

New Jersey Court of Errors and Appeals.

CATHERINE BROOKS, Administratrix,
etc.,
Defendant in Error.

vs.

CONSOLIDATED GAS COMPANY OF
NEW JERSEY,
Plaintiff in Error.

In Error.

Brief for Consolidated Gas Company of New Jersey, Plaintiff in Error.

On October 6th, 1900, John Brooks was killed by receiving a shock from an electric wire attached to the transmitter on the house of a Mr. Asiel at Long Branch, N. J., and Catherine Brooks as his administratrix brought suit against the Consolidated Gas Company of New Jersey in the Monmouth County Circuit Court to recover for the pecuniary damage resulting to the widow and next of kin by reason of the death of John Brooks through the alleged negligence of said company. The jury brought in a verdict in favor of the plaintiff and against the Company for Five thousand (\$5,000) dollars, and the judgment entered thereon was affirmed by the Supreme Court.

This writ of error brings up for review the action of the Supreme Court in affirming the judgment entered

below. We contend that the judgment should be reversed for the following reasons:

(1) The trial Judge should have granted the motion to non-suit or the motion to direct a verdict because of the contributory negligence of John Brooks.

(2) The trial Judge should have granted the motion to direct a verdict because of the failure on the part of the plaintiff to show any negligence or want of care on the part of the Consolidated Gas Company of New Jersey, the plaintiff in error.

(3) The trial Judge erred in certain particulars in his charge to the jury.

I.

The trial Judge should have granted the motion to non-suit or the motion to direct a verdict in favor of the Consolidated Gas Company because John Brooks came to his death through his own negligence or want of care.

John Brooks, a man about fifty years of age, worked exclusively as gardener and care taker for a Mr. Asiel at the latter's residence in Long Branch (Case, page 17, lines 8, 29-39; page 18, lines 4-10). He had worked for Mr. Asiel several years (Case, page 14, line 27). When Mr. Asiel and his family were away from their cottage John Brooks and his family lived in the stable in the yard close by the cottage. The keys of the house were in his possession, he had entire charge of the place, he kept the house in order and did any little repair work that had to be done about the place. He was authorized to employ workmen and mechanics to do any work about the house. Mr. Asiel and his family went

away on July 30th, 1900, and John Brooks immediately moved his family to the stable and lived there and had entire charge of the place until the time of his death on October 6th, 1900.

Attached to this brief is a copy of one of the pictures which was admitted in evidence. It shows the situation at the time of the accident. One flight up from the ground, about ten or fifteen feet in the air, was a balcony with a tin roof enclosed by a railing four feet high and the only entrance to the balcony was through the house (Case, page 36, line 21). The balcony railing was from two and one-half to six inches inside the corner of the house and outside the railing was the gutter of the balcony (Case, page 37, line 34; page 34, line 32; page 30, line 29). Around the corner of the house nine or ten inches from the corner and about fifteen feet from the ground was the transmitter, a necessary part of the system (Case, page 35, line 38; page 37, line 6). The transmitter was placed on the house by order of Mr. Asiel and his own electrician determined the point where the transmitter should be placed (Case, page 62, line 18). Attached to the transmitter were the two primary wires bringing the electric current to the exterior of the house. From the lower part of the transmitter the current was carried by secondary wires into the interior of the house. In order to touch the transmitter or the wires attached thereto it was necessary for one to reach around the corner of the house.

At about noon on October 6th, 1900, John Brooks went up to paint the gutter on the outside of the balcony rail and his son John A. Brooks accompanied him (Case, page 31, lines 20-32). The son testified that he helped his father to remove some slats on the balcony and then sat down to play with a ball and in a moment he heard his father call out and looking saw his father lying over the balcony rail with his head down, his left hand firmly grasping the electric wire at the loop and his right hand in the gutter outside the balcony rail with the brush in his hand (Case, page 32, line 26; page 34, lines 2-10 and 30-34). Other witnesses testi-

fied that they saw John Brooks lying over the rail with his left hand grasping the wire (Case, page 40, line 5; page 47, line 20, line 38). Dr. Shaw who examined the body after the accident said that there was burnt insulation in the left hand (Case, page 50, line 3; page 60, line 10) and another witness for the plaintiff testified that there were rubber blisters in the burnt hand and a smell of burnt rubber (Case, page 42, lines 21-29). An examination of that part of the wire which John Brooks had grasped made after his body had been removed showed that the wire he had grasped was curved out as if it had been pulled out (Case, page 23, line 1), and for three or four inches or the width of a man's hand where John Brooks had been grasping the wire the insulation on the wire was pulled down as if he had grasped the wire and pulled the insulation down (Case, page 21, line 8; page 49, line 35; page 50, line 38; page 51, line 2). This was at the point where the two ends of the wire had been joined together and the tape insulation over them was the insulation that had been pulled down (Case, page 86, line 35; page 87, line 1; page 88, line 1).

It appeared further that when the transmitter was placed on the house about three months previous to the accident that James R. Shields, Mr. Asiel's electrician, told John Brooks that the wires leading into and leading out of the transmitter were dangerous and that he (Brooks) must not touch them (Case, page 63, line 35, etc.; page 75, line 6). Shields testified that he gave Brooks this warning because as caretaker he might have occasion to go near the transmitter and because he might warn others who came to the house (Case, page 76, line 21). William R. Anderson, foreman of the electric department of the Consolidated Gas Company, saw John Brooks at Mr. Asiel's cottage shortly after the transmitter had been put up and Brooks asked if the wires were dangerous, and Anderson told him that they were dangerous and that he (Brooks) must never touch or handle them "in any manner, shape or form," and that he must notify the Company at once if any-

thing happened to the wires (Case, page 97, lines 21-36). William H. Havens who was working as gardener for a neighbor of Mr. Asiel at the time of the accident and who was formerly an engineer of an electric light company, testified that John Brooks came over to his place the morning of the accident and borrowed a hammer saying that he was going to do some repair work on the tin roof at Mr. Asiel's where the electric wires were and Havens told him to be careful and not touch the electric wires as they were dangerous and Brooks answered that he was not afraid of them (Case, page 78, lines 16-22; page 79, lines 26-29; page 80, lines 10-20).

The Supreme Court in its opinion states that no one saw the accident and there was no testimony to show how the accident occurred and therefore that the trial court would not have been justified in holding that the negligence of the deceased conclusively appeared. No one actually saw John Brooks reach around the corner of the house and grasp this wire but his son who was only ten feet away from his father when he was killed states that his father was painting the gutter outside of the balcony rail before the accident and that he heard him cry out and that he turned and saw his father leaning over this rail with his right hand holding the paint brush in the gutter and his left hand firmly grasping the wire at the loop. Other witnesses saw him just after the accident in this same position. The evidence shows that the gutter was some distance away from the wire and that there was no necessity in painting the gutter to be near the wire or to touch it in any way. Moreover it appeared from the evidence of Mr. Asiel's own electrician that in order to be killed by contact with this wire it was necessary for a person to have grasped it firmly and have had contact with the ground. We respectively submit that this evidence proves conclusively that John Brooks did not accidentally touch the wire but that he firmly grasped it probably to balance himself as he leaned over the rail.

It may be urged that because the current had been

turned off the inside of the house on July 30th that John Brooks had a right to suppose that the current did not run to the transmitter. The linemen of the defendant company had been to the house since that time, John Brooks had let one of them into the house to go to the porch, and he had been warned that the wires were dangerous since July 30th.

John Brooks knew the danger, having been repeatedly warned not to touch the wires around the transmitter in any way; the last warning having been given only a few hours before his death. The transmitter was around the corner of the house in a place where it did not in any way interfere with his work in painting the gutter. We contend therefore that the negligence of John Brooks in grasping the wire was the cause of his death and that the motion to non-suit or to direct a verdict ought to have been granted by the learned trial Judge.

If the negligence of John Brooks contributed to the injury or if his death was caused by his want of care there can be no recovery.

Del., L. & W. R. R. v. Toffey, 9 Vroom, 525.

Durant v. Palmer, 5 Dutch, 544.

N. J. Express Co. v. Nichols, 4 Vroom, 434.

Penn. R. R. Co. v. Middleton, 28 Vroom, 154.

Menger v. Laur, 26 Vroom, 205.

In *Anderson v. J. C. Electric Light Co., 35 Vroom, 664*, the plaintiff was injured by deliberately touching a wire not in the performance of the work about which he was employed, but simply for the purpose of demonstrating the correctness of his judgment when he knew that the wire might be dangerous. It was held that there could be no recovery. In this case the wire was immediately at the place where the plaintiff was at work.

In the case of *Hector v. Boston Electric Light Co., 161 Mass., 588*, the plaintiff, a lineman of a telephone company, was sent up to the roof of a building to affix a telephone wire to a standard. Instead of going up

through the building he went up through another building and attempted to walk from the roof of that building to the roof where he had to work. In doing so he came into contact with a wire the insulation of which was worn off. The Court held that he was not in the exercise of due care at the time and place of the accident and therefore could not recover, even though there was no proof that he knew of the dangerous character of the wires.

In *Electric Light and Power Co. v. Lefeyre*, 93 Texas, 604, it was held that an electric light company cannot be held liable for death caused by shock received from its uninsulated wires in a place where persons could not reasonably be expected to go. The top of an unrailed wooden awning attached to a house about sixteen feet above the street was held to be such a place, and it was held that a person injured by going up on the awning and attempting to lift a wire could not recover against the company.

See also *Perham v. Portland Gen. Elec. Co.*, 53 Pacific Rep., 14.

II.

The trial Judge should have directed a verdict in favor of the Consolidated Gas Company, because the plaintiff had failed to show any negligence or want of care on the part of the Company, and because it appeared from the evidence that the Company was not guilty of any negligence or want of care.

A careful study of the record in this case will show that there was no dispute about the facts, there was no contradictory testimony in the case.

Previous to the summer of 1900 Mr. Asiel's house was supplied with electric current by the Consolidated Gas Company by means of an underground cable. Early in the summer of 1900 this cable became faulty and defective and a source of annoyance to the other customers of the company in that vicinity and Mr. Asiel was notified to repair his cable at once (Case, page 55, lines 33-39). In order to repair the underground cable it would be necessary for Mr. Asiel to dig up his lawn, a thing which he did not desire to do, and so he decided to have his house supplied with electric current by means of an overhead wire. With this form of construction it was necessary either to place a pole in Mr. Asiel's yard on which to attach the transmitter (a necessary part of the system), or to place the transmitter on his house. The company desired to place the transmitter on a pole in the yard, but Mr. Asiel objected and ordered the company to place the transmitter on his house at the point chosen by his (Asiel's) electrician Shields (Case, page 56, lines 11-19; page 57, line 4; page 62, line 20). Mr. Asiel had the wires run on the outside of his house by his electrician Shields, who was a witness at the trial, and the company placed the transmitter at the point where the ends of the leads or wires had been run by Shields (Case, page 62, lines 18-23). This work was completed in June, 1900, and after the Company had placed the transmitter on the house and completed its work, Mr. Asiel's electrician examined the work thoroughly and at the trial he testified that the company had done its work in first-class order, and that all the wires connected with the transmitter were thoroughly insulated (Case, page 62, line 35; page 63, lines 1-14; page 98, line 3; page 99, lines 30-40; page 100, line 1). The evidence shows that the transmitter and the wires attached thereto were thoroughly insulated with insulation that lasts several years, and that the transmitter was put up by competent and efficient workmen (Case, page 63, line 19; page 102, line 1).

The transmitter was placed on the house at a point where the company was required to place it by Mr.

Asiel, and it cannot, therefore, be held liable in any way from the fact that wires carrying so great a current of electricity were placed on the house at a point where persons standing on the balcony could reach them. If there was any negligence in this respect it was the negligence of Mr. Asiel and the plaintiff's action should have been brought against him.

The testimony shows conclusively that the Consolidated Gas Company used in this work an insulated wire which was the standard in the trade for outdoor overhead construction work and the best in the market, the most desirable and the kind universally used (Case, page 57, line 37; page 64, line 22; page 101, lines 12-15). A witness for the plaintiff named Zacharias, testified that he examined the transmitter and the wires attached thereto immediately after the accident, that on one wire he found that the insulation had been pulled down into a lump as if some one had grabbed the wire and pulled the insulation down, and that all the other wires were insulated (Case, page 20, line 38; page 21, line 7; page 23, line 8). This was at the point where the two wires had been connected and which were insulated with tape. He testified that the wires were insulated in the same way as all outdoor overhead electrical construction work is insulated, and that he had never seen any other form of insulation used in that class of work. He said that this form of insulation was not a protection against electric shock, that there was a form of insulation that was a protection but that it was never used in overhead construction on account of its weight (Case, page 21, line 7; page 22, line 12; page 24, line 11; page 25, line 10). His testimony coincided entirely with the testimony of the electrician produced by the defendant company. All the electricians agreed that nothing was an absolute insulator (Case, page 101, line 35) and that a person grasping an insulated wire such as is used in outdoor overhead construction work would receive a shock and that a person standing on a tin roof as John Brooks was doing in this case, would receive a greater shock than if he had been standing on a wooden roof. But

in order to kill a person the wire must have been grasped very firmly and there must have been contact with the earth through the tin roof (Case, page 72, line 25).

It appears from the evidence that the lineman (Charles L. White) who put up the transmitter in June and who made the necessary connections was a competent first-class workman (Case, page 102, line 5, etc.), and he testified positively that the wires were thoroughly insulated when they were put up (Case, page 99, line 30, etc.). Between June and October 6, 1900, the transmitter and the wires connected with it were examined and inspected several times by one of the company's workmen, a lineman, the witness Frank G. Sanford, who testified that he had always found the insulation in good order and condition. He further testified that he had gone to Mr. Asiel's house two or three days before the accident to put in a fuse in the transmitter, and that the transmitter and the wires were in good condition, and that none of the insulation was off the wires at that time (Case, page 82, lines 1-40). An hour after the accident this same person was sent to Mr. Asiel's house to see what the trouble was, and he found the insulation pulled down on one of the wires for about three inches into a bunch, and that it looked as if some one had pulled the insulation down, and that this was the only place where the insulation was off at all on the wires or around the transmitter. He testified positively that the insulation was not pulled down in this way when he examined this same wire a few days before, and that the wire at that time was thoroughly insulated (Case, page 83, lines 1-40). There was no evidence that the insulation had been off before the accident and such a contention was not made by the learned counsel for the plaintiff. In fact the evidence shows conclusively that there must have been insulation on the wire before the accident, for how else could there be insulation and rubber blisters all through the burnt hand and a strong smell of burnt rubber. Moreover, the part of the wire that was bare of insulation was covered with burnt rubber. None of these things

could have been so if the wire had been bare of insulation before the accident.

Counsel for the plaintiff tried to belittle the evidence of Sanford as to his inspection of the wires by confusing him in his cross-examination and he points to various apparent contradictions in his testimony. We respectfully submit that an examination of the evidence will show that the learned counsel's method of cross-examination was itself most confusing and his questions many of them entirely unintelligible and that Sanford though sometimes confused was very positive in regard to his examination of the wires. As to the alleged statement that he made his inspection when standing fifteen feet away we respectfully submit that an examination of the question and answer will show that the witness made no such statement.

We respectfully submit that the mere proof of the occurrence of an accident raises no presumption of negligence.

Bahr v. Lombard Ayres & Co., 24 Vroom, 233.
Excelsior Electric Co. v. Sweet, 28 Vroom,
224.

The plaintiff below was bound to show that the defendant was responsible through some act of negligence or want of care for the decedent's death in order to entitle her to a verdict. The existence of such circumstances as would justify the inference that the injury was caused by the wrongful act of the defendant and exclude the idea that it was due to a cause with which the defendant was unconnected.

Suburban Electric Co. v. Nugent, 29 Vroom,
658.

Paynter v. Bridgeton, etc., Traction Co., 38
Vroom, 619.

Plaintiff must bear the burden of proving the negligence charged in the declaration.

McGilvery v. Newark El. L. & P. Co., 34
Vroom, 591.

Bien v. Unger, 35 Vroom, 596.

In the case of *Smith v. East End Electric Company*, 47 At. Rep. (Pa.), 1123, plaintiff's intestate came in contact with a wire belonging to defendant on the roof of a house where he was painting. Upon examination it was found that the insulation of the wire was defective at the place where decedent had hold of it. The court granted a non-suit, stating that it did so because there was no evidence of actual notice to the defendant of the defective insulation, nor any evidence of how long it had been defective. On appeal the court held that there was no error in granting the non-suit.

In this case the transmitter and wires connected therewith were placed at a point chosen by the owner of the house. They were on private property. The company used competent workmen in performing its work and a form of insulated wire which was the standard in the trade, the best in use for that character of work. There was no contention that the insulation was out of order before the accident, the undisputed evidence showed that the transmitter and wires were in good condition a few days before the accident. It was proved that there was no form of insulation in use that was a complete protection from electric shock. The defendant company had maintained thorough and frequent inspection of the transmitter and wires. In addition to all this plaintiff's intestate who was the caretaker of the premises had been requested and ordered to notify the defendant company if the transmitter or wires needed attention or were out of repair and no notice of any kind had ever been given to the defendant company.

There was no proof of any negligence or want of care on the part of the defendant and a verdict should have been directed in its favor.

III.

**It was error for the Court to charge:
 "The usual rule applies and that is that
 they are charged with introducing the
 agency by the use of the best known means
 and appliances for so doing."**

Mr. Zacharias, a witness for the plaintiff, on the re-direct examination testified that there was an extra heavy insulation of rubber with braid on the outside that was proof against electric shocks. To be sure later in answering a question asked him by the Court he said that this form of insulation was never used in outdoor overhead electrical construction, and therefore the defendant company could not be expected to use it. But we respectfully submit, in view of this testimony, it was error for the court to charge as he did, for it may have given the jury the impression that the defendant company could have used this form of insulation, a conclusion that was absolutely contrary to all the evidence in the case.

