. Our courts have long recognized the fact that the greater the danger, the higher the degree of care necessary. It is clearly fallacious to endeavor to compare, as defendant does, the degree of care imposed upon one dealing with ordinary materials and upon one dealing with a highly destructive agency. The principal laid down in *Feil v. West New Jersey & Seashore Railroad Co.*, *supra*, and the line of cases cited in connection with it, is misapplied to the present state of facts. The trial judge, in the present case, well said (*Case*, p. 107) that the defendant might be liable for the failure to exercise reasonable care "standard or no standard."

The jury had the testimony of the witness, Smith, who was a lineman of lifelong experience, who had studied the subject of high tension wires. Smith gave it as his opinion that current of 33,000 volts would jump six feet, and this was more than the distance of the wire in question from the top of Heyer's body. He said he had seen it jump three or four feet to a ground. He said that in his opinion wires of this character should be placed ten or twelve feet from a place where a human being might be. This had nothing to do with the question of standards of construction, but had to do with the reasonable care which a duly qualified expert stated should be exercised by one using high tension wires. Judge Lawrence struck out the testimony of Smith so far as it related to standards. He left for the jury's consideration the remainder of his testimony relating to his opinions as to safe construction.



He was supported by the witness, Proctor, who testified that even a wire carrying 2,300 volts should be placed six feet away from a point where anyone might come in contact with it (Case, p. 109). It would obviously follow that the greater the voltage the greater the distance it would jump and the farther away it should be placed. *The significant thing in this connection is that the company offered absolutely no testimony to refute the opinions of Smith and Proctor. No one was called by the company to say that a current of 33,000 volts would not jump six feet. No one was called by the company to say that it was safe construction to carry the wire within six feet of the top of the fire wall.* On the other hand, the only witness produced by the defendant in this connection said that ten feet would be the proper clearance (Finch, Case, p. 131).

In this posture of the proofs, not only was the finding of the jury based upon testimony, but any other conclusion would seem to be clearly against the greater weight of the evidence.

The defendant sought to prove that young Heyer had a wire in his hand which he might have brought in contact with the high tension wire and so brought about his own death. This was really the theory of the defense and effort was made to establish that fact. It was a rather feeble effort, however, and rested almost solely upon the testimony of one Le-Maistre, an employee of the defendant company, who testified that he found a piece of wire unrolled on the roof that morning (Case, p. 116). The plaintiff had produced two witnesses who had stated that the wire which young Heyer had in his hand was not raised in the air and did not come in contact with the Company's wire. They stated that the wire which Heyer was using was wrapped around the pole lying over the fire wall. (Archie Heyer, Case, p. 34, line 40) (Flippin, Case, p. 40, line 30-40). Even had



there been evidence that the wire which Heyer had in his hand came in contact with or was brought near the high tension wire, this fact simply would have raised the question of contributory negligence, and the jury would have been justified in concluding on the evidence that Heyer was not guilty of contributory negligence.—*Brooks v. Consolidated Gas Co.*, 70 N. J. L. 211; *Barnett v. Atlantic City Electric Co.*, 87 N. J. L. 20. However, the only witness to the accident testified emphatically that Heyer never brought the short wire in his hand near the high tension wire. Certainly, the jury was justified, therefore, in acquitting the deceased of any contributory negligence.

10

Plaintiff regards it as necessary to contradict a statement in defendant's brief (Defendant's Brief, p. 23) to the effect that the wire was eight and a half feet above the top of the building. Defendant may fail to distinguish between the top of the building and the top of the fire wall. Defendant's own witness, George D. Cooper, testified (Case, p. 143, line 20-30), that the wire in question was 5.59 feet above the parapet.

20

In summary, it is respectfully urged that there was ample testimony to justify the jury in drawing the inferences they apparently drew upon the controverted matters in the case. The questions they had to ask themselves were:

Did the Company maintain the wire?

30

Did it contain a deadly current?

Was it safely constructed with relation to the point where decedent was at work?

Did he come in contact with it?

Was he guilty of any contributory negligence?

The conclusions which the jury reached on these questions are obvious and there was evidence to support all of them. In fact, there was practically no evidence to controvert them.

40



For these reasons it is respectfully urged that their finding should be sustained and the judgment affirmed.

Respectfully submitted.

WARD KREMER,

Attorney and Counsel for  
Plaintiff-Respondent

10

20

30

40