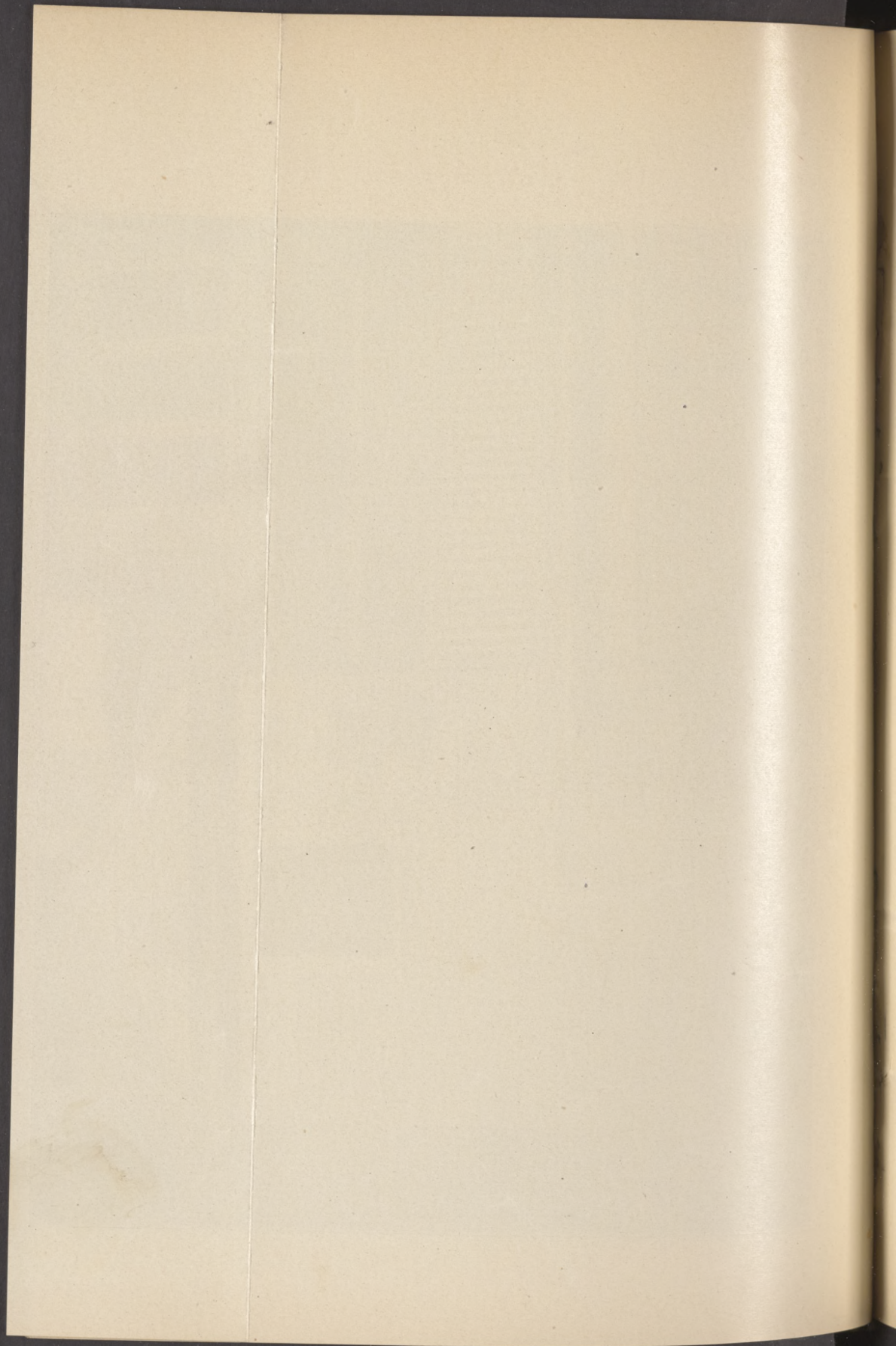
In the case of *New Jersey Traction Company v. Gardner*, 29 Vroom, 176, the Court held that it was error to use the word "insure" in charging the jury about the defendant company's duty to its passengers. Certainly, the reasoning of this case applies most aptly to the facts in the present case, and we contend that just as it was error for the Court in the Gardner case to use the word "insure" just so in this case it was error for the trial Judge to use the words "best known means and appliances," without adding the words "for outdoor overhead electrical construction."

**For these various reasons we contend
that the judgment below should be re-
versed.**

LEWIS, BESSON & STEVENS,
Attorneys for Plaintiff in Error.

EDWIN A. S. LEWIS,
of Counsel.





New Jersey Supreme Court.

CATHARINE BROOKS, ADMINIS-
TRATRIX, &C.,

Plaintiff,

v.

CONSOLIDATED GAS COMPANY
OF NEW JERSEY,

Defendant.

WRIT OF ERROR.

[Filed March 3, 1902.]

New Jersey, ss.—The State of New Jersey to J. Frank Fort, Esquire, Judge of our Circuit Court at Freehold, in and for the county of Monmouth, or such Justices of the Supreme Court of the State of New Jersey as shall hold such Circuit Court, greeting :

Because in the record and proceedings
[L. s.] and also in the giving of judgment in a
plaint which was in our Circuit Court, 10
holden at Freehold, in and for the said county of Monmouth, between Catharine Brooks, administratrix of John Brooks, deceased, plaintiff, and Consolidated Gas Company of New Jersey, a corporation, defendant, of an action in tort, manifest error hath intervened to the great damage

of the said Consolidated Gas Company of New Jersey, a corporation, as by its complaint we are informed, we being willing that speedy justice should be done to the parties aforesaid in this behalf, do command you distinctly and openly to send, under your seal, the record and proceedings aforesaid, with all things touching and concerning the same, to our Justices of our Supreme Court of the State of New Jersey, on the eighteenth day of March next, together with this writ, that the record and proceedings aforesaid being
 10 inspected, we may further cause to be done thereupon what of right and according to the law ought to be done.

Witness William S. Gummere, Esquire, our Chief Justice, at Trenton aforesaid, the fifth day February, nineteen hundred and two.

WM. RIKER, JR.,
 Clerk.

LEWIS, BESSON & STEVENS,
 Attorneys.

The answer of J. Frank Fort, Esquire, one of the Judges
 20 of the Circuit Court within named, the record and proceedings of the plaint whereof mention is within made, with all things touching the same, I certify to the Justices of our Supreme Court of the State of New Jersey, at Trenton, at the day and year within contained, in a certain schedule to this writ annexed, as I am commanded.

J. FRANKLIN FORT.
 Judge.

Monmouth County, ss.—The State of New Jersey to the Sheriff of the county of Monmouth aforesaid, greeting:
 30 [L. s.] You are hereby commanded to summon Consolidated Gas Company of New Jersey, body corporate, if in your county it may be found, so that it be and appear before our Circuit Court to be holden at Freehold, in and for said county of Monmouth, on Thursday, the twenty-fifth day of July, nineteen hundred and one, to answer unto Catharine Brooks, administratrix of John Brooks, deceased, in an action of tort, to her damage twenty-five thousand dollars, as is said, and have you then and there this writ.

Witness John Franklin Fort, Judge of our said Circuit Court at Freehold aforesaid, the eighth day of July, nineteen hundred and one.

JOSEPH McDERMOTT,
Clerk.

SAMUEL A. PATTERSON,
Attorney.

Due and legal service of the within summons is hereby acknowledged this 9th day of July, A. D. 1901.

LEWIS, BESSON & STEVENS, 10
Attorneys for Defendant.

Filed July 12th, 1901.

JOSEPH McDERMOTT,
Clerk.

Monmouth County Circuit Court of the twenty-fifth day of July, nineteen hundred and one.

Monmouth County, ss.—The Consolidated Gas Company of New Jersey, a corporation duly organized under the laws of the State of New Jersey, the defendant in this suit, was summoned to answer unto Catharine Brooks, administratrix 20 of John Brooks, deceased, in an action of tort, and thereupon the said plaintiff, by Samuel A. Patterson, her attorney, complains for that whereas heretofore, to wit, on the sixth day of October, in the year of our Lord nineteen hundred, the said defendant, the Consolidated Gas Company of New Jersey, was in possession of and did own and operate a certain electric light power and plant in the township of Ocean, in the county of Monmouth, State of New Jersey, and also was at the date aforesaid in possession and control of certain wires connected with said electric power 30 and plant, strung upon poles and extending in, through and over certain of the public streets of said township, and in, through and over certain lands and premises belonging to one Lina Asiel, in Elberon, in said township, and which said poles and wires were used by the said Consolidated Gas Company of New Jersey for the purpose of conducting powerful currents of electricity for lighting purposes in, through and over the said premises of the said Lina Asiel. And the said plaintiff avers that it was then and there

the duty of the said defendant and its employes to so carefully manage, guard, protect and insulate said wires so that the same should not be dangerous and fatal to the lives of persons lawfully coming in contact therewith, or being at or near the said wires upon the said premises of the said Lina Asiel.

And the said plaintiff avers that it was the duty of the said The Consolidated Gas Company of New Jersey to keep and maintain said wires at all times upon the said premises
10 of the said Lina Asiel, so that the same should be safe for all persons lawfully upon said premises to discharge their business or duties without their lives being endangered by the improper and negligent use of said wires or said electric current by the said defendant or its agents.

And the said plaintiff avers that on or before the said sixth day of October, nineteen hundred, the said John Brooks was lawfully upon said premises of the said Lina Asiel, then and there discharging his duties as superintendent of the said premises and as care-taker of the house
20 erected thereon and belonging to the said Lina Asiel for and in her behalf, and while so employed it became and was the duty and business of the said John Brooks to paint and repair a balcony porch attached to and a part of said house for and in behalf of the said Lina Asiel, and thereupon the said John Brooks did proceed to paint and repair the said balcony in pursuance of his said duties.

And the said plaintiff avers that upon and outside of the said building of the said Lina Asiel, and about two feet from where the said John Brooks was engaged in said em-
30 ployment, was a certain electric transmitter, the property of the said The Consolidated Gas Company of New Jersey, and placed and maintained upon the said building at said point by said company, defendant, and connected with and attached to the said transmitter was an electric wire running from said transmitter to poles placed, owned and maintained upon said premises by the said defendant, and running thence from said poles to a public highway, and thence to the power-house of the said defendant in the township of Ocean aforesaid, which transmitter, wires and
40 pole were then and there used and maintained and owned

by the said defendant for the purpose of transmitting electricity in and through the said wires and building.

And the said plaintiff avers that notwithstanding the said transmitter was placed and maintained by the said defendant as aforesaid in close proximity to said balcony, and notwithstanding the said wires were then and there charged with electricity, a dangerous and powerful element, the said defendant did not and would not insulate the said electric wire at or near the said transmitter, but caused the same to be and remain without insulation or any other protection, and then and there caused and continued the said electric wire to be exposed in such a manner as that contact therewith by a human being would cause instant death. 10

And the said plaintiff avers that the said defendant, well knowing the premises and knowing that the said electric wire was not insulated and that it was without any protection or guard whatever and that it would cause instant death to any person touching the same or getting in contact therewith, did, on the said sixth day of October, nineteen hundred, charge the said electric wire with a powerful, dangerous and deadly electric current. 20

And the said plaintiff avers that on the sixth day of October, nineteen hundred, the said John Brooks, deceased, while engaged as aforesaid in the performance of his said duties of painting and repairing the said balcony, without carelessness, negligence or fault on his part, was, by coming in contact with the said uninsulated wire, at the point where it connected with the said transmitter, shocked by the electric current then and there in said wire and transmitted by said defendant, so that he, the said John Brooks, was then and there, to wit, on the sixth day of October, nineteen hundred, killed. 30

And the said plaintiff avers that the death of the said John Brooks was caused wholly by and was the result of the negligent and careless conduct and management by the said defendant and its employes in placing said wire upon said premises and maintaining it there as aforesaid without insulation, and that without any fault or negligence on the part of the said John Brooks. 40

And the said plaintiff avers that the said John Brooks, deceased, left him surviving his wife and next of kin as follows :

Catharine Brooks, widow ; John Alexander Brooks, son ; Florence May Brooks, daughter ; and Blanche A. Brooks, daughter.

And the said plaintiff avers that great pecuniary injury resulted to said next of kin from the said death of the said John Brooks, deceased, to wit, the sum of twenty-five
10 thousand dollars, whereby and by force of the statute in such case made and provided an action hath accrued to the said plaintiff as the personal representative of the said John Brooks, deceased, to recover from the said The Consolidated Gas Company of New Jersey, body corporate, damages for the said death of said John Brooks, deceased, for the exclusive benefit of the said next of kin of the said John Brooks, deceased, amounting in the whole to a large sum of money, to wit, the sum of twenty-five thousand dollars ; wherefore she brings her suit, &c.

20 And the said plaintiff brings here into court her letters of administration of the goods, chattels and credits of the said John Brooks, deceased, granted to her on the twenty-second day of October, in the year of our Lord nineteen hundred, by the Surrogate of the county of Monmouth, in the State of New Jersey, which was the county and State wherein the said John Brooks resided at the time of his decease.

SAMUEL A. PATTERSON,

Attorney of Plaintiff.

30 Filed August 14th, 1901.

JOSEPH McDERMOTT,

Clerk.

Monmouth County Circuit Court. Catharine Brooks, administratrix of John Brooks, deceased, plaintiff, v. The Consolidated Gas Company of New Jersey, defendant. Plea.

And the said defendant by Lewis, Besson & Stevens, its attorneys, comes and defends the wrong and injury, when, &c., and says that it is not guilty of the said supposed

grievances above laid to its charge, or any or either of them or any part thereof in manner and form as the said plaintiff hath above thereof complained against it, and of this the said defendant puts itself upon the country, &c.

LEWIS, BESSON & STEVENS,
Attorneys of Defendant.

State of New Jersey, County of Monmouth, ss. — C. Henry Irwin, Treasurer, of full age, being duly sworn according to law, on his oath says that he is the Treasurer of the Consolidated Gas Company of New Jersey, the defendant in the above-named plea; that the said plea about to be filed by the said defendant is not intended for the purpose of delay, and that this affiant verily believes that the said defendant has a just and legal defense to said action on the merits of the case. 10

C. HENRY IRWIN,
Treasurer.

Sworn and subscribed to at Long Branch, N. J., before me this twentieth day of September, A. D. 1901.

[L. s.]

HENRY SCHOENLIEN, 20

Notary Public for the State of New Jersey.

Filed September 23d, 1901.

JOSEPH McDERMOTT,
Clerk.

Therefore it is commanded to the sheriff that he cause to come before the judge aforesaid, at Freehold aforesaid, on the first Tuesday of January, in the year of our Lord one thousand nine hundred and two, twelve, &c., by whom, &c., who neither, &c., to recognize, &c., because, &c., and the same day is given the parties aforesaid. 30

And now on this day, to wit, on the sixteenth day of January, A. D. nineteen hundred and two, to which this cause was continued, come the parties aforesaid, by their said attorney, before the said judge, at the place aforesaid, and the sheriff of the county of Monmouth returned here into court the writ of the State of New Jersey, to him directed and delivered in all things executed, with a panel of the names of the jurors thereunto annexed, and the jurors of the said jury being demanded, to wit:

- | | |
|----------------------|-------------------------|
| 1 M. Lester Terry, | 7 William F. Madge, |
| 2 Vincent Miller, | 8 Thomas Riordan, |
| 3 Joseph R. Cranmer, | 9 Frederick Smith, |
| 4 Charles H. Tuttle, | 10 Archibald A. Tilton, |
| 5 John Brehany, | 11 John B. Ivins, |
| 6 Joseph Kaplan, | 12 William D. Hulse. |

Also come, who to say the truth of the within contained premises, being duly elected and sworn on their oaths say, that they find in favor of the plaintiff, Catharine Brooks, 10 administratrix of John Brooks, deceased, and against the defendant, the Consolidated Gas Company of New Jersey, and they further say that they assess the damages at five thousand dollars, and so say they all, that it is considered that the said plaintiff do recover against the said defendant her said damages, the sum of five thousand dollars—and also the sum of fifty-two dollars and twenty-one cents for her costs and charges in her said suit in this behalf expended, which said damages, costs and charges in the whole amount to the sum of five thousand and fifty-two dollars 20 and twenty-one cents.

J. FRANKLIN FORT,
Judge.

Judgment entered January 16th, 1902.

State of New Jersey, County of Monmouth.—I, Joseph McDermott, Clerk of the county of Monmouth, and *ex-officio* Clerk of the Circuit Court, in and for said county, do hereby certify the foregoing to be a true and correct copy of the judgment entered in above-stated cause as the same remains of record in my office.

30 In testimony whereof, I have hereunto set my hand and seal of said county, which is the seal of said court, at Freehold, this twenty-eighth day of [L. s.] February, in the year of our Lord one thousand nine hundred and two.

JOSEPH McDERMOTT,
Clerk.

ASSIGNMENT OF ERRORS.

[Filed March 3, 1902.]

Afterwards, to wit, on the eighteenth day of March, nineteen hundred and two, in the Supreme Court of the State of New Jersey, comes the said Consolidated Gas Company of New Jersey, by Lewis, Besson & Stevens, its attorneys, and says that in the matters recited and contained in said bill of exceptions, and also in the giving of judgment, there is manifest error in this, to wit :

1. That at the trial of said cause at the Circuit, and at 10 the close of the plaintiff's testimony, the defendant, Consolidated Gas Company of New Jersey, moved the court for judgment of non-suit, which motion the justice who tried said cause refused to grant, to the injury of the defendant, Consolidated Gas Company of New Jersey.

2. That at said trial the defendant, Consolidated Gas Company of New Jersey, by its counsel, at the close of the defendant's testimony, renewed the motion to non-suit, which motion the said justice who tried said cause refused to grant, to the injury of the defendant, Consolidated Gas 20 Company of New Jersey.

3. That at said trial the defendant, Consolidated Gas Company of New Jersey, by its counsel, at the close of the defendant's testimony, moved the court to direct a verdict in favor of the defendant, which motion the said justice who tried said cause refused to grant, to the injury of the defendant, Consolidated Gas Company of New Jersey.

4. That at said trial, the plaintiff, Catharine Brooks, administratrix, &c., by her counsel, asked Elias Asiel, a witness on the part of the plaintiff, the question, "Did 30 you call at the office of the Consolidated Gas Company at all, in the summer of 1900?" To which the defendant objected and the said justice overruled the objection, to the injury of the defendant, Consolidated Gas Company of New Jersey.

5. That at said trial the plaintiff, Catharine Brooks, administratrix, &c., by her counsel, asked Charles R. Zacharias, a witness on the part of the plaintiff, the question,

"Then from which do you deduce your statement that the overhead wires of electric companies usually in vogue at the present time are not sufficiently covered by insulation to avoid a shock to a person taking hold of them?" To which the defendant objected and the said Justice overruled the objection, to the injury of the defendant, Consolidated Gas Company of New Jersey.

6. That at said trial the plaintiff, Catharine Brooks, administratrix, &c., by her counsel, asked John T. Lovett, 10 a witness on the part of the plaintiff, the question, "What are the average wages of a first-class gardener, if you know?" To which the defendant objected and the said justice overruled the objection, to the injury of the defendant, Consolidated Gas Company of New Jersey.

7. That at said trial the plaintiff, Catharine Brooks, administratrix, &c., by her counsel, asked Harry E. Shaw, a witness on the part of the plaintiff, the question, "You cannot tell whether there had been any insulation on there at the time of the accident or not?" To which the defendant 20 objected and the said justice overruled the objection, to the injury of the defendant, Consolidated Gas Company of New Jersey.

8. That at said trial the plaintiff, Catharine Brooks, administratrix, &c., by her counsel, asked James R. Shields, a witness on the part of the defendant, the question, "Suppose it did kill him?" To which the defendant objected and the said justice overruled the objection, to the injury of the defendant, Consolidated Gas Company of New Jersey.

9. That at said trial the defendant, Consolidated Gas Company of New Jersey, by its counsel, requested the court to charge the jury that the plaintiff is not entitled to a verdict if it has not proved affirmatively that there was no insulation at the place of contact with the wire with decedent's person. To charge which the said justice refused, to the injury of the defendant, Consolidated Gas Company of New Jersey. 30

10. That at said trial the defendant, Consolidated Gas Company of New Jersey, by its counsel, requested the court 40 to charge the jury, that if the wire was imperfectly insula-

ted this is not sufficient to entitle the plaintiff to a verdict because the plaintiff has charged, as the basis of her claim of negligence, that there was no insulation on the wire at the place in question. To charge which the said justice refused, to the injury of the defendant, Consolidated Gas Company of New Jersey.

11. That at said trial the defendant, Consolidated Gas Company of New Jersey, by its counsel, requested the court to charge the jury that the defendant is entitled to a verdict if there was insulation on the wire at the place complained of, no matter how insufficient or improper it may have been. To charge which the said justice refused, to the injury of the defendant, Consolidated Gas Company of New Jersey. 10

12. That at said trial the defendant, Consolidated Gas Company of New Jersey, by its counsel, requested the court to charge the jury that there is no evidence that the wire was uncovered at the place of accident before Brooks' injury. To charge which the said justice refused, to the injury of the defendant, Consolidated Gas Company of New Jersey. 20

13. That at said trial the defendant, Consolidated Gas Company of New Jersey, by its counsel, requested the court to charge the jury that no negligence can be charged against the defendant because of the quality of the insulation it used on its wires at the transformer. To charge which the said justice refused, to the injury of the defendant, Consolidated Gas Company of New Jersey.

14. That at said trial the said justice charged the jury as follows: "The transmission of electricity thus carried upon wires is a dangerous agency, and a company transmitting it is required to exercise a high degree of care to prevent injury to persons who may, in the exercise of a lawful right, come in contact with such agency." To charge which was to the injury of the defendant, Consolidated Gas Company of New Jersey. 30

15. That at said trial the said justice charged the jury as follows: "The usual rule applies, and that is, that they are charged with introducing the agency by the use of the best-known means and appliances for so doing. Some 40

cases say, standard means and appliances." To charge which was to the injury of the defendant, Consolidated Gas Company of New Jersey.

16. That at said trial the said justice charged the jury as follows : "It will appear somewhat doubtful from the evidence whether there is a standard insulation for a wire used for outside work in transmitting electricity as shown in this case. If there is not a standard found by you from the evidence to exist, then it is the duty of the defendant to use
10 that which is the accepted and universally recognized best quality of material usually used in the trade for like purposes." To charge which was to the injury of the defendant, Consolidated Gas Company of New Jersey.

17. That at said trial the said justice charged the jury as follows : "The company must also use skilled and competent workmen in attaching the appliances and making the necessary connections, and then after the appliances are thus up the company is required, from time to time as necessity requires, to inspect and keep the wires and appli-
20 ances in proper and reasonably safe condition." To charge which was to the injury of the defendant, Consolidated Gas Company of New Jersey.

18. That at said trial the said justice charged the jury as follows : "Was the insulation of the wire used by the defendant in this case imperfect or defective, and did the conditions exist which are alleged in the plaintiff's declaration, that is, that the defendant had not and would not insulate the electric wire at or near the transmitter? If that condition existed and the evidence shows it, then you may
30 find from that state of facts, if you find them to exist, negligence in the defendant, because if they did put up a non-insulated wire the defendant did a wrong to anyone who by duty might be called to come in contact therewith." To charge which was to the injury of the defendant, Consolidated Gas Company of New Jersey.

19. That the verdict in said case was in favor of the plaintiff and against the defendant, Consolidated Gas Company of New Jersey, as by law said verdict, under the testimony of the case, ought to have been for the defendant,
40 Consolidated Gas Company of New Jersey.

20. That the judgment in said case was given in favor of the plaintiff, whereas by law said judgment ought to have been given in favor of the defendant, Consolidated Gas Company of New Jersey.

Wherefore, the said defendant prays that the judgment aforesaid, by reason of the errors aforesaid, may be reversed and for nothing holden, and that the said defendant, Consolidated Gas Company of New Jersey, may be restored in all things that it has lost by reason of said judgment, and that said defendant in error may rejoin to the said errors. 10

LEWIS, BESSON & STEVENS,

Attorneys for Defendant.

March 18th, 1902.

Due and legal service of the within assignment of errors made and accepted this eighteenth day of March, nineteen hundred and two.

SAMUEL A. PATTERSON,

Attorney for Plaintiff.

JOINDER IN ERROR.

[Filed February 28, 1902]

20

And hereupon afterwards, to wit, on the eighteenth day of March, nineteen hundred and two, the said Catharine Brooks, administratrix of John Brooks, deceased, by Samuel A. Patterson, her attorney, comes into court and says that there is no error either in the record and proceedings aforesaid or in giving the judgment aforesaid, and she prays here that the court here may proceed to examine as well the record and proceedings aforesaid as the matters assigned for error, and that the judgment aforesaid in manner aforesaid given may in all things be affirmed, &c. 30

S. A. PATTERSON,

Attorney for and of Counsel with Plaintiff.

TESTIMONY.

Monmouth County Circuit Court. Catharine Brooks, administratrix, *v.* The Consolidated Gas Company et al. Before Hon. John Franklin Fort and a jury.

FREEHOLD, N. J., January 16th, 1902.

For the plaintiff, *Samuel A. Patterson and William T. Hoffman.*

For the defendant, *Lewis, Besson & Stevens and Mr. Smythe.*

10 *Elias Asiel*, called on behalf of the plaintiff, being duly sworn testified as follows :

By Mr. Patterson.

Q. Where do you reside?

A. New York City.

Q. What is your business?

A. Broker.

Q. Did you live in Long Branch or Elberon in 1900?

A. I lived there from May to the 30th of July.

Q. Have you property there?

20 A. Yes, sir.

Q. What does it consist of?

A. Of a house that we lived in and a barn.

Q. I show you a photograph; state whether or not that is your house?

A. Yes, sir.

Q. In 1900, and before that, did you know John Brooks?

A. Yes, sir; he was my gardener in 1898, until he lost his life on the 6th of October, 1900.

Q. What premises did he occupy under your employment during the winter?

30 A. He took care of the house; shoveled the snow off the porches.

Q. Did he occupy the house?

A. He occupied the barn.

Q. What did you pay him for his services per annum at that time?

A. \$40 a month—\$480 a year.

Q. And in addition to that, what did he receive from you, if anything?

A. Now and then he received gifts.

[Objected to.]

Q. Did he receive anything else?

A. He had the free occupancy of the barn.

Q. As a residence?

A. As his residence in the winter time, or from the time that I left until I returned.

Q. What period of time was that?

10

A. That varied; but it was mostly from the 1st of October until the middle of May.

Q. During the summer time, where did he live, if you know?

A. He lived in Oakhurst.

Q. What was his business during that period of time?

A. Gardener.

Q. For you or for anybody?

A. Only for myself; I paid him by the year, \$480.

Q. Did he have the right under his employment with you, to do any work that did not interfere with your work?

A. He had no such right.

Q. You mean his services belonged exclusively to you?

A. Yes, sir.

Q. Did you furnish him with any supplies?

A. No, sir.

Q. You know the Consolidated Gas Company of Long Branch—you know of such a concern?

A. Yes, sir.

Q. In the summer of 1900, did you call at the office of that company and have any conversation with anybody in there representing the company?

[Objected to unless it is connected in some way with the accident.]

The Court—I suppose this witness is called out of order, in order that he may get away to-night.

Mr. Patterson—The purpose of the question is to show that the company was instructed to take the current away from that property.

Mr. Lewis—I object to it on the ground that it is not in any way connected with this accident.

The Court—I will rule it out, as it is not sufficiently definite to show that there was any officer of the company with whom he talked.

Q. Did you call at the office of the Consolidated Gas Company at all, in the summer of 1900?

Mr. Lewis—We object, on the ground that it has no connection whatever with the accident in this case. It may
10 be material as between Mr. Asiel and this company as to the responsibility of either one for this accident, but so far as this case is concerned it is immaterial.

The Court—The question as it stands is immaterial, one way or the other ; it is preliminary only and is admissible.

Exception by defendant allowed and sealed accordingly.

[L. S.]

J. FRANKLIN FORT, J.

A. I called down there on the morning of the 30th of July, 1900.

Q. Did you see any person in there?

20 A. Yes, sir.

Q. Who did you see?

A. I saw a clerk at the desk.

Q. Any one else?

A. I had a conversation with the clerk at the desk.

Q. State it?

Mr. Lewis—We object, and this is all taken subject to our objection and exception.

The Court—Yes, and if it is not connected later on, I will probably rule it out.

30 A. I said to him that Mrs. Asiel had written to him to turn off the current and take out the meter, as we were leaving for the mountains on the 30th of July; he said that he had received the notice and that they would turn off the current and take out the meter.

Q. When did he say they would do that?

A. He said they would do it that day.

Cross-examination by Mr. Lewis.

Q. Is it not a fact that a suit was started against you or your wife, by this plaintiff?

[Objected to as not being a cross-examination and as immaterial. Objection sustained.]

Q. You said that Mr. Brooks received \$480 a year !

A. \$40 a month all the year round.

Q. And you were to have his exclusive services ?

A. Yes, sir.

Q. How many months during the year did he live in the 10 stable?

A. He lived there from about the 1st of October to the middle of May ; if we got down the 1st of June, he lived there until that time.

Q. For a period of seven or eight months in a year ?

A. It was all the way from seven and a half to eight months.

Q. You say that when you were down there, he resided in Oak street ?

A. No, I said Oakhurst.

20

Q. Did he pay his own rent ?

A. He did, so far I know.

Q. You had his services from morning to night, all through the year ?

A. He was in my employ all through the year.

Q. What was the nature of that employment of Mr. Brooks by you ; you said a moment ago that he was a gardener ?

A. He was engaged as a gardener, and, furthermore, he had to sweep the porches, wash the porches of the house, 30 and in winter time, if there was a leak in the roof, or in the shingles, he would repair it ; but he was not engaged to do any repair work, because any repair work that was to be done we employed mechanics to do it ; but in case of a small leak he would repair it if he could.

Q. Then his duties were simply those of inspection ; he was to see if any work was to be done, and he would give the order to have it done ; is not that the fact ?

A. I should not call him an inspector, but if there was a

small leak in the shingles, I should judge that he would repair that without calling a mechanic.

Q. But for other repairs he would call in a mechanic, and it would be done by a mechanic?

A. Yes, sir; he could not do any plumbing work or things of that kind.

Q. Would he do any painting?

A. I never ordered him to do any painting.

Q. In general, then, during the winter months while you
10 were not there, his duties were those of a care-taker?

A. Yes, sir.

Q. And in the summer he was your gardener?

A. Yes, sir.

By Mr. Patterson.

Q. Did you furnish him with coal or oil?

A. I furnished light for him; I paid his gas bills in the winter.

Q. How about the coal?

A. He paid for the coal.

20 By Mr. Lewis.

Q. Do you know what the gas bills amounted to?

A. They did not amount to much; a few dollars a month; it may have been sometimes a dollar and sometimes \$1.50 or \$2.

Q. Not more than \$10 or \$15 a year?

A. I should think it might have been nearer \$15 or \$20 than \$10 or \$15.

William H. Stauffer, called on behalf of the plaintiff.

30 [By consent, the photographs on both sides are admitted in evidence, and the witness, who is a photographer, is withdrawn.]

Charles R. Zacharias, called on behalf of the plaintiff, being duly sworn, testified as follows:

By Mr. Patterson.

Q. What is your business?

A. Electrician.

Q. Where do you do business?

A. At Asbury Park.

Q. In 1900, did you go to Mr. Asiel's cottage in Elberon to examine any electric works or a transmitter?

A. Yes, sir; I went there for that purpose.

Q. I show you a photograph of the transmitter and a wire on a house; is that a representation of what you examined?

A. Yes, sir.

Q. State how recently after the occurrence; was it a short or a long time after the accident?

A. I should say the same day or the following day; a 10 very short time after.

Q. In what condition did you find the transmitter and wire leading into it?

A. The converter—I saw the primary wires leading into the converter, a very short distance from the banister, I should say anywhere from three to five feet; I saw one of the wires bare of insulation.

Q. How was the rest of the wire?

A. It was insulated.

Q. Where did the wire run to, from the converter? 20

A. The primary wire ran from the converter to the pole out on the street.

Q. How long have you been an electrician?

A. I have been one fourteen years.

Q. Are you familiar with insulation of wires and the wiring of houses for electricity?

A. Yes, sir.

Q. What would be the inevitable result of a person touching with his hand an uninsulated wire charged with the electric current such as you saw on the side of that 30 house on that occasion?

A. A touch from that system would more than likely cause death.

Q. It would shock him in any event?

A. Yes, sir.

Q. Is there any generally recognized system that is adopted to protect a person from coming in contact with electric wires from injury where the wires are charged with electricity?

A. Yes, sir ; there are many safeguards thrown around them in the way of insulation.

Q. Is insulation one of them ?

A. Insulation of wire is one of them, yes.

Q. Was there any protection at all at that point—at the point where the converter and uninsulated wire met—from injury to a person coming in contact with that wire ?

Mr. Lewis—It does not appear when this was.

The witness—I was there in the evening, I remember,
10 and everything indicated excitement around there.

Mr. Lewis—I think the date ought to be fixed.

By the Court—

Q. How do you know it was either the day or the day after the accident ?

A. The tin roof, from my recollection, was freshly painted ; the mark from where the paint had been scraped from the roof was fresh.

The Court—Can you prove by other witnesses what time he was there ?

20 Mr. Patterson—Yes, I think so.

The Court—We will take this, subject to that proof.

The Witness—I did not make a memorandum of the date.

By Mr. Patterson.

Q. Was it immediately after your learning of the accident ?

[Objected to as immaterial.]

A. Yes, sir.

The Court—Just let him tell what he saw and you may
30 fix the date when he saw it, afterwards.

Mr. Lewis—I objected to his last question and move to strike out the answer.

[Motion to strike out the answer granted.]

Q. Was there anything at the point where the converter and the wire that was uninsulated met, to protect a person from injury or death, who might come in contact with that wire charged with electricity ?

A. The wire was insulated, except for a few inches where it was bare.

Q. What was there on these few inches to protect a person from death, if he touched that live wire?

A. There was nothing to protect him.

Cross-examination by Mr. Lewis.

Q. In looking at this picture, will you tell where this wire was bare of insulation, for three or four inches?

A. My recollection is that it was directly above the converter; the primary wire there; it looked as if a man had grabbed it and pulled it down.

Q. What did it look like?

10

A. It looked as if it had been pulled.

Q. As if the wire had been pulled down?

A. Yes, sir.

Q. How many feet was that piece of bare wire above the floor of the porch?

A. I did not measure it.

Q. How many feet would you say?

A. I would suppose about five feet from the roof of the porch, to the wire; it may be six feet; it was an easy reach.

20

Q. How many feet from this corner of the house was this wire?

A. I would say it was directly there (indicating on picture).

Q. Was it not some foot or so around the corner of the house?

A. Perhaps so; it was an easy reach from the roof of the porch, to the wire.

Q. But it was not actually over the porch, was it?

A. It was around the corner of the house—I show you 30 the picture?

A. The picture is just as it was there.

Q. It was not over that porch, over the open porch?

A. No, it was not.

Q. It was around the corner of the house, was it not?

A. Yes, sir.

Q. A man standing on this porch would have to reach around the corner of the house to grab that wire, would he not?

A. If he was leaning, as I understood was the case—he was painting this leader there——

Q. I did not ask you that; the point is this, a person standing on this porch, would have to reach around the corner of the house to grasp the wire where it was bare, would he not?

A. Yes, sir.

Q. Do you know how many volts that wire carried?

A. Not absolutely, no.

10 Q. Do you know about?

A. Two thousand, I should say.

Q. Does insulation of itself completely protect a wire from giving a shock to a person when the wire is charged with two thousand volts?

A. If the insulation is such as is generally used on overhead wires, no, sir; I would not say so.

Q. So that a person touching an insulated wire would receive a shock?

A. Yes, sir; exactly, the chances are that he would.

20 Q. And the tendency of the shock is to grab it tighter—if a person grabbed a wire with his hand, his hand would be held to the wire by the shock?

A. He could not release his hand from the wire.

Mr. Hoffman—Do you mean an insulated wire, Mr. Lewis?

Mr. Lewis—Yes.

By the Court—

Q. (To the witness.) Do you mean that?

30 A. Yes, sir, as the wires are usually insulated; there are forms of insulation, that a man would be perfectly safe in doing it, but they do not use them in average electrical construction.

By Mr. Lewis—

Q. I was asking for the average electrical construction for overhead wires, is it not the natural tendency of one who has grabbed a wire that way to still grasp it until dragged away from the wire?

[Objected to.]

A. He evidently fell, and in falling had a tendency to

sag that wire ; I do not think it was caused by the grabbing; I think his body fell, and that would be the tendency.

Q. That is your opinion?

A. Yes, sir.

Q. You examined all the wires around that converter, did you not?

A. Yes, sir.

Q. And that is the only place that you found that the wire was bare of insulation?

A. I have no recollection of any other brake in the insulation. 10

By Mr. Patterson—

Q. Have you ever examined the overhead wires of electrical companies to determine the degree of shock you would get from taking hold of an insulated wire?

A. No, sir.

Q. Then from what do you deduce your statement that the overhead wires of electric companies usually in vogue at the present time are not sufficiently covered by insulation to avoid a shock to a person taking hold of them? 20

[Objected to on the ground that counsel is trying to contradict his own witness. Objection overruled.]

Exception by defendant allowed and sealed accordingly.

[L. S.] J. FRANKLIN FORT, J.

A. I have been in business long enough to get shocks from insulated wires.

Q. Did you ever get a shock from an overhead electric wire of the average electrical company?

A. No, sir.

Q. Then you do not know the degree of shock that a 30 person would receive from coming in contact with the average insulated overhead electrical wire?

A. Not personally ; no, sir.

Q. What is insulation?

A. It is generally a gutta percha or rubber insulation; cement and cotton braid, saturated with tar or paraffin, and so on.

Q. Covering what?

A. Covering the gutta percha.

Q. You said a moment ago that there is an insulation that is safe ; what is it ?

A. It is an extra heavy insulation of rubber with braid on the outside.

Q. Is that used by persons operating electrical works to cover wires ?

A. Not on outside overhead construction.

Q. Can it be used for overhead construction ?

[Objected to. Objection overruled.]

10 A. It can be used ; yes, sir.

By the Court—

Q. But it is not used ?

A. No, sir.

By Mr. Patterson—

Q. At the point where this converter was, within a foot of a place where a person could stand or might stand and within a foot of where a live electric wire was, if an insulation of the kind you have last referred to had been upon that wire at that point, what would have been the result to
20 a person, in your opinion, touching it ?

Mr. Lewis—We object, because the counsel has put a question to an expert witness, and he has misstated the facts in stating that the wire was a foot away from a certain point, when it was five feet above the level of the porch floor and around the corner of the house, and a person would have to reach around to grasp the wire. If counsel would change his question——

[Question withdrawn.]

Q. If that wire had been insulated in the method you
30 have last described, would it have been dangerous to a person touching it ?

[Objected to on the ground that the witness has stated that that form of insulation is never used for overhead outside construction.]

[Objection overruled.]

A. I believe it could have been insulated heavy enough so that if——

The Court—No, that is not the question.

[Question repeated]—If that wire had been insulated in

the method you have last described, would it have been dangerous to a person touching it?

A. No, sir.

By Mr. Lewis.

Q. How long have you been in the business?

A. About fourteen years.

Q. And whether a wire is properly insulated or not depends on the amount of voltage, does it not?

A. Yes, sir.

Q. And the insulation about which you have just spoken 10 is never used, is it, for overhead, out-of-door construction work—in your opinion, is it ever used for outdoor, overhead construction work?

A. I have never seen it used.

John T. Lovett, called on behalf of the plaintiff, being duly sworn, testified as follows:

By Mr. Patterson.

Q. What is your business?

A. A nurseryman.

Q. Where?

20

A. At Little Silver.

Q. Did you know John Brooks?

A. I did.

Q. Did you know him in 1900?

A. I did.

Q. How long before that had you known him?

A. I had known him for about five years.

Q. At the time you knew him, what was his business?

A. Gardener.

Q. What was his capacity as a gardener?

30

A. He was a first-class gardener.

Q. What are the average wages of a first-class gardener, if you know?

Mr. Lewis—We object, on the ground that it is not what the average wages of a first-class gardener may be; their own proof is, that he was getting \$40 a month.

The Court—What his earning capacity is, may be shown. It is competent.

Exception by defendant allowed and sealed accordingly.

[L. S.]

J. FRANKLIN FORT, J.

A. From \$35 to \$60 a month.

Q. A gardener of John Brooks' capacity?

A. I should say about \$40 or \$50 a month.

Cross-examination by Mr. Lewis.

Q. How long did you know Mr. Brooks?

10 A. About five years.

Q. What did you know about his ability as a gardener?

A. I came in contact with him a great many times during the summer and he always seemed like a careful, painstaking and a very good gardener.

Q. And a gardener of Brooks' ability, in your opinion, is worth from \$40 to \$50 a month?

A. Yes, sir.

Adjourned to to-morrow, January 17th.

George Travers, called on behalf of the plaintiff, being
20 duly sworn testified as follows :

By Mr. Hoffman.

Q. Where do you reside?

A. Long Branch.

Q. What is your business?

A. Gardener.

Q. Do you remember the 6th day of October, 1900?

A. Yes, sir.

Q. Where were you employed at that time?

A. I was employed at Elberon at that time.

30 Q. Did you know Mr. Brooks in his lifetime?

A. Yes, sir.

Q. Did you know where he was employed?

A. Yes, sir.

Q. How far was it from where he was employed, that you were engaged?

A. Not over one hundred feet apart.

Q. On adjoining properties?

A. Yes, sir.

Q. On the 6th day of October, did anything happen out of the ordinary at this house of Mr. Asiel?

A. Yes, sir.

Q. What was it?

A. John Brooks got killed on the wire there up on the house.

Q. What was the first thing that attracted your attention?

A. The first thing that attracted my attention was the 10 screaming of his wife and children.

Q. Where was his wife when she was screaming, if you know?

A. She was right below on the lawn.

Q. How far was that from the house?

A. Not over fifty or sixty feet.

Q. At what time of day was this?

A. About five minutes after twelve o'clock in the day.

Q. When you heard the screaming of the wife and children, what did you do, if anything?

20

A. I ran over; I was about to have lunch, and I went over to see what was the trouble, and I ran over to Mr. Asiel's cottage.

Q. Where did you go first when you got there?

A. I went immediately to the place where the man was hanging on the wire—not upstairs at the time, but down—for I saw him hanging with his head down and his hand on the wire.

Q. You say that he was hanging down?

A. Yes, sir.

30

Q. His head was down by what?

A. Over the rail or baluster, whatever it may be called.

Q. Look at this photograph and see if you can identify that as being the representation of the place?

A. It is not necessary for me to look at it; I know the situation.

Q. This was on the second projection of the house?

A. It was what I call the first story.

Q. I see by the photograph that there is a baluster there; explain how that baluster was situated?

A. There was a tin roof there, and there was a railing between three and four feet high.

Q. When you say a tin roof, you mean a tin floor, do you not?

A. This roof was covered with tin.

Q. What I want to get at is, when you say the tin roof, was that the roof above where Mr. Brooks stood, or was it the roof that he was standing on?

A. The roof on which Mr. Brooks stood was tin.

10 Q. He stood upon the tin?

A. Yes, sir.

Q. You say there is a baluster there three or four feet high?

A. Yes, sir.

Q. Do you know where the transmitter was situated?

A. Yes, sir; up on the house.

Q. How far was that from the end of the baluster?

A. About four inches.

Q. How high was it from this tin floor, to the electrical
20 apparatus?

A. Four feet, six inches.

Q. How do you know that?

A. I measured it.

Q. When did you measure it?

A. I measured it the same day, or the day afterwards.

Q. In reference to the position of Mr. Brooks when you first saw him, you say his hand was upon the wire?

A. Yes, sir.

Q. Which hand was that?

30 A. The left hand, I believe.

Q. Where was his right hand?

A. His right hand was hanging over the baluster or railing.

Q. And his head was hanging, where?

A. His head was hanging down.

Q. When his head was hanging down, was that over the baluster, or otherwise?

A. Over it.

Q. Did you notice whether there was anything in his hand?

A. There was nothing in his hand except the hand he had on the wire.

Q. What was the condition of his hand ; the one that was on the wire ?

A. The condition of it was that it was burned all across ; his fingers burned to the bone, so you could lay an ordinary pencil right in it.

Q. When you got there, was he alive or dead ?

A. Dead.

Q. Was there anybody else upon that platform, or roof 10 as you call it, inside the baluster ?

A. Yes, sir ; there were people running up and down.

Q. Did you see the son of Mr. Brooks ?

A. Yes, sir.

Q. Where was he ?

A. He was up with his father on the roof.

Q. Were there any evidences there as to what Mr. Brooks was doing ; could you see from what was there, what he had been doing ?

A. There was a paint can on the roof, and there was a 20 paint brush laying in the gutter.

Q. Was there anything there beside the roof to stand upon ?

A. There was a lattice work up there on the roof.

Q. Slats joined together ?

A. Yes, sir.

Q. Could you see whether he had been painting the slats or the roof ?

A. No, I didn't notice what the man was painting.

Q. Was there fresh paint there anywhere ?

30

A. There was paint in a can.

Q. Was there any evidence of any part of it having been freshly painted ?

A. I could not say about that.

Cross-examination by Mr. Lewis.

Q. Look at this photograph ; you said the height of this above the floor, was four feet six inches. Where did you measure from ; look at the picture and show ?

A. No, I am a very poor judge of these things.

- Q. What part of the roof did you measure from?
A. From the tin.
Q. On the outside of the railing?
A. Right beside the railing.
Q. Was it on the outside of the railing or inside of the rail?
A. The inside.
Q. Where the slats were over the tin?
A. Yes, sir—no, there was no slats on the tin there.
10 Q. I understood you to say there were?
A. No, I didn't say that.
Q. What did you say about slats; I understood you to say there were slats on the tin roof?
A. Yes, sir.
Q. Did you measure from those slats?
A. No, the slats were standing up.
Q. They were not on the roof?
A. Yes, sir; on a part of the roof.
Q. You say the transmitter was how many inches around
20 the corner of the house?
A. Four inches.
Q. Did you measure that?
A. Yes, sir.
Q. Four inches from the corner?
A. Four inches from the corner.
Q. Did you measure the height of the rail?
A. No.
Q. Was the rail inside the corner of the house?
A. I should judge it was, about six inches.
30 Q. From the corner of the house?
A. Yes, sir; in from the edge.
Q. And the gutter that you speak of, where the tin porch was, was on the outside of the rail, was it not?
A. Yes, sir.
Q. How far from the corner of the house was the paint brush?
A. Pretty close; I could not say how far.
Q. When you first saw Mr. Brooks, was his hand on the wire?
A. Yes, sir.

Q. Where were you at that time?

A. I was right down below him on the ground.

Q. On the ground looking up?

A. Yes, sir.

Q. Could you see if his hand was burning at all?

A. No, I didn't notice smoke coming out of his hand; there might have been, but I didn't notice.

Q. And I understand you to say, the left hand was on the wire?

A. Yes, sir; to the best of my knowledge. 10

John A. Brooks, called on behalf of the plaintiff, being duly sworn testified as follows:

By Mr. Hoffman.

Q. How old are you?

A. Ele

Q. Do you remember the 6th day of October, 1900?

A. Yes, sir.

Q. Where were you that day?

A. Up with my father.

Q. With your father, where? 20

A. Up on the balcony where he was.

Q. The balcony of whose house?

A. Mr. Asiel's.

Q. What time did your father go there?

A. About five or ten minutes after twelve?

Q. Had you had your dinner or lunch?

A. No, sir.

Q. What did your father go there for—what was he doing?

A. I think he was going to paint the gutter. 30

Q. Did he have any paint with him?

A. No, sir; he left the paint down by his side.

Q. The paint was down by his side?

A. Yes, sir.

Q. Did you go up after him or before him?

A. Right beside him; I went up with him.

Q. What did you go up for?

A. To help him lift the slats.

Q. What were those slats?

- A. What they put on the balcony.
Q. On the roof?
A. Yes, sir.
Q. What did you want to lift the slats for—what were you going to do with them?
A. Lift them up so he could paint them?
Q. You were going to paint the slats?
A. Yes, sir.
Q. Did you lift the slats up?
10 A. Yes, sir.
Q. Then what did you do?
A. After I got them all lifted up, I went and sat down and played with a ball I had.
Q. What kind of a ball?
A. A rubber ball.
Q. How far were you from your father?
A. About ten feet.
Q. Did you see what your father was doing?
A. No, sir.
20 Q. You were engaged with your ball?
A. Yes, sir.
Q. What was the first thing that you saw, in reference to your father, after you had commenced to play with your ball?
A. The only thing I heard was when he said, "Oh."
Q. Loudly?
A. Yes, sir.
Q. So that you heard it plainly?
A. Yes, sir.
30 Q. What did you do then?
A. I got up and I ran to him.
Q. When you got to him, what then?
A. I ran to him.
Q. How was he when you got to him; was he standing or lying?
A. He was lying over the balcony.
Q. Over the railing?
A. Yes, sir.
Q. What did you do then?
A. I tried to pull him off.

Q. Could you pull him off, or did you?

A. No, sir; I could not.

Q. What occurred to you, if anything?

A. I could not let go of him.

Q. What did you take hold of?

A. I took hold of his shoulders.

Q. Show me whereabouts you took hold of him?

A. Just like that; and I tried to pull him.

Q. And you could not let go?

A. No, sir.

10

Q. Do you know why you could not let go?

A. Because of the electricity.

Q. How did it feel to you?

A. Every minute as if it would burst my neck.

Q. How long did you stay in that position?

A. About two minutes.

Q. How did you get loose?

A. A jerk from the electricity.

Q. It let you loose?

A. Yes, sir; let me off.

20

Q. Threw you off, do you mean?

A. Yes, sir.

Q. Were you injured at all?

A. Yes, sir.

Q. How?

A. My hand; there are five scars on my hand, and right up and down my left side and down to my toe, to the end of my big toe, and it burned a hole in my shoe.

Q. Did someone come to you?

A. Yes, sir.

30

Q. Who came first?

A. A colored man was the first one.

Q. Is he here?

A. No, sir.

Q. Where is he?

A. I don't know.

Q. Anybody else come?

A. Then Mr. Travers came.

Q. Do you know when you got to your father whether he was alive or dead?

A. I could not tell you.

Q. Where was his hand?

A. His left hand was on the wire and the other one was lying in the gutter with the brush in his hand.

Q. Can you show just exactly your father's position?

A. Like that over the balcony. (Illustrating.)

Q. Where was his left hand?

A. Like that.

Q. Whereabouts on his body was the railing?

10 A. About here. (Pointing to his stomach.)

Q. Do you know how high that wire was that your father's hand was upon, when you got there, from the floor?

A. Yes, sir; about four feet.

Q. Do you know how far that was from the precise corner of the house?

A. No, sir; I cannot tell.

Cross-examination by Mr. Lewis.

20 Q. You say it was about four feet from the floor of the balcony?

A. Yes, sir.

Q. And it was around the corner of the house, was it not?

A. Yes, sir.

Q. And the rail was inside the corner of the house?

A. Yes, sir.

Q. Do you know what part of the balcony your father was going to paint?

A. No, sir.

30 Q. You do not know whether he was going to paint the gutter?

A. I know he was going to paint the gutter.

Q. That part of it, outside of the rail?

A. Yes, sir; there was something the matter with the gutter.

Alexander J. Taylor, called on behalf of the plaintiff, being duly sworn, testified as follows:

By Mr. Hoffman.

Q. Where do you reside?

A. Long Branch.

Q. How long have you lived there?

A. About eight months.

Q. What is your business?

A. Tailor.

Q. Do you remember the 6th of October, 1900?

A. Yes, sir.

Q. Where were you that day?

A. I was in Asbury Park.

Q. Do you know the place where Mr. Brooks was killed? 10

A. Yes, sir.

Q. Did you see him that day?

A. Not until I saw him in the coroner's office; I was informed of the accident about three o'clock.

Q. Are you conversant with this house?

A. Yes, sir.

Q. As to its architectural features?

A. I know the house perfectly well.

Q. After you saw Mr. Brooks at the coroner's, did you go to the house? 20

A. Yes, sir.

Q. When?

A. That evening, or that afternoon, about five o'clock.

Q. For what purpose did you go there?

A. I went there to see where the accident happened and where the wire was, and where the transmitter was.

Q. Anybody go with you?

A. Yes, sir.

Q. I show you this picture, see if you can recognize that as a reproduction of that part of the house? 30

A. Yes, sir; that is right.

Q. How far was the floor of that balcony from the ground?

A. I did not take the measurement from the lawn up to the balcony.

Q. Can you give an idea?

A. The photographer who took our pictures measured from the lawn up to the wire, and that was fifteen feet to the overhead wire.

By the Court—

Q. Were you there when he did the measuring?

A. Yes, sir.

Q. You saw him take the measure?

A. Yes, sir.

Q. You say from the ground to the overhead wire, is how high?

A. A little over fifteen feet.

By Mr. Hoffman—

10 Q. Tell me what you mean by the overhead wire?

A. The overhead wire is not exactly on this picture; you have another one that shows the overhead wire.

Q. You mean the wire that comes in from the pole to the transmitter?

A. Yes, sir.

Q. I want to know how far it is from the ground to this floor of the balcony?

A. I should reckon that was about the same height as the overhead wire; it was one flight up.

20 Q. What were the means of access to this balcony?

A. Through the house; there was an entrance from the hall in the house.

Q. There is a fence on the outer part of that balcony; how high was that—this railing?

A. That was a little less than four feet.

Q. How much of that railing was there—how long was it, running from here to where it stopped?

A. About as far as from here to that table.

Q. It was right across the porch?

30 A. Yes, sir; it enclosed the whole thing—about fifteen feet.

Q. What was the condition of that floor when you got there in the afternoon—the floor of the balcony?

A. It was bare, and the slats were up against the wall; up against the house as though some one had been painting them.

Q. When you say against the wall what do you mean?

A. Up against the shingled part against this wall—against the building.

Q. Did you notice this transmitter?

A. Yes, sir.

Q. Do you recall the precise situation—where it was?

A. It was right on the outside of the building.

Q. How far was that from the corner of the balcony, the corner nearer to that wall?

A. Exactly four inches to the wire; to the transmitter was from nine to ten inches; the wire and the transmitter are two different things.

Q. And from the wire to the corner of the house was how far? 10

A. Four inches.

Q. What was the condition of the wire when you got there?

A. Slightly curved.

Q. Does this give a representation of the condition of the wire as you saw it that afternoon?

A. Yes, sir.

Cross-examination by Mr. Lewis.

Q. How did you happen to hear of the accident?

A. I was informed by Mr. Brooks' boy. 20

Q. Were you a friend of Mr. Brooks?

A. I was no particular friend; I was his brother-in-law.

Q. You are the brother of Mrs. Brooks?

A. Yes, sir.

Q. And these measurements that you speak of, were they made by the photographer?

A. No, sir; the measurement from the lawn to the wire, the overhead wire was, but the other measurements were not.

Q. The others were from your own observation that you made in regard to the distances? 30

A. No, sir; I measured them.

Q. The rail of the balcony was inside of the corner of the house, was it not?

A. It was, about two and one-half inches, from the edge, just the width of it.

Q. Of the shingle?

A. No, sir; not of the shingle, but the width of the top of the rail.

Q. And the transmitter and wire were on the edge of the house around the corner?

A. The wire was four inches from the edge of the corner.

Q. On the outside of the house?

A. Yes, sir.

Edward M. Beach, called on behalf of the plaintiff, being duly sworn, testified as follows :

By Mr. Hoffman—

Q. You reside where?

10 A. West Long Branch.

Q. Your profession is what?

A. Physician.

Q. How long have you been a physician?

A. For about seventeen years.

Q. Did you know Mr. Brooks in his li'etime?

A. Yes, sir.

Q. How well did you know him?

A. I knew him, I think, about ten years ; I attended his family about that time.

20 Q. You were the family physician?

A. Yes, sir.

Q. Do you remember the accident that resulted in his death?

A. Yes, sir.

Q. Before that accident, had you noticed as to his condition of health?

A. Yes, sir ; I examined him once.

Q. When was that?

A. That was in 1897 that I examined him.

30 Q. What was the condition of his health then?

A. He had a slight cold—the grip.

Q. Anything further than that?

A. No, sir.

Q. Did you see him occasionally, or frequently, after that time, too?

A. Yes, sir ; I used to see him when I visited his family; that was the only time I ever examined Mr. Brooks, and I remarked at that time that he was a healthy, strong man.

Q. The last time you saw him before the accident was, when?

A. I think in 1899—shortly before the accident.

Q. You made no examination of him?

A. No, sir.

Q. Did you see anything that would indicate that there was anything the matter with him?

A. Not a thing; I would see him frequently; I would go by there three or four times a day, and I would see him at work on the lawn.

10

[Cross-examination waived.]

Charles B. Sexton, called on behalf of the plaintiff, being duly sworn, testified as follows:

By Mr. Hoffman—

Q. Where do you reside?

A. Long Branch.

Q. How long have you lived there?

A. Eighteen years.

Q. What is your business?

A. At the time of this accident, I was sexton of the 20 Elberon Memorial Church.

Q. Is your name Sexton?

A. Yes.

Q. And you are a sexton of a church?

A. Yes, sir.

Q. Do you remember the day of this accident?

A. Yes, sir.

Q. What were you doing that day about noon?

A. I was standing by the front gate of the church, sweeping the sidewalk.

30

Q. How far was that away from this house?

A. About half a block or possibly a little more.

Q. Did anything attract your attention?

A. Yes, sir.

Q. What was it?

A. I heard a woman shriek.

Q. Did you afterwards ascertain who the woman was?

A. I saw from the direction it came, and I ran down the road as far as Mr. Asiel's house.

Q. State what you saw and what you did, in your own way?

A. I ran down to the house, and the first thing I saw was a lady lying on the grass, rolling and shrieking and hollering, and she pointed up that way, and I looked up and saw that there was a man with his left hand grasping the electric wire; I immediately understood what was the matter; I entered the house and rushed upstairs; his little boy, at that time, was standing on the balcony roof; I told the boy
10 not to touch his father, because I saw that he had already been burned; I took hold of the boy by the shoulders and pulled him back and said, "Don't touch your father;" and whether it was the commotion on the roof or what it was, I don't know, but instantly the man's left hand dropped from the wire and rested on the rail; I took hold of Mr. Brooks then, and I think with the assistance of Mr. Worth, who was on one side and I on the other, we laid him down flat on the roof, and I called for water and took my pocket handkerchief and bathed his head and worked
20 his tongue, while some one else was going for a doctor, and while still engaged in this, trying to resuscitate him so far as I knew how, the doctor arrived; the doctor came there and saw the condition of the man, and he said there was life in the man yet, and so he commenced to work, pumping, with the man lying on his back and both hands on the chest, pumping him; the doctor did that for some time, and then he asked me to do the same thing, which I did for some time, and then the doctor said he had better bleed the man, and I tied the ropes around the man's arm here and
30 here, and the doctor opened the veins of both arms; we worked over the man in that position for about two hours and a half.

Q. The result was what?

A. We could not get any life.

Q. You speak of the position of his one hand; what was the position of the other hand when you got there?

A. The right hand?

Q. Yes?

A. It hung over the railing.

Q. Did you notice the distance from where the body was to this transmitter?

A. Yes, sir.

Q. How far was it?

A. His body was about two feet from the transmitter, over the rail.

Q. And the left hand was fast to the wire?

A. When I went up it was fast.

Q. What was the condition of the left hand that was attached to the wire? 10

A. It was so that the hand and fingers were all burned right in, almost to the bone, by the wire.

Q. Were there any evidences there, as to what he had been doing?

A. Yes, sir.

Q. What was it?

A. Painting; the paint brush was laying in the gutter.

Q. And the slats that were used to cover up the floor; did you see where they were?

A. They were standing up against the house. 20

Q. Were there any evidence of new paint upon the slats?

A. No, sir.

Q. What was the condition of that wire that he had hold of; was it in position as it ordinarily would be, if you know, or had it been curved, or detached, or pulled?

A. I could not say the proper position for the wire, but the wire that he had in his hand was in a curve.

By the Court—

Q. You mean curved out of a straight line?

A. Yes, sir. 30

Q. Toward the balcony railing?

A. Directly over it, from the house.

Q. You mean pulled out?

A. Yes, it was a regular bow.

By Mr. Hoffman.

Q. It was not torn from the building?

A. No, sir.

Q. Is this photograph a representation of it?

A. Yes; there is where the man's hand was, right there on that railing. (Showing the jury.) 40

Cross-examination by Mr. Lewis.

Q. The transmitter was around the corner of the house on the outside?

A. Yes, sir.

Q. Around the corner from the porch?

A. Yes, sir.

Q. You say that when you first saw Mr. Brooks, he had his left hand on the wire?

A. Yes, sir.

10 Q. And that afterwards, the left hand dropped?

A. Yes, sir.

Q. Did you look at it?

A. I did, thoroughly.

Q. What did it look like?

A. A mass of burned substance.

Q. What was the substance?

A. That would be hard for me to say; the hand was burned, and likewise gave out a very bad smell.

20 Q. Was that the smell of burned flesh or burned rubber, in your opinion?

A. I should say that it was the smell of burned rubber.

Q. Was there any evidences of burned rubber on his hand?

A. There possibly might have been, because on either side of the cut of the hand, there appeared to be some little bubbles as it were, or blisters.

Q. Rubber blisters?

A. Yes, I think they were rubber blisters, as rubber would make.

30 *George W. Pittinger*, called on behalf of the plaintiff, being duly sworn, testified as follows:

By Mr. Patterson—

Q. Where do you reside?

A. Allenhurst.

Q. What is your business?

A. Life insurance and real estate?

Q. How long have you been in the life insurance business?

A. For ten years.

Q. What companies do you represent?

A. The *Ætna Life of Hartford*.

Q. What is the standard mortuary table?

A. Either the American or the Combined, in this country.

Q. Are you familiar with those tables?

A. I am.

Q. Have you them with you?

A. I have the American, not the Combined.

Q. What is the expectation of life according to the American mortuary table, of a man in sound, healthy condition, between the age of forty-nine and fifty?

A. At forty-nine, it is 21.6 years; at fifty, it would be 20.9 years.

Q. What book are you reading from?

A. The book prepared by the *Equitable Life Insurance Company*.

Q. What does it contain?

A. It contains a table of rates.

Q. Does it contain a mortuary table?

20

A. Yes, sir; all of the tables in connection with the life insurance.

Q. What are they?

A. Mortuary tables, compound interest tables, and other tables based on the expectancy table.

Q. What reference is there to the American Mortuary Table?

A. It gives it complete.

The Court—There is no use going into that; counsel will not dispute that.

30

Mr. Lewis—No, sir, we do not. I have no objection to that.

Mr. Patterson—I offer the table in evidence.

Mr. Lewis—I think the witness' testimony is evidence enough; I am willing to take it.

By Mr. Lewis—

Q. The expectancy of life of a man is that he will live about seventy years, according to that table?

A. It varies according to the age.

Q. If he was forty-nine he would live, you say, to about seventy years?

A. Yes, sir.

Q. That is, a perfectly healthy man?

A. Yes, sir.

By the Court—

Q. His expectancy is about twenty years?

A. Yes, sir.

Mr. Lewis—Mr. Brooks' age has not been proven yet; I
10 suppose that will be proved later on?

[Plaintiff's counsel offers in evidence the record of the Surrogate's Court of Monmouth county, showing the appointment of Catharine Brooks, administratrix of John Brooks, deceased.]

Mr. Lewis—We admit that without its being proved.

The Court—They will be admitted in evidence.

Catharine Brooks, called on her own behalf, being duly sworn, testified as follows:

By Mr. Patterson—

20 Q. Where do you reside?

A. Long Branch.

Q. Are you the plaintiff in this suit?

A. Yes, sir.

Q. Are you the widow of John Brooks, deceased?

A. Yes, sir.

Q. When were you married to Mr. Brooks, and where?

A. I was married to him in England, about fourteen
years ago the 13th of June.

Q. Were any children born of the marriage?

30 A. Yes, sir, John A., Florence and Blanche; three children.

Q. What are their ages?

A. Eleven, nine and three years?

Q. Where do they live?

A. Long Branch.

Q. With whom?

A. With me.

Q. How long did you live in Long Branch with Mr. Brooks?

A. We did not live in Long Branch at all, when Mr. Brooks was living; we came to Dr. Hoffman's place at Elberon first, about nine or ten years ago.

Q. How long had Mr. Brooks been in the employment of Mr. Asiel?

A. About three years.

Q. In Elberon?

A. Yes, sir.

Q. As a gardener?

A. Gardener and care-taker.

10

Q. Where did his family reside during those three years?

A. We lived on Mr. Asiel's place during the winter months, and in the summer we went to Oakhurst.

Q. Where did you reside there?

A. In our own house there.

Q. A house of your own?

A. Yes, sir.

Q. Who supported the family?

A. My husband.

Q. What was Mr. Brooks' age?

20

A. He was in his fiftieth year; he would be fifty the 12th of January the following year.

Q. This accident occurred on the 6th of October, 1899?

A. In January, 1900, he would be fifty years old.

Q. Was he a large man or a small man?

A. A large man, well built.

Q. What was his health?

A. I knew him to be sick only for a cold.

Mr. Lewis—I think the accident happened on the 6th of October, 1900.

30

The Court—Let us get that right; which year was it?

The Witness—He was not fifty when the accident occurred; I know he would not have been fifty until the following January from the accident.

Q. Then he would have been fifty last January, a year from this time?

A. Yes, sir.

Q. What were his habits in regard to the expenditure of money?

A. His habits were to his home and family and his duty to his employer.

Q. Do you know what his income was at the time of his death?

A. Yes, sir.

Q. What was it?

A. Mr. Asiel paid him \$40 a month the year 'round; when my husband engaged with Mr. Asiel he held a position with Mr. Dees, at Hollywood, where he received \$40 a
10 month and we lived there all the year around, and in summer we had milk and vegetables and in winter we had light and heat, besides the house, and Mr. Asiel told him that he would prefer to give him the same wages and he would make up in other respects what we had been getting, and he intended to build a cottage on his land——

[Objected to, and on motion of defendant's counsel, the last part of the answer as to what Mr. Asiel intended to do, is stricken out.]

Q. It has been said here that you lived in a barn that
20 was fixed up as a house?

A. Yes, sir.

Q. What was furnished you there, as an equivalent for money—anything?

A. Only gas in the house; as Mr. Asiel said, as a matter of gift, he made up——

[Objected to.]

The Court—Let it stand as Mr. Asiel himself said and not what she understood him to have said.

Q. Where were you at the time this accident occurred?

30 A. I was in the barn, in our own rooms.

Q. What time of day was it?

A. Noon.

Q. When had you last seen Mr. Brooks, prior to the accident?

A. Ten or fifteen minutes before; he was upstairs.

Q. In the barn?

A. Yes, sir.

Q. Where did he go?

A. He came up to throw his coat off, remarking that it
40 was a very hot day, and he said——

[Objected to.]

Q. I asked you where he went?

A. He went downstairs to go up on the roof as he

says—

[Objected to.]

The Court—If there is any statement of his on the record it will be stricken out.

Q. Where did you see him next?

A. My little girl called me from downstairs to come quick, that papa was dead. 10

Q. Where did you see him next?

A. I went downstairs across the lawn, and as I crossed the lawn I saw him on the balcony, and I went through the house and caught hold of my husband and tried to get him off the wire and I was shocked at the time; I think I was, I could not do anything.

Q. I show you a photograph of the balcony; is that the balcony that you refer to?

A. Yes, sir.

Q. In what position upon that balcony did you find him? 20

A. His left hand was on the wire.

Q. His left hand was on what wire?

A. Where that is slightly pulled there.

Q. You mean the wire immediately below the left hand knob, as it shows there on the side of the house?

A. Yes, sir.

Q. The wire that is slightly pulled?

A. Yes, sir.

By Mr. Lewis—

Q. The wire that is slightly curved, you mean? 30

A. Yes, sir.

By Mr. Patterson—

Q. Was he on the floor of the balcony?

A. Yes, sir; his feet were.

Q. Where was he leaning, if at all?

A. Over the railing.

Q. Was the wire broken?

A. I don't know anything about the wire; I didn't go near the wire; he had hold of the wire.

Q. You do not know whether it was broken or not?

A. No, sir.

Q. The wire that he had his hand on, was it insulated or not?

A. I don't know.

Q. Was it covered with any cloth?

A. I don't know.

Mr. Lewis—I do not want counsel to be so leading.

Q. Was he living or dead?

10 A. I don't know.

Q. What did you do?

A. I caught hold of the hand on the other side and placed my two hands on him, and my little boy was lying unconscious and I caught hold and a colored man, I think it was, called out, "My God, Mrs. Brooks, keep away from your husband," and all I remember was when I was on the grass.

Q. Who picked the little boy up?

A. I don't know.

20 [Cross-examination waived.]

Harry E. Shaw, called on behalf of the plaintiff, being duly sworn, testified as follows:

By Mr. Patterson—

Q. Where do you reside?

A. Long Branch.

Q. Are you a practicing physician?

A. I am.

Q. How long have you been such?

A. For three and a half years.

30 Q. Are you acquainted with the premises of Mr. Asiel, in Elberon?

A. Slightly.

Q. In October, 1900, were you there?

A. I was called to Mr. Asiel's cottage.

Q. Did you know John Brooks?

A. I did not.

Q. Did you find his body there?

A. I did; what I was told was his body.

Q. Where did you find him?

A. Lying on the balcony or roof of a porch.

Q. Do you recognize that picture as the representation of it?

A. Yes.

Q. Was he prostrate upon the floor?

A. He was.

Q. State if you observed, or not, the electric converter?

A. I looked at it.

Q. Did you see any wire there?

A. I did.

10

Q. Was it covered with anything, or was it bare?

A. Part was covered and a portion bare.

Q. Did he have his hand upon anything?

A. I saw him an hour after the accident occurred, and he was lying at that time prostrate on the floor of the balcony.

Q. The piece that you say was not covered, can you show it on the photograph?

A. I think it was this piece in here.

Q. Do you mean the loop?

20

A. The loop above the transmitter.

Q. Did you do anything there?

A. I merely made an examination and found that the man was dead—if I might state, Dr. Barauk had been working over him for at least an hour before I reached there.

Q. Was there anything about his appearance that indicated to your mind the cause of his death?

A. His left hand was very deeply burned right down to the bone.

30

Q. What did that indicate?

A. Together with the surroundings, it indicated that he had had hold of a live wire.

Cross examination by Mr. Lewis—

Q. How much of this wire was bare?

A. I think about two or three inches.

Q. About the width of a hand?

A. About that; yes, sir.

Q. Did you examine Mr. Brooks' hand?

A. I did.

Q. What was its appearance?

A. The tissues were burned through, right down to the bone, revealing two or three bones of the hand, and the skin and tissues were charred, and also there was some black substance or material that appeared very much like the insulation from the wire.

Q. Did it look like rubber?

A. Like rubber or rubber tissue.

10 Q. You picked some of that off the hand, did you not?

A. Yes, sir.

By the Court—

Q. As to whether you noticed the condition of this bareness of the wire—how long the insulation had been off—could you tell from the indications whether it was a fresh break, or an old break?

A. The wire was dark-colored; that is all I noticed; it was not a brilliant, bright copper wire.

Q. The bare part, you mean.

20 A. Yes, sir.

Q. How closely did you examine it; to what extent did you look at the broken place on the wire?

A. Just a casual glance; looked at it for a moment or two.

Q. You did not examine it at all?

A. Not carefully.

Q. You did not note whether there were any pieces of insulating material on the wire?

A. I noticed that much; part was covered by insulation
30 and part was not.

Q. The part that was not covered, was it entirely clear, or not?

A. Entirely clear.

By Mr. Lewis—

Q. Did it have the appearance as if it had been pulled off?

A. It had.

By Mr. Hoffman—

Q. What do you mean; what was pulled off?

A. I thought he meant the insulation—that it was pulled down.

By Mr. Lewis—

Q. Yes, it had the appearance as if the insulation had been pulled down?

A. Yes, sir.

Q. You speak of the wire being a dark color; was it the same appearance as the dark color on the hand?

A. Yes, sir; it was.

Q. So it had the appearance of being dark rubber, or burned rubber?

A. It did.

10

Q. That is, on the bare part?

A. Yes, sir.

By Mr. Patterson—

Q. You cannot tell whether there had been any insulation on there at the time of the accident or not?

[Objected to on the ground that the witness came there an hour after the accident. Objection overruled.]

Exception by defendant allowed and sealed accordingly.

[L. s.] J. FRANKLIN FORT, J.

A. I could not tell.

20

John A. Eaton, called on behalf of the plaintiff, being duly sworn testified as follows:

By Mr. Patterson—

Q. Where do you reside?

A. Elberon.

Q. What is your business?

A. Contractor.

Q. Did you know the premises of Mr. Asiel, in Elberon, in 1900?

A. Yes, sir.

30

Q. Did you know John Brooks, the deceased?

A. Yes, sir.

Q. How long?

A. I have known him ever since he first went to work for Dr. Hoffman; I should think maybe seven or eight years.

Q. In your business as a contractor did you ever come in contact with him?

A. Quite a good deal.

Q. In what capacity?

A. The first time that I ever came in contact with him I got him a job at Mr. Deeves.

Q. Did he ever work under your observation?

A. Yes, sir.

Q. In what way?

A. I did Mr. Deeves' work there; he worked there [for a while.

10 Q. What was he doing there?

A. He was a general gardener.

Q. What do you mean by "a general gardener"?

A. He took care of his garden, and was a caretaker of his place when he was away; he had general supervision of the place.

Q. What was his qualification?

A. I called him an A No. 1 man.

Q. Do you know what wages——

[Objected to. Question withdrawn.]

20 Q. Did you go to Mr. Asiel's house on the day of this accident?

A. Yes, sir.

Q. What attracted your attention?

A. Just after dinner—we were at work down toward the sea, on the road to the accident——

Q. What time was it?

A. Between half past twelve and one o'clock.

Q. What did you find there?

A. I found this man, Mr. Brooks, on this tin roof of the
30 piazza, or whatever it was, and Dr. Barauch and someone else working over him.

Q. Was he lying down on the floor of the balcony?

A. Yes, sir.

Q. Was he alive at that time?

A. Sometimes they thought he was, and then it turned out that he was not.

Q. Did you notice any converter on the side of the house?

A. I noticed the box there.

40 Q. I show you this photograph; is that it?

A. Yes, sir.

Q. Did you notice that small wire that appears to have a loop to it?

A. Yes, sir.

Q. Did you notice whether any part of that was covered with insulation?

A. When I got there, part of it was not covered.

Q. Did you see any evidences around anywhere on the floor or elsewhere of any part of it?

A. I did not.

Q. Just describe the appearance of that part of the wire that was not covered?

A. The piece of wire, I should judge it was what you would take up in your hand, was uncovered; it was as if some one had pulled it to make a little bend in the wire from the converter.

Q. Was there anything about that piece of uninsulated wire that indicated that the insulation had been burned off there or that it had never been on there?

A. I am not prepared to say, for I could not say whether it had been pulled off or whether it had been off.

Q. Was there anything that impressed your mind as to which it was?

A. No, sir.

Q. There was nothing to indicate it specially on the wire that you saw?

A. That is all that I took particular notice of.

Q. How close were you to this wire?

A. So I could have touched it if I had wanted to.

Q. Did you notice from what direction the wire came, that went into that converter or box?

A. All I noticed was that it came from the street from a pole.

Mr. Hoffman—Is there any question but what this was the wire of the company?

Mr. Lewis—I do not think so; it may be a question whether it was the wire of the company or the wire of the owner, perhaps.

[Cross-examination waived.]

Charles D. Strong, called on behalf of the plaintiff, being duly sworn testified as follows :

Mr. Patterson—

Q. Where do you reside?

A. Long Branch.

Q. What is your business?

A. General manager of the Consolidated Gas Company of New Jersey.

Q. The defendant in this suit?

10 A. Yes, sir.

Q. How long have you been their general manager in Long Branch?

A. Since June, 1898.

Q. Then you were manager of the affairs of the company in October, 1900?

A. I was.

Q. Did you know the premises of Mr. Asiel in Elberon, where this accident occurred?

A. Only in a casual way, the same as I would know any
20 other ordinary cottage.

Q. Did your company furnish that property with any electric current?

A. It did.

Q. On October 6th, 1900?

A. No; they used no current in the property at that time; there was no current in the house at that time.

Q. But in the converter?

A. Well, I could not say positively, whether it was, or whether it was not.

30 Q. The current that is said to have killed Mr. Brooks, was furnished by what company?

A. The Consolidated Gas Company.

Q. Do you know who strung the wires from the street, to that house, to the converter?

A. It was done by our order.

Q. Who owned the wires that went into the converter, if you know?

A. They were owned by us.

Q. Who made such examinations as were made, if any

were made, of the wires of your company from time to time?

A. It was done by the linemen in the employ of the electrical department.

Q. Who were the linemen?

A. I could not tell all of them at that time; I do not remember; there are two or three; a man by the name of Anderson; a man by the name of White, and a man named Sanford; that is all that I remember at the present time.

Q. Did you go to this house after you heard of the occurrence?

A. I did not.

Q. When was the current turned off of the house?

Mr. Lewis—Do you mean on the inside of the house?

Mr. Patterson—Yes.

A. I think it was July 31st, if I remember the date correctly, on the workman's report.

Cross-examination by Mr. Lewis.

Q. What do you mean when you say the current was cut off from the house?

20

A. The meter was taken out.

Q. How did you happen to take the meter out on July 31st?

A. I presume it was ordered out by Mr. Asiel or someone in his employ.

Q. Do you know?

A. No; I don't know positively.

Q. At whose instructions was this transmitter put on the house?

A. I presume that was ordered by the superintendent of the electric department.

Q. Who told you to put the transmitter on that house?

A. The house was originally supplied with an underground cable; the cable became faulty, defective and it was a source of considerable annoyance in that neighborhood to other customers, and the superintendent of the electric department reported that fact to me and I instructed him to advise Mr. Asiel that he must repair that cable at once or we should be compelled to cut him off, as we could

not permit our other customers in that territory to be annoyed by his faulty cable.

[Objected to as immaterial.]

The Court—You were asked how came you to put on the transmitter; never mind anything that preceded that; just answer that question.

A. Mr. Asiel wanted to know if we could not arrange it to supply him overhead, and not compel him to renew his cable that summer, and we told him if he would arrange 10 his secondary wiring, we would supply him for the balance of the summer with an overhead line. I think he objected to placing a pole in his yard, and that compelled us to put a transmitter on the house.

By Mr. Hoffman—

Q. Do you know this of your own knowledge?

A. Yes, sir; this was reported to me; the distance from the pole to the house was so great that we did not want to put up the wire that distance without support, on account of its liability to break down.

20 By Mr. Lewis—

Q. Did you tell Mr. Asiel that you would have to put a transmitter on the house or on a pole?

[Objected to as leading.]

The Court—After that talk, what did you do?

A. He went ahead and arranged with some electrician to have the secondary wires put in, and after that we put up the transmitter and made the connection so he could have light.

Q. Who was the electrician?

30 A. Mr. Shields.

By the Court—

Q. What do you mean by secondary wires?

A. Those are the wires leading from the transmitter into the house; the transmitter reduces the tension of the current.

Q. Are any of the wires shown in the picture—the secondary wires?

A. Yes, sir; these are the ones—(indicating).

Q. Then the wire in the loop is not a secondary wire?

40 A. No, sir; that is not a secondary wire.

By Mr. Lewis—

Q. As I understand you, Mr. Asiel objected to that transmitter being on a pole in his yard?

A. He objected to placing a pole in his yard, and the pole in the street would be too far away from the house, with a heavy wire.

Q. And hence you put the transmitter there?

A. We then put up a smaller wire because it carried a higher tension of current.

Q. Do you know how that wire was put up?

10

A. No; I did not see the wire.

By the Court—

Q. What do you say about a smaller wire?

A. The higher the pressure of the current, the smaller the wire to carry a given quantity of current.

Q. Because of the distance of this pole from the transmitter, you were compelled to put up a lighter wire?

A. We were compelled to go in with a heavy current, so we could go, by a lighter wire and assure the safety of its not falling down.

20

Q. Then you put this transmitter on the house in order not to allow so much current go into the house?

A. Yes, sir; that reduces the pressure; that is the purpose of the transmitter.

Q. Then there was more current above the transmitter, where the man took hold, than there was below it?

A. A higher voltage—a higher pressure?

Q. What is the difference in the voltage between that above and that below?

A. One hundred volts below and two thousand above.

30

Q. One thousand nine hundred volts difference?

A. Yes, sir; one thousand nine hundred volts difference, that is, between here and here—(indicating on photograph.)

Q. Above and below the transmitter?

A. Yes, sir.

By Mr. Lewis—

Q. Did you use wire that was usually used in that line of work?

[Objected to as not being a cross-examination.]

A. We did.

40

Q. With the usual form of insulation on them?

A. Yes, sir.

Q. How about the effectiveness of that form of insulation?

[Objected to, unless it is shown that he is acquainted with the different kinds of insulation from tests that he has made.]

The Court—You had better let it stand where it is ; that is as far as you ought to be allowed to go on cross-examination.
10

Mr. Lewis—I do not mean to go into that, but the question of insulation was brought up.

The Court—He has testified that those wires were insulated in accordance with the usual custom of such wires ; I think that is all you are entitled to.

Catherine Brooks, recalled on her own behalf.

By Mr. Patterson—

Q. How much of the income of Mr. Brooks did he expend upon the family for its support and comfort?

20 A. He usually gave me his check every month when he received it.

Q. If he did not give you his check, how much would you get of it?

A. The whole amount, usually.

Q. The word “usually” does not convey anything definite?

A. If he wanted to pay any bills with it where he went to change the check, he would pay them and the remainder he would bring home to me.

30 Q. How much of his annual income, in dollars, was spent upon his family?

A. I could not say.

Q. About how much ; his total income was \$480 ; how much of that went into the family?

A. The biggest part of it, except what he expended for himself.

Q. The biggest part—that is not very definite?

A. I never made a record of the biggest part of it.

By the Court—

Q. How much of that money would you say he spent on himself, exclusive of you and the children and the household matters?

A. He never spent more than one or two dollars a week; sometimes not even that; if he had bills to pay he paid them.

By Mr. Lewis—

Q. He bought his own clothes, did he not?

A. Very little clothes he had to buy? 10

By Mr. Patterson—

Q. Why did he not have to buy clothes?

A. Because they were mostly given to him.

Q. By whom?

A. The owners of the property where he usually worked.

Harry E. Shaw recalled on behalf of the plaintiff.

By Mr. Hoffman—

Q. When you saw that transmitter there, was it indicated to your mind that it was all covered and insulated?

A. The wires, do you mean? 20

Q. The wire—this loop?

A. I said it was all covered except two inches or so, bare.

Q. There was some evidence of some part of that wire having been insulated or covered?

A. Yes, sir.

Q. But there were two or three inches that was not covered?

[Objected to as leading.]

A. Yes, sir. 30

Q. How much of it as you say, was not covered?

A. About two or three inches.

Q. Could you form any opinion as to where the evidences of insulation came from, with reference to that wire—those that you saw?

[Objected to.]

Q. I understood you to say there were some evidences of rubber in the wound; having your attention drawn to that and your attention also drawn to the wire that you

saw, could you form from those two things an idea as to where—from what part of that wire—those evidences of insulation came?

A. I judged it came from the portion of the wire that was then uncovered, because the insulation was in his hand—portions of it, and the wire was bare, and I naturally inferred that the insulation in his hand came from the wire.

By the Court—

10 Q. Were those evidences all the way along through the hand or only on the edges?

A. No, there were pieces in the hand.

Q. All the way through?

A. All the way through it.

Plaintiff rests.

Mr. Lewis—I move that the testimony of Mr. Asiel, stating that he had gone to the office and ordered them to take out the meter from his house be stricken out; I do not think it has been connected with the accident; it was
20 admitted yesterday, with the understanding that if it was connected later on with this accident, with Mr. Brooks in any way, it would then be admissible.

The Court—The testimony of your own superintendent this morning is that that order was given, and also that it was cut off prior to this accident, so I do not see how that testimony could prejudice you in any event; the current was cut off in accordance with the order, and cut off prior to the accident, so far as the house was concerned. I think Mr. Asiel said he called there prior to the time the superin-
30 tendent now states that it was cut off. If you want it out under those circumstances, I will strike it out.

Mr. Lewis—I think it is immaterial and we will leave it as it is.

Mr. Lewis—I move for a non-suit on the ground, first, that they have failed to prove any negligence on the part of the defendant company. As the evidence stands at present, I do not see that there is anything upon which the negligence of the defendant company can be predicated.

Secondly, that the decedent was guilty of contributory negligence.

Counsel for plaintiff argued in opposition to the motion.

The Court—I have had some difficulty about this case during the taking of this testimony, and still have, about my duty in the matter. I think it is always a safe rule not to take a case from a jury if there is any thing upon which negligence may be predicated on the defendant's part. The thought I had in my mind, I hardly think I will express now, in view of the conclusion which I have arrived at 10 during this argument. It is not my practice, when I am intending not to non-suit, to state the reasons, because sometimes it is prejudicial to the rights of the defendant when the case finally goes to the jury, if it goes, later on.

I think this case, on one branch, should be further heard on the part of the defendant. There is something in the case, as was expressed by Justice Garrison, that calls for the defendant to tell about, and that is, as to the inspection of this wire. Suppose it should appear that this was a proper insulation—the usual and customary insulation—and the 20 jury thought it was sufficient insulation at the time it was put up. That is not enough in the use of a dangerous instrument. The defendant, or person erecting it or using it, is charged with another duty, and that duty is, inspection; that it shall continue in the condition which is usual and ordinary for the sort of agency contained in it, after it is erected and put in use. The same principle applies here as applies to railroad appliances on a train; it may be good when it is put on, but if six months afterwards an accident happens it must appear that it was inspected and 30 that it continued good up to the time of the accident.

Without referring to any of the questions of negligence in the defendant, about which I have doubts, or the contributory negligence on the part of the deceased, there is no evidence to show inspection, or lack of inspection, in this case; so I think I should not non-suit at this time. I may, later, when the case gets further on, after the defendant's evidence is in, pursue the course which the Court of Errors said should have been taken in the Newark Electric Light

Company v. McGilvery, 33 Vroom 451, but I will not non-suit at this time.

Exception by defendant allowed, and sealed accordingly.

J. FRANKLIN FORT, J. [L. s.]

James R. Shields, called on behalf of the defendant, being duly sworn, testified as follows :

By Mr. Lewis—

Q. What is your employment ?

A. Superintendent of electric construction ?

10 Q. What was your employment in the summer and fall of 1900 ?

A. Constructing electrician at Long Branch.

Q. State if you were ever employed by Mr. Asiel in regard to the electric apparatus upon his house ?

A. I was.

Q. State the circumstances of that employment and what was done by you ?

A. Mr. Asiel's original cable having become grounded, necessitated having a new one or some other method of
20 construction, and in order to facilitate matters and not dig up his lawn, he requested me to run the wires temporarily on the outside of the building, so the electric light company could get up their outside service, which I did.

Q. Did you give any particular orders as to where his transmitter was to be placed ?

A. I did not, I simply sent the men down there, and they made the necessary connection.

Q. Was there any question of a pole in the yard discussed ?

30 A. Mr. Asiel did not bring up that question with me, but I understood—

[Objected to.]

Q. He did not bring it up with you ?

A. No, sir.

Q. Did you see it after it was constructed, this work, the transmitter and the wires put on the house ?

A. I did.

Q. What was its condition ?

A. In first-class order, for such construction.

Q. When was that?

A. A day or two after the erection of it.

Q. What time of the year; do you remember?

A. I won't be positive as to the date, but it was some time in June.

Q. June, 1900?

A. Yes, sir.

Q. Did you know the deceased, Mr. Brooks?

A. I did.

10

Q. Did you notice the insulation on the wires near the transmitter after it was put up, when you examined it?

A. I did, personally; examined it with the underwriters' inspector, who was present at the time.

Q. How long have you been an electrician?

A. Seventeen years.

Q. In your opinion, how long would that insulation last and be in good condition?

A. Unless subjected to violence, indefinitely.

Q. What kind of violence do you mean?

20

A. Mechanical injury.

Q. Do you mean by some force from the outside?

A. Some outside force.

Q. You say you knew Mr. Brooks?

A. I did.

Q. Did you talk with him in regard to these wires and the transmitter?

A. I did.

Q. What did you say to him?

[Objected to. Objection overruled. Exception by 30 plaintiff].

A. I explained to him the nature of the high tension wires and cautioned him against handling them.

[Objected to.]

Q. State what you said, as nearly as may be, in the words you addressed to him?

A. To the best of my recollection I said, "Mr. Brooks, you must not handle these wires if, on any occasion, you have to go upon the roof;" to the best of my recollection, that is what I said.

40

Q. When did you tell him that?

A. Immediately after the construction.

Q. Did you tell him why he must not handle them?

A. I did.

Q. What did you tell him?

A. I told him that the voltage on those high tension wires was somewhere around two thousands volts, and it was dangerous to handle them.

Q. Dangerous in what way?

10 [Objected to.]

Q. Was this the usual and effective mode of insulation of wires at that time?

[Objected to. Objection sustained.]

Q. State the kind and character of insulation on these wires?

A. It was the kind and character that is used universally through the different parts of the country for outside construction.

[Plaintiff's counsel objects to the answer and moves to
20 strike it out. Motion to strike out denied.]

Q. What has been found in regard to its effectiveness?

A. It has been found that that insulations will stand exposure to the elements and last longer and be more durable than any other form that we have had brought to our observation.

By the Court—

Q. What as to its effectiveness as a preventative of a person receiving an electric shock from a charged wire?

A. I don't know exactly how to answer that, but I
30 should imagine it was as good as anything that could be put there.

Cross-examination by Mr. Hoffman—

Q. You say you have been employed in electrical business for seventeen years?

A. Yes, sir.

Q. In what way were you first employed in that line?

A. As an apprentice.

Q. An apprentice to what?

A. To an electrical firm in New York City.

Q. What did you have to do?

A. Various duties.

Q. Well, what?

A. Carry wire, drill holes.

Q. And as you grew in knowledge, how did you grow in reference to your duties; how did they expand; what next did you do, besides carry wire and drill holes?

A. Then I installed wire.

Q. What do you mean by installing wire?

A. Handle the wire itself, personally, and put it in different positions in a building that was called for.

Q. Was that the nature of your knowledge of this business?

A. Then I have had charge of different construction in New York City.

Q. Construction of what?

A. Electrical construction.

Q. What; there are a great many?

A. Installing wire in buildings.

Q. Anything else?

20

A. Switchboards.

Q. Putting wires on switchboards?

A. Yes, sir.

Q. Anything else?

A. Electric motors.

Q. What do you mean by installing electric motors—putting them in position?

A. Yes, sir, and connecting them with the different service wires.

Q. Anything else?

30

A. No.

Q. Have you had any experience in the installation of wires?

A. Not except in the course of my practice.

Q. That, in the course of your practice, would be very little from what you say; you say you have been engaged in installing wires and installing electrical motors; that would not give you much opportunity to gain knowledge in reference to insulation, would it?

A. I studied on that subject.

Q. You studied that in books?

A. Yes, sir.

Q. Seventeen years ago?

A. No.

Q. When did you study that?

A. Three or four years ago.

Q. Have you continued the study of electricity in reference to insulation?

10 A. Not to any great extent.

Q. Do you know how they insulate wires?

A. Yes, sir.

Q. Do you know what is used?

A. Yes, sir.

Q. How did you find that out?

A. By study and observation.

Q. What has your observation been in reference to it?

A. What do you mean?

Q. I mean exactly what I say; what has been your
20 observation in reference to insulation of wires?

A. I have observed the different methods of insulation and the different material that is used.

Q. Where first did you observe the use of material for insulation?

A. In the various buildings that I have been engaged in.

Q. Where, first?

A. I suppose I studied it in the office first.

Q. Where did your observation come from?

A. From the different samples sent there.

30 Q. Are you a chemist?

A. No, sir.

Q. Did you know anything about what those samples contained and what the combination was?

A. Except such as was given to us by the agent.

Q. Of these different insulation material?

A. Yes, sir.

Q. They put them in the office and told you what they were composed of?

A. Yes, sir.

Q. You never dissected them to find out whether or not those stories were true?

A. No, not from a chemist's standpoint.

Q. From any standpoint that gave you a knowledge of what the constituent elements were?

A. No, sir.

Q. So, in point of fact, you don't know anything about insulation from its start up to the finish?

A. Except from observation and practical experience.

Q. What has been your practical experience in the way of insulation?

A. Observing the effect of the current after it has been on the wires for a number of hours or years.

Q. How did you find out, by touching the wires?

A. No; by removing old wires.

Q. You removed old wires?

A. We cut the wire, and cut the insulation off, and see the condition of it after having been subjected to different voltages.

Q. What did you find out?

A. That oftentimes the quantity of current carried on the wire would have an effect on the insulation.

Q. The amount of current carried on the wire would have an effect on the insulation?

A. Yes, sir.

Q. Would the insulation have any effect on the amount of current carried on the wire?

A. No.

Q. The matter of insulation would make no difference as to the force of the current?

A. No; I was talking of the quantity of the current.

Q. The quantity of the current would have nothing to do with the force of it?

A. No, sir.

Q. Is there not more force in nineteen hundred volts, than in one hundred volts?

A. Undoubtedly; but not more quantity of current.

Q. Did you see the insulation at this house?

A. I did at the time of its erection.

Q. What erection?

- A. The erection of this electric apparatus.
Q. Do you mean by that, this transmitter?
A. Yes, sir.
Q. When you put that on, you call that its erection?
A. Yes.
Q. Were you there?
A. Not at the time, but the day afterwards.
Q. And you found it, as you say, insulated?
A. Yes, sir.
- 10 Q. What with?
A. With a fibrous compound that is used.
Q. Fibrous compound—what was it?
A. A composition of coal tar and cotton; I don't know the other element.
Q. If you did know the other element, you would be better able to say how good that insulation was?
A. I simply said that the insulation that was on the wire was such as I have been accustomed to see in different places.
- 20 Q. State one other place where you have seen such an insulation as that?
A. You mean the exact insulation, or insulation of the wire?
Q. What do you mean when you are talking about insulation?
A. I saw it at the next house; the next door.
Q. How do you know that the material used next door, was the same insulation as was in this house?
A. I don't know it positively.
- 30 Q. What do you mean by saying it was the same, then?
A. The wire is bought from the same people, and the insulation—of course, the manufacture is exactly the same.
Q. That is only guess work on your part?
A. When we purchase it, it is guaranteed to us.
Q. Then you have only the guaranty of the manufacturer and speak from that, but not from your own knowledge?
A. No, sir; that is all.
- 40 Q. You know about the wires in your power-house?
A. I am not connected with the power-house.

Q. You know something about them, do you not?

A. No, sir.

Q. You don't know anything about the wires there?

A. No, sir, I don't know anything about the power-house.

Q. Where do you stay and what are your duties in reference to this company?

A. I am not connected with this company; I am superintendent of a company in New York City.

Q. What were you doing out there?

A. At that time I was an electrician out there. 10

Q. What were your duties out there?

A. To erect wires in various buildings that I would secure a contract for.

Q. Then you were putting wires in houses on your own contracts?

A. Yes, sir; I was in business there at that time.

Q. You had nothing to do with the installation at that house?

A. I installed these temporary wires for Mr. Asiel from the cellar, where the transmitter formerly was, to this place 20 where it was erected.

Q. Did you have anything to do with the insulating part of it?

A. I did to this extent, that I put insulators on the side of the building to keep it away from the building.

Q. Did you put any insulators on this transformer, you, yourself?

A. No, sir; that was done by the Consolidated Gas Company.

Q. You did not see it done? 30

A. No, sir.

Q. And all you know about it is that you went there the next day and looked over it?

A. Yes, sir.

Q. You did not know what the material was that was upon the wires?

A. I do not know positively.

Q. And you cannot tell me anything about the power-house?

A. No, not positively. 40

Q. How many kinds of insulation are used, to your knowledge?

A. I might enumerate some of them ; there is paper, rubber, porcelain and fiber.

Q. Have you used them all ?

A. I have.

Q. Which is the newest insulator ?

A. A certain construction of paper.

Q. Is not that more effective than any other ?

10 A. It is as effective, in some cases, as the others.

Q. Is it not more ?

A. Not necessarily.

Q. Is it at all ?

A. No ; it is not.

Q. How about porcelain ?

A. Porcelain is a good insulator for some purposes.

Q. For what purposes ?

20 A. For conducting a wire that is already insulated, through a partition ; that is required by the rules of the underwriters.

Q. Have you any knowledge of this particular insulating material being used anywhere else, except those two places ?

A. Yes, sir ; it is used extensively all over Long Branch ?

Q. In houses ?

A. Not in houses, but for outside construction.

Q. For overhead ?

A. For outside construction ; it is not permitted in houses, under certain circumstances, by the underwriters.

30 Q. Why is it not permitted ?

A. It is one of their rules.

Q. Don't you know ?

A. It is one of their rules that you must not use it only in overhead construction.

Q. Do you know why that rule is made ?

A. No.

Q. Is it not because it is known [to be so much more dangerous ?

A. No ; I don't know that.

40 Q. What do you know about it ?

A. I simply know that the underwriters have that rule.

Q. And that rule is what?

A. That for outside construction, that this fire and weather-proof wire, as it is called, is preferred by them for that system of work—the outside construction.

Q. And with all your knowledge of this business, and from your observation, you do not know why that rule is made?

A. No ; I can't give you legal evidence on that point.

Q. Is there not a better insulator than the one you use 10 and have used, inside of houses—a safer one than you used in this case, inside?

[Objected to.]

The Court—Confine your question to outside work.

Q. Do you not know that there is a better material used for insulation than this, on outside work?

A. I do not.

Q. Is there any other used on outside work than this?

A. Not to any great extent.

Q. Never has been? 20

A. Possibly.

Q. You do not know?

A. I do not know.

Q. How long has this been in vogue and been on the market, this combination?

A. It has been in various improved forms for several years.

Q. In various improved forms?

A. Yes, sir.

Q. You mean by that, they are all the time improving it? 30

A. Undoubtedly ; they are getting different materials.

Q. Has there been any improvement since October, 1900, on it?

A. Not that I know of.

Q. When was the last improvement?

A. I cannot state that definitely ; possibly the first wire of that description was simply two strands of cotton, and then they improved it by getting these different compounds in it.

Q. You do not know what they are? 40

A. I do not know the exact compounds.

Q. You consider that this was an effective and safe insulation?

A. As I viewed it the following day, I thought it was.

Q. Had you ever had any experience testing whether it was or not?

A. Testing the insulation of the wire?

Q. Yes?

A. No, sir.

10 Q. If I should tell you that a person coming in contact with that wire was instantly killed, what would you say then as to whether it was properly insulated or not, and whether the material answered its purpose?

A. I would want to know how he came in contact with it; it might not necessarily kill him.

Q. Suppose it did kill him?

[Objected to. Objection overruled.]

Exception by defendant allowed and sealed accordingly.

J. FRANKLIN FORT, J. [L. S.]

20 Q. What have you to say whether it is properly insulated?

A. The conditions under which he was killed are important.

Q. What would be the conditions under which a man would be killed, by coming in contact with that wire, insulated as you saw it, in your opinion?

A. He must have grasped it very firmly, and must have had a contact.

Q. Contact with what?

30 A. With the earth, through either the tin or some other conductor, that would carry the current to the earth.

Q. If he did not grasp it very firmly, it would not kill him?

A. I don't think, under the circumstances, it would.

Q. Have you ever seen anything of that kind?

A. I have.

Q. Have you seen a like accident?

A. I don't know how it happened.

Q. As I have described it to you?

A. I have seen accidents where men have grasped electric wires and never recovered.

Q. What kind of wires?

A. With a high pressure.

Q. How high pressure?

A. From fifteen hundred to twenty-five hundred volts.

Q. And protected as this was?

A. In about the same manner.

Q. Did you make an investigation so you would know? 10

A. No, I didn't make any investigation of the insulation.

Q. Do you know whether it was the same insulation or not?

A. No, I do not, but I know the wire was insulated; I do not know the exact nature of the insulation.

Q. Suppose a man should touch a wire that had twenty hundred volts running through it; touch it with the back of his hand extended; would not that naturally cause the muscles to grasp the wire?

[Objected to as speculative.]

20

The Court—If he will state that he is capable of answering the question, he may do so.

A. I have never observed the actual contact of a person's hand on the wire.

Q. And, therefore, you know nothing about it?

A. I do not, but I have seen the result after he had made the contact.

Q. What was the result?

A. That the man has to be placed where he receives the current through both arms or down through his body, to 30 the ground.

Q. Did you ever see a man killed by contact with a wire?

A. I did.

Q. Where was that?

A. On Broadway, New York; I did not witness the killing, but I arrived there soon afterwards.

Q. You say you had some conversation with Mr. Brooks?

A. Yes.

Q. When did you have that conversation?

A. I don't recollect the date of it, but shortly after the 40

wire was placed on the outside of the building—the transmitter.

Q. Do you know whether any person in your employ or anybody else's employ, looked after that wire or saw to it, or to that transmitter, after it was put in, until the day of Mr. Brooks' death?

[Objected to on the ground that this witness was in no way connected with the defendant company; that he was simply employed by Mr. Asiel to make the necessary connections with the wires.]

10 The Court—He is only asked the question, whether he knows—yes, or no.

A. Which wire do you mean?

Q. The wire that caused the death?

A. I had no personal inspection of that; it was out of my jurisdiction.

Q. You say you had a conversation with Mr. Brooks; where did that take place?

A. Somewhere about the property.

20 Q. Tell me as nearly as you can where it was?

A. Possibly in the yard in the rear of the house.

Q. Are you certain about that?

A. I am not; I am certain that the conversation took place, but not the point.

Q. Who were present?

A. Myself and Mr. Brooks.

Q. Nobody else?

A. No, sir.

Q. You are sure nobody else was present?

30 A. Not to my recollection.

Q. What time of day was it?

A. I don't know; some time in the forenoon.

Q. What makes you say in the forenoon?

A. My recollection of the time I went there; my habit was to go down in that vicinity in the forenoon.

Q. You are certain, now, as to the time of day by your habit; is that right?

A. Yes, sir.

Q. Did you have any other conversation with Mr. Brooks
40 that day?

A. Not to my recollection.

Q. What was the first thing you said to him ; did he speak to you ?

A. I believe the conversation came up about the transmitter that was on the house.

Q. What was the conversation ?

A. I told him, "Mr. Brooks, be careful and not handle those wires up there, if you should have occasion to go on the roof, because they are dangerous."

Q. Did you just burst in with that conversation, without 10 anything being said preliminarily about it ; was there no talk about anything else before you said that ?

A. Yes, sir ; about the transmitter and the wires through the house.

Q. What was it ; what was the conversation ?

A. I don't recollect now.

Q. You do not remember ?

A. I recollect this part of it, that Mr. Brooks spoke to me about the wire coming out of the cellar ; I told him that was put in there to carry the current from where it 20 was formerly placed in the cellar, and bring it up to the transmitter, which was on the outside of the house.

Q. Who spoke first about it ?

A. I did, and he spoke about those wires.

Q. You do not remember the time ; you do not remember the place, and you cannot remember all the conversation ?

A. I do not.

Q. What made you think about anybody going upon the roof ?

30

A. I really don't know now, why I thought of it.

Q. You thought somebody might go upon the roof ?

A. I thought somebody might go up there and I would caution him.

Q. Did you really think about that roof being a place of danger ?

A. I did not, to that extent.

Q. Then why did you say anything about it ?

A. I told him to be careful not to handle the wires.

Q. You told him not to go on the roof ?

40

Mr. Lewis—No ; he did not say that.

Mr. Hoffman—I added that to the last question.

Q. You said to Mr. Brooks that he must look out for himself when he went upon that roof, or words to that effect?

A. Yes, sir.

Q. What suggested to you the danger of that roof?

A. The fact of the transmitter being there.

Q. What put it into your head that anybody might go
10 upon that roof?

A. I suppose, in the natural repairing and taking care of the building, one might go up.

Q. Did you have that in your head, that there might be a necessity for repairing that roof?

A. Yes, sir ; there is always repairing to be done in such places.

Q. And that was in your mind?

A. Possibly ; I would not say.

Q. Why in the world did you suggest to him about the
20 roof?

A. Simply as a care-taker of the property ; he would inform anybody who came there to be careful with the wires.

Q. Why did you want him to be careful with those wires?

A. Because the voltage was very high, and there was a possibility of somebody slipping on the roof and landing on top of them and breaking them down.

Q. Slipping off the roof and landing on that transformer?

A. There is a possibility that a man might fall down.

30 Q. Is this the roof you are talking about?

A. Yes, sir.

Q. You didn't want him to fall off of that roof and fall on that, did you?

A. Not him, but anybody.

Q. You were looking for protection for everybody, then?

A. Yes, sir.

Q. You know something about roofs ; did it ever occur to you that a man falling off of the roof would not strike that at all?

A. He would not, now that I look at the picture.

Q. But before that, you thought he might fall from that roof, and might fall on that transmitter?

A. Yes, sir; or on the railing.

Q. You have been putting up transmitters on houses for seventeen years, have you?

A. No, I didn't say that.

Q. This was a dangerous instrument, was it not?

A. The transmitter itself?

Q. Yes?

10

A. Not necessarily.

Q. With the wires running there and the voltage in the wires, it was dangerous, was it not?

A. If there is a voltage on the wire and the wire is bare, it would be dangerous.

Q. The wire was not dangerous, then, when it was not bare?

A. No, it was not.

Q. How in the world, then, did it enter your head to warn him against something that was not dangerous at all and tell him it was dangerous?

20

A. It is to this extent, if he was there working with anything and happened to strike these wires and destroy the insulation a little, he might get a tremendous shock.

Q. There was danger of the insulation being destroyed?

A. Yes, sir; there are always accidents.

Q. But only by mechanical means?

A. Yes, sir.

Q. There was nothing else but mechanical means that would destroy that insulation?

30

A. I can't say as to that.

Q. You cannot tell that, can you?

A. No, I cannot.

Q. So, in your mind, when you had this talk with Mr. Brooks, you wanted to warn him against the danger of falling off that roof and striking that transmitter, which might become non-insulated and be dangerous?

A. Or handle the wires that might become bare by mechanical injury, for he would receive a shock.

Q. In point of fact, as it was there that day, it was a very dangerous wire, was it not?

A. Those high tensions are always dangerous.

William H. Havens, called on behalf of the defendant, being duly sworn, testifies as follows :

By Mr. Lewis—

Q. Where do you reside?

A. In Elberon.

Q. What were you doing in the month of October, 1900?

10 A. Working for Mr. Minzenheimer.

Q. Where?

A. Park avenue, adjoining the property of Mr. Asiel.

Q. Did you know Mr. Brooks, the deceased?

A. Yes, sir.

Q. Did you see him on the morning of October 6th?

A. Yes, at half past nine or ten, Mr. Brooks came to my place and asked me for a hammer ; he said he was going to do some work on the tin roof at Mr. Asiel's, and I didn't see what he wanted to do with a hammer, and I charged
20 him particularly.

Q. What did you charge him?

A. I charged him particularly not to touch those wires ; I told him I knew the danger, and he said he was not afraid of them.

Q. Do you know if that was the day that Mr. Brooks was killed?

A. Yes, sir ; that afternoon at half-past one, I heard of his death.

Cross-examination by Mr. Patterson—

30 Q. What is your business?

A. Gardener, and also I worked at the engineer trade for a number of years, off and on.

Q. Were you neighborly and friendly with Mrs. Brooks?

A. Yes, sir ; I lived right across the road.

Q. You are still?

A. Yes, sir.

Q. What was it, your sense of duty or justice, that prompted you to tell that story to this company?

A. No, sir.

Q. When did you first tell that to this company?

A. After they had brought the suit.

Q. After who had brought the suit?

A. Mr. Brooks.

Q. Mrs. Brooks, you mean?

A. Mrs. Brooks.

Q. Who did you tell that to?

A. I told it to the electrical company.

Q. Who was it that you told it to?

10

A. I can point him out; I don't know his name.

[Mr. Lewis directed a man to stand up.]

The witness—That is the man.

Q. What is his name?

A. He fixed the poles and the wires that went through my boss' place.

Q. Had you known him before?

A. Yes, sir; I saw him every day that he was working.

Q. You do not know his name yet?

A. I know him when I see him; I see him every day on 20 the road, connecting poles and things; and there is Mr. Clark, the same way; I see him every day, off and on.

Q. Did he ask you what you knew about this?

A. No, sir.

Q. You volunteered that?

A. Yes, sir; I told him that I knew the danger of the wires or I would not have warned him.

Q. How did you find out that the wires were dangerous?

A. When I worked at the electric light plant at Long Branch.

30

Q. Then you are an employe of the electric light company?

A. I was in the business of firing for the company—firing the boilers.

Q. What was there that convinced you that the wires adjoining that porch were dangerous?

A. When I saw the men in my fire-room handle the wires with rubber gloves.

Q. Wires like that?

A. I could not say it was that kind of a wire, but it was 40

in the electric light plant, and if one wire is dangerous all wires are.

Q. You mean that you were giving him a general warning against all electric wires?

A. I gave him warning not to touch any wires.

Q. It was applied to any wires?

A. Yes, sir.

Q. He did not tell you that he was going up there to touch wires, did he?

10 A. Yes, sir; he said he was going up there to paint, where the electric wires were.

Q. And you told him not to touch them?

A. Yes, sir.

Q. How long before this happened was it that you had the conversation with him?

A. I had the conversation about half-past nine.

Q. What wire did you call his attention to?

A. On the roof where he was going to work; he told me there were electric wires there.

20 Q. In the balcony?

A. I suppose so; that is what he told me; he was to paint where the wires were.

Q. There are wires all over the house; what part of the house did he refer to?

A. I told him where he was painting, not to touch the wires.

Q. Where was he painting?

A. That I didn't know until half-past one that day, when I saw him dead; I didn't know where he was going
30 to paint; he didn't tell me.

Q. That is why you told him to look out at that particular place?

A. I told him to look out for the electric wires.

Q. I understood you to say a moment ago that you were neighborly towards Mrs. Brooks; is that right?

A. I live next door to her.

Q. You have a neighborly feeling toward her?

[Objected to. Objection withdrawn.]

Q. Is it not a fact that you have made statements dis-

paraging to Mrs. Brooks, and your attention has been called to that fact?

A. No, sir.

Q. Have you not been charged with having made statements of that character against her?

A. I don't remember.

Q. Which one of the Brooks family was it that you were charged with making disparaging remarks about?

A. I never made any statements against any of them.

Q. Which one were you charged with making remarks 10 against?

A. I don't know.

Q. Did you not say that Mrs. Brooks' boy was a thief?

A. If you want to bring that out I will tell you; he stole carpenter tools from my barn that I was in charge of, and I can prove it.

Q. And that is the reason you are so neighborly?

A. Not at all.

Frank G. Sanford, called on behalf of the defendant, being duly sworn, testified as followed :

20

By Mr. Lewis—

Q. Where do you reside?

A. New Rochelle, New York.

Q. Who are you working for now?

A. The Westchester Light Company.

Q. Where were you working in the summer and fall of 1900?

A. For the Consolidated Gas Company of Long Branch.

Q. Did you ever see the transmitter and wires on the house of Mr. Asiel?

30

A. Yes, sir.

Q. When did you see them?

A. I saw them quite a good many times.

Q. Did you see them previous to October 6th, 1900?

A. Yes, sir; I did.

Q. Do you remember the day that Mr. Brooks was killed at that place?

A. I do.

Q. Did you see them a few days before that time, and if so, state how many days before and when?

A. Possibly two or three days before.

Q. How did you happen to see them?

A. I was up that way mostly every day.

Q. Did you go to the house of Mr. Asiel two or three days before the accident?

A. Yes, sir.

Q. What did you go there for?

10 A. I went there to put in a fuse.

Q. Where?

A. At Mr. Asiel's.

Q. Where?

A. In the cut-off.

Q. Where is the cut-off?

A. In the transmitter.

Q. I show you a picture; show us where you put the fuse?

A. Right in here.

20 Q. Right in where?

A. Between those white porcelain cut-outs.

Q. Did you examine the condition of the wires around that transmitter at that time?

A. Yes, sir.

Q. Tell us what you did at that time and what the condition of things were?

A. I found the fuse in the cut-out there, and the lines were in good condition, so far as I could see.

Q. Did you examine the line?

30 A. I did.

Q. And the insulation?

A. Yes, sir; the insulation was there all right.

Q. Was that part of your duty?

A. It was, certainly.

Q. State what your duty was?

A. My duty was to examine the lines, and if I saw any trouble at all, to report it or repair it.

Q. Did you find any trouble that day with those wires?

A. I did not.

40 Q. When did you see the wires after the accident?

A. It might have been an hour after the accident.

Q. What did you find?

A. I found the insulation had been pulled down on the wire.

Q. For how long a space?

A. Possibly three inches.

Q. Show us on this protograph where?

A. Right here.

Q. In what appears on the picture as a loop?

A. Yes, sir; it had been pulled down. 10

Q. Could you tell from the appearance of it whether it was a recent or an old break in the insulation?

A. It must have been a recent break.

Q. How could you tell?

A. Because I had been there a few days before.

By a juror—

Q. What do you mean by being pulled down; could you pull the rubber down so there would be a space left there without insulation, without taking it away from the wire? 20

A. That might be possible.

Q. Can it be done; is that what you mean by being pulled down?

A. Yes, sir.

By the Court—

Q. You mean that the insulation can be slid along the wire, when you say it was pulled down; the coating around the wire; could that be done?

A. I don't know.

Q. You spoke about it being pulled down; look at the 30 picture; do you see anything there that indicates any bunch, and if so, where was it, if you saw it on the loop?

A. The bunch is right about in here.

Q. There was a bunch there?

A. Yes, sir.

By a juror—

Q. Was that bunch caused by the connecting of the wires or a breaking of the insulation?

The Court—The witness' testimony is that it was pulled down. 40

Cross-examination by Mr Patterson—

Q. Are you in the employ of this company at the present time?

A. I am not.

Q. What is your business now?

A. The same business.

Q. Where?

A. New Rochelle.

Q. You were in their employ at the time of this accident?

10 A. I was.

Q. How did you get upon that building that day?

A. On a ladder.

Q. Where did you get the ladder?

A. I don't recollect now where I did get it.

Q. Were you on foot that day?

A. No, sir.

Q. What kind of a wagon did you have?

A. I had a sort of a runabout buggy.

Q. Did you cart a ladder around with you in the wagon?

20 A. No, sir; I didn't.

Q. Did you know the house was empty or occupied?

A. I don't recollect whether it was empty or not.

Q. Who let you in the house?

A. I didn't go through the house.

Q. Who gave you permission to go on the house?

A. I don't remember who did.

Q. Do you mean that somebody did, but you do not remember who?

A. I don't know; I am sure I don't remember.

30 Q. Were you instructed to go there by anyone?

A. Yes, sir.

Q. By whom?

A. By the company.

Q. Who?

A. The company.

Q. Who was it?

A. I think Mr. Irwin.

Q. What did he tell you to go there and do—to put a fuse in?

A. To go there and see about the accident.

Q. I am talking about the time you went there with your ladder; you went there and put a fuse in, did you not?

A. Oh, that was different altogether.

The Court—He was asking you about the time when you went there two or three days before the accident and put in the fuse.

Q. Who directed you to go there?

A. I had orders from the office.

Q. To do what?

10

A. To go and see what the trouble was.

Q. There was no trouble before this accident; you only went there once, then?

A. I had been there several times.

Q. You had only been there once in October?

A. No, I had not.

Q. What do you mean, you had not?

A. I mean that I had been there before in October, before the accident.

Q. How did you get upon the house the time you went there before the accident?

A. Before the accident I didn't have to go up there.

Q. You didn't have to go up there before the accident in October?

A. No, sir.

Q. Why did you not have to—you understand, don't you?

A. It was not necessary.

Q. What do you mean by that?

A. What do you mean?

30

Q. How many days after the accident was it that you went there and put this ladder up and carted off this converter or made this change?

A. I didn't cart off anything at all.

Q. How many days after the accident was it that you went there and made this alteration in or cut off the current?

Mr. Lewis—He has not testified to that.

The Court—He said he put in a fuse before the accident.

Q. How many days after the accident was it that you went there to look at the scene of the occurrence?

Mr. Lewis—He did not say he went there days after the accident.

Q. How many days after the accident was it that you went to look at the scene of the occurrence?

A. One hour, I should think it was.

Recess.

Q. I show you a photograph offered in evidence ; do you
10 recognize that as the converter that was upon the Asiel house?

A. I do.

Q. Do you recognize that as showing the wire that was there?

A. I do.

Q. I direct your attention to a small lump on the bottom of the wire that is looped ; do you notice it there?

A. Yes, sir ; I do.

Q. Did you observe that bunch there when you went
20 there after the accident?

A. Yes, sir ; that is the connection with the cut-out from the transmitter.

Q. Then, that had been there all the time?

A. Yes, sir.

Q. That had no connection with the fact that an accident had occurred there?

A. No.

Q. That bunch was not caused by anybody taking hold and shoving the insulation down?

30 By the Court—

Q. That is, the bunch in the curved wire ; is that what you mean?

A. Yes, sir.

Q. What caused it?

A. It might have been caused by being taped ; that is not the insulation ; it might have been taped.

Q. That is, the taped condition produced a larger surface than the usual insulation?

A. Yes, sir ; and that is probably what slipped down.

By Mr. Patterson—

Q. Did you go there and examine the floor of the premises for any purpose at the time you went after the accident?

A. Nothing, only I saw a little blood on the floor.

Q. Was that the occasion that you refer to when you took the ladder and put it up there and went up?

A. At the time of the accident.

Q. After the accident?

10

A. Just after the accident?

Q. Yes?

A. Yes, sir.

Q. Who was there then?

A. There was quite a number there.

Q. Mr. Brooks' body had been removed at that time, had it?

A. Yes, sir.

Q. What did you go there for?

Mr. Lewis—Which time?

20

Q. This time that I am speaking of, after the accident?

A. To see what condition the lines and so forth were in.

Q. To make an examination of the insulation?

A. Yes, sir.

Q. And that was the time you made the inspection as to the insulation that you have referred to?

A. At that time ; yes, sir.

Q. Who sent you there to make an inspection as to the insulation?

Mr. Lewis—Fix the time.

30

Q. I am talking about the time after the accident?

A. At the time of the accident?

Q. Yes ; who sent you there?

A. I was sent there by the company. I don't know that I was sent particularly to look after the insulation, but I was sent there to look after everything in general.

Q. What did you do when you got there?

A. I took a ladder and got up where the man had had the shock there, and I re-taped the place on the wire

where the insulation had slipped down the other tape, and re-taped it.

Q. Did you disconnect the electric current?

A. I did not.

Q. Had it been disconnected?

A. It had been previous, on different occasions, I suppose; yes, sir.

Q. Had it been shut off between the time the accident happened and the time you got there?

10 A. I really could not say about that.

Q. Did you use gloves to do it?

A. To do what?

Q. To re-tape it?

A. I did, yes sir.

Q. Why did you use gloves to do it?

A. I didn't care to get the electricity myself.

Q. But it had been shut off, had it not?

A. I don't know.

Q. What else did you do besides re-taping it?

20 A. That is all that I did.

Q. When did you put a new fuse in that converter?

A. A short time before that.

Q. How do you fix the time?

A. What do you mean?

Q. How do you know it was a short time before that?

A. I recollect that I have an idea that it was a short time before that.

Q. Had you been to other places on that occasion?

A. Yes, sir; I had been around to other places.

30 Q. Do you fix the time by referring to any other place that you had been to?

A. Yes, sir.

Q. What other places did you go to the same day that you went to this place?

A. I don't remember exactly.

Q. Then how do you associate that visit to this place in connection with your going to other places, if you do not remember any other place?

A. For the simple reason that I was out to look after
10 this trouble.

Q. What other place did you go to, to look for trouble?

A. I don't remember.

Q. Who was with you?

A. I believe I was alone at the time—no, I had a driver with me.

Q. Who is he?

A. A colored man.

Q. Where does he live?

A. In Long Branch.

Q. Is he in the employ of the company? 10

A. I don't think he is.

Q. You said before recess, in your cross-examination, that you did not take a ladder to make the inspection the first time, because it was not necessary; do you remember saying that?

A. I misunderstood that.

Q. Do you remember saying that?

A. I remember it, yes, but I misunderstood that question.

Q. Who told you that you misunderstood it, have you 20 been talking about that question during recess?

A. No, I have not.

Q. When did you discover that you misunderstood it?

A. Just now, when you mention the fact.

Q. But your cross-examination continued after you had made that statement; why did you not correct it then?

A. I didn't understand it.

Q. What has brought it so vividly to your mind now that I refer you to it?

A. I just happen to recollect the circumstance. 30

Q. What did you misunderstand—my question?

A. Yes, sir.

Q. What was my question?

A. I can't exactly recollect it now.

Q. What did you understand me to ask you, when you misunderstood my question?

A. I can't say now.

Q. Then you don't know whether you understood my question or not?

A. Yes; I know I misunderstood it. 40

Q. Without knowing what you were asked or recalling it?

A. What was the question at the time?

Q. I guess that will do for that; you came down here, you say, from New Rochelle?

A. Yes, sir.

Q. Who asked you to come here?

A. I had agreed to come here if my services were required.

10 Q. Who did you have the agreement with?

A. I agreed with the company that I would come.

Q. Are you promised money for your time in coming here?

A. Nothing only my time lost.

Q. Who fixes the amount of that?

A. I don't know who does.

Q. No amount fixed?

A. Not as I know of.

Q. You are not here under subpoena, are you?

20 Mr. Lewis—He came here without a subpoena.

Q. You are not here under a subpoena, are you?

[Objected to.]

The Court—He says he came voluntarily.

Q. How do you fix the month that you made the inspection of these premises?

A. What do you mean?

Q. I cannot make it any more definite.

A. The day of the month?

Q. The month; how do you fix the month that you
30 made the inspection?

A. I should judge in October.

Q. How do you fix it?

A. I don't understand what you mean.

Q. How do you discriminate between October and September as the time?

A. October can't be September.

Q. No, but you could have been there in September?

A. Yes, sir.

Q. How do you fix that it was in October?

40 A. Because I know it was in October.

Q. What day of the week was it?

A. I could not say.

Q. What day of the month was it?

A. I can't say.

Q. What happened on the day that you went there that makes you sure that it was in October?

A. I believe they had no light there at the time.

Q. They had no light there from July 30th; that would not fix the time, would it?

A. Would not fix what?

10

Q. The time that you went in October.

A. It might, yes.

Q. The fact that they had no light there from July 30th might fix the time in your mind that you made an inspection in October; do you say that?

A. Yes, sir.

Q. How would it do it?

A. It would do it all right.

Q. How could what happened in July fix something that happened to you in October?

20

A. Happened to who?

Q. You say you fixed it in October because the lights were turned off in July; how does that fix it in your mind that you were there in October?

A. Because I made an inspection of the lines at the time in October.

Q. How do you fix it was in October?

A. Because I know it was in October.

Q. But you said you knew it because the lights were turned off in July?

30

A. Well, that is right.

Q. Were they turned off in October, too?

A. They were; yes, sir.

Q. Were they not turned off in September?

A. I could not say.

Q. Then it might have been September that you were there?

A. No, sir.

Q. How did you get up to this place?

A. At what time?

40

Q. When you made the inspection?

Mr. Lewis—Which inspection? I object; this man made two inspections; let counsel state which one.

The Court—The inspection occurred before the accident.

Mr. Lewis—And once afterwards.

The Court—Afterwards, he went there to see the condition of things—to ascertain what was the cause of the trouble—by order of the company; the other was a general inspection, and he went in the line of his duty; that is 10 the way I understood his testimony on the direct.

Q. How did you get up to the place where the converter was when you made your first inspection?

A. Through the house.

Q. Who let you in the house?

A. I don't remember; it was some one of the family, I believe.

Q. You saw Mrs. Brooks there?

A. I won't say that I saw Mrs. Brooks.

Q. There were two persons in the family who would let 20 you up, Mr. or Mrs. Brooks; which was it; it was not your house—who let you in the house?

A. I think it was Mr. Brooks; that is, before the accident.

Q. Did you have any conversation with Mr. Brooks?

A. No, only the ordinary.

Q. What did you say to him?

A. I don't remember what I said to him.

Q. Do you remember anything that you asked him?

A. I do not.

30 Q. You can recall nothing that you asked him at that time?

A. I cannot; no.

Q. What did you go there for?

A. What did I go where for?

Q. To that house at that time.

A. To look over the line and so forth.

Q. What was the so forth?

A. To see how the fuses were.

Q. What else?

40 A. The lines and so forth.

Q. To look at the lines?

A. Yes, sir.

Q. What else?

A. That is all.

Q. Did anybody go up with you?

A. No; I don't think they did.

Q. When had you been there before that; before the first inspection?

A. I hadn't been directly to the house, but I had been by there. 10

Q. When had you been by there before, to make an inspection?

A. At the house, or in the house?

Q. At the house, or in the house either.

A. I hadn't been in the house in quite a lengthy time.

Q. Then the fact was, that you did not have any regular system of making an inspection of wires at that place, did you?

A. As I rode along; I was up that way pretty nearly every day. 20

Q. But you had no regular system of making an inspection of that house or those wires?

A. Not particularly that house.

Q. And you had not been to that house to make an inspection that summer before, had you.

A. Yes, sir; I had.

Q. When?

A. I don't recall just when.

Q. Had you inspected that wire where the loop was, before, that summer? 30

A. I had; yes, sir.

Q. Can you tell me the month?

A. I cannot.

Q. Was it in the fore part of summer or the latter part?

A. The fore part, I think.

Q. In June?

A. I could not say.

Q. You made one inspection of that all summer; is that right?

A. Directly through the house? 40

Q. Or of this loop ?

A. No, not necessarily.

Q. Not necessarily, but is it not a fact that you only made one inspection of that house all summer, and that was early in the summer ?

A. No, sir.

Q. How many inspections did you make ?

A. I was up that way pretty nearly every day.

Q. Did you go there to make a critical inspection ?

10 A. No, I did not.

Q. Then there was not any frequent, continuous system of inspection adopted there, was there, of those premises ?

A. No, no more than any other premises.

Q. When you went upstairs on the occasion of the first inspection you put in a new fuse ?

A. Yes, sir.

Q. Did you go upon the roof ?

A. I went upon the roof.

Q. You got up there by going through the house ; are
20 you sure about that ?

A. Going through the house ?

Q. Yes ; you went directly out on the balcony ; how did you climb upon the roof from the balcony ?

A. From what balcony ?

Q. That balcony.

A. It was not necessary to go on the roof.

Q. Have you not just said that you went on the roof ?

A. I went in through the house.

Q. And on the balcony ?

30 A. Yes, sir.

Q. Then you made an inspection of the wires on the roof, did you not ?

A. It was not necessary to make an inspection of the wires on the roof.

Q. Had you not gone there to make an inspection of the lines ?

A. Yes, sir.

Q. Were there not lines upon the roof ?

A. On the roof ?

Q. Yes ; on the edge of that roof ; don't you see that line?

A. You may call it a roof.

Q. How did you go up there to make an inspection of that line?

A. Out on the porch.

Q. You were not within fifteen feet of it ; is that the way you inspected it?

A. Yes, sir.

Q. You mean to say that that, in your opinion, is a 10 proper inspection of electric wires, that may or may not require insulation, standing fifteen feet away and looking at them?

A. I don't know why it should not be.

Q. Is that the manner in which you inspected these wires?

A. It is ; yes, sir.

Q. Is that the way you inspected the wires that are said to have caused his death?

A. It is ; yes, sir ; that is—yes, that is right.

20

Q. Did you make any report to the company after you went back, of any conditions found by you there?

A. I did.

Q. Why was it necessary for you to go and put in a new fuse in that house without obtaining the permission of Mr. Asiel, if the current had been cut off from that house?

[Objected to. Question withdrawn.]

Q. Have you had any experience in coming in contact with wires similar to that loop charged with a voltage that has been stated in this case it was charged with?

30

A. With the voltage?

Q. Yes ; come in contact with a wire insulated as that loop was and charged as that loop was at that time?

A. Yes, sir ; I have had experience.

Q. Did you ever put your naked hand on a loop of an insulated wire of that character?

A. What do you mean?

Q. Did you ever put your naked hand on a loop of an insulated wire, insulated as that loop was on that occasion?

A. I did not ; no.

40

Q. What do you use on your hand to protect yourself when you handle a loop like that—charged like that?

A. Rubber gloves.

Q. Why do you use rubber gloves?

A. To protect myself.

Q. From what?

A. From the current, if necessary.

Q. How would the current affect you if you did not have the rubber gloves on; kill you?

10 A. I don't know that it would.

Q. It would take a chance?

A. Probably would.

By the Court—

Q. Speaking of the loop, while you were there making the examination or inspection, or whatever you did before the accident, was this wire in the form of a loop as it is now; was it always so?

A. It was in the form of a loop.

Q. It has always been a loop?

20 A. Yes, sir.

By Mr. Patterson—

Q. Did you know when you went there for the first inspection that the current was on that wire and in that loop to the extent of a voltage of from one thousand nine hundred to two thousand volts?

A. I did; Yes, sir.

By the Court—

Q. Was there any change in the condition of that loop when you went there after the death of Mr. Brooks, as to
30 the loop—the form of it?

A. The loop had been disturbed.

Q. Was it any larger in any way?

A. No; it was pulled down and the insulation or the tape was pulled down.

Q. Were the wires torn down from their fastenings at either end?

A. No, sir.

Q. Just the same, except a little different form of the loop?

40 A. Yes, sir.

William R. Anderson, called on behalf of the defendant, being duly sworn, testified as follows :

By Mr. Lewis—

Q. What is your employment?

A. The foreman of the electric department of the Consolidated Gas Company.

Q. How long have you been in their employment?

A. Ever since the Consolidated Gas Company took charge of it.

Q. How many years?

10

A. I don't know.

Q. How many years have you been in that line of business?

A. About fifteen years in that line of business ; I have been here about twelve years.

Q. Do you remember the day when Mr. Brooks was killed?

A. Yes, sir.

Q. October 6th, 1900?

A. Yes, sir ; about then.

20

Q. State if you had had any conversation with Mr. Brooks that summer in regard to these wires?

A. I saw Mr. Brooks once ; I think it was shortly after the loop was run across there.

Q. Shortly after the wire was put up?

A. Yes, sir.

Q. What did you say to him?

Mr. Hoffman—Let us have the date.

A. I cannot give the date, but shortly after it was put up ; in June, some time.

30

Q. State what you said?

A. Mr. Brooks asked me about the wires running across the lawn, and asked me if they were dangerous.

Q. What did you say?

[Objected to. Objection overruled.]

A. I did not say they were dangerous or were not dangerous ; I just said, " If anything happens to those wires, you notify the company at once and keep your hands off of them ; " I told him to keep away from them ; " don't touch them in any way, shape, manner or form."

40

Q. Do you know the kind of insulation that was on those wires at that place?

A. It was the regular insulation that you find on all outside work.

Q. How long would they last?

A. For years, so far as I know.

Mr. Hoffman—Is this witness competent to tell us?

The Court—He has had fifteen years' experience; the jury will judge of his ability from his knowledge and
10 experience.

Q. How long have you had experience with that kind of insulation?

A. I know we have had some up for ten years, and it is just as good as when it was put up.

Q. Is that the usual time that you find that they last?

A. No, not necessarily; they may go for another ten years, so far as I know.

Cross-examination by Mr. Patterson.

Q. I show you a photograph marked *Exhibit No. 1*; do
20 you observe Mr. Asiel's house there?

A. Yes, sir.

Q. Do you observe in that photograph the lines running across the lawn?

A. Yes, sir.

Q. Are those the two lines you referred to in your conversation with Mr. Brooks?

A. This is the pair of wires that I referred to in speaking to him, running across the house.

Q. You said to him if anything happened to those wires
30 not to touch them, but let the company know at once; is that right?

A. Yes, sir.

By Mr. Lewis—

Q. Did you ever examine this wire after it was put up?

A. Yes, sir.

Q. When?

A. About two days afterwards.

Q. What was its condition?

A. It was all right; it was only a superficial examina-

tion; everything was insulated and everything looked in good shape.

Q. When you speak of those wires that ran across the lawn, were they the ones that ran to the transmitter?

A. They ran right from the line to the transmitter.

Q. Are these the lines that run across?

A. Yes, sir; they come from the pole up here.

Charles L. White, called on behalf of the defendant, being duly sworn, testified as follows:

By Mr. Lewis—

10

Q. What is your business?

A. Lineman for the Consolidated Gas Company.

Q. How long have you been working for them?

A. About three years.

Q. You were working for them in the summer of 1900?

A. Yes, sir.

Q. State if you put up this wire on the Asiel cottage?

A. I put it up.

Q. When?

A. I think it was in July; either June or July.

20

Q. Of what year?

A. It must have been 1899.

Q. Was it the year of the accident?

A. Yes; the same year.

Q. The accident was in October, was it?

A. I think it was.

Q. And you put it up the previous June or July?

A. It was either June or July.

Q. What did you do to put the wire up?

A. I got the order to connect up the house, and of course I took what was necessary—the wire and the transmitter and the cut-outs, and all that was necessary to do the work with, and connected to the two leads that came out of the house where the electrician wanted them, where he put up two leads coming out of the house, and we went right to them and connected the transmitter.

Q. Were those wires all insulated?

A. Yes, sir.

Q. You are sure about that?

A. Yes, sir ; positive.]

Q. How long have you been doing that kind of work for the company ?

A. I went to work for them in 1899.

By the Court—

Q. The place for the transmitter must of necessity be where the leads come out of the house ?

A. Yes, sir.

Q. Who attends to that ; does the company have any-
10 thing to do with that ?

A. The electrician, the man who wires the inside, and we tape on to those two leads or wires.

By Mr. Lewis—

Q. Does the company have anything to do with the placing of those leads ?

A. No, sir ; nothing at all.

[Cross-examination waived.]

Severn D. Sprong, called on behalf of the defendant, being duly sworn, testified as follows :

20 By Mr. Smythe—

Q. In 1900 you were in the employ of the Consolidated Gas Company ?

A. I was.

Q. In what capacity ?

A. Superintendent of the electric department.

Q. Who are you employed by now ?

A. The Central Electric Company, of Metuchen.

Q. What is your profession ?

A. Electrical engineer.

30 Q. How long have you been an electrical engineer ?

A. For ten or fifteen years.

Q. During that time have you become thoroughly acquainted with the different methods of stringing wires and insulating, and all that kind of thing ?

A. I am quite familiar with it.

Q. Are you familiar with the effectiveness of insulation ?

A. Yes, sir.

Q. Are you familiar with the life of insulation ?

A. Yes, sir.

Q. How long it lasts?

A. Yes, sir.

Q. Do you know the kind of insulation that was used in the Consolidated Gas Company's wires, in Long Branch, in 1900?

[Objected to. Objection overruled.]

A. Yes, sir; it was what was called double-braid, weather-proof insulation.

Q. Was there only one kind in use in that place for the overhead work? 10

A. That was the only kind.

Q. Was that the standard insulation in the trade?

A. It was.

Q. What do you know in regard to its effectiveness?

A. I know it is as good as any in the market for weather-proof purposes, including electrical.

Q. And is a non-conductor of electricity?

[Objected to as leading.]

A. Yes, sir.

Q. What kind of insulation did you say it was? 20

A. Double-braid, weather-proof.

By the Court—

Q. What do you mean by "electrical?"

A. I meant that it was not only an electrical insulator, but had the mechanical properties of withstanding the weather.

By Mr. Smythe—

Q. You say electrical insulation; what do you mean by that?

A. I mean just what I say; that it is an insulator against 30 electricity.

Q. When you say insulate electricity, do you refer to insulating it on the wire?

A. I refer to the fact that electricity will not go through it to any considerable extent; nothing is an absolute insulator, but it approaches it as nearly as anything does.

Q. How long have you known that kind of insulation which the Consolidated Gas Company used in 1900 to last effectively as an insulator of electricity?

A. It is a question of years; I have known it to last four or five years.

Q. Without having anything done to it?

A. Yes, sir.

Q. Do you know Mr. White, the man who installed this transmitter and connected up the plant at the Asiel cottage?

A. I do.

Q. How long have you known him?

10 A. About four years.

Q. During that time have you had opportunity to observe what amount of skill he displayed as a lineman and in doing work of this character?

[Objected to. Objection overruled.]

Exception by plaintiff.

A. I have.

Q. What have you to say in regard to the competency of Mr. White, so far as you have observed, in work of that character done by him.

20 [Same objection, ruling and exception.]

A. It was satisfactory.

Q. The question was more particularly in regard to his competency in doing that kind of work; what have you to say about that?

[Same objection, ruling and exception.]

A. That he was competent to do this class of work.

Cross-examination by Mr. Patterson—

Q. Did you ever examine the insulation on the wires at the Asiel house in Long Branch?

30 A. No, sir.

Q. Do you know what kind of insulation was on those wires of your own knowledge?

A. Yes, sir.

Q. Without having inspected it?

A. It was the only kind of wire that they could use for that purpose.

Q. You mean to say that you only had one kind on hand?

A. For that purpose.

Q. But there are other kinds of insulation beside that ?

A. For different purposes.

Q. It has been said that there is a certain kind of insulation for what is called overhead wires ; is that right ?

A. Yes, sir.

Q. That is a lighter insulation than an insulation on wires that are not overhead ?

A. Not necessarily.

Q. Is it a heavier insulation than the insulation on wires in and around a house, or a lighter insulation ?

10

A. It is usually heavier.

Q. The overhead system is usually heavier ; do you mean that ; and where it cannot be touched by a person without climbing a pole or breaking, that it requires a heavier insulation than a wire that a person might brush against in walking around the house ?

A. Yes, sir.

Q. What is the purpose of an insulation on a wire ?

A. To protect it somewhat against trees.

Q. Is it also to protect against loss of life ?

20

A. Yes, sir.

Q. Then, ordinarily, would not a heavier insulation protect to a larger degree from loss of life than a lighter insulation ?

A. It is very evident.

Q. Then why would you not put a heavier insulation on a wire, that a person in walking around a house might touch, than an insulation on a wire twenty feet in the air ?

A. Because there is no pressure on the house wire.

Q. There was a pressure of two thousand volts on a wire that was within four inches of a place where a person might be standing ; do you call that an overhead wire ?

30

A. Yes, sir.

Q. Then the question of the thickness of the insulation is entirely governed by the question of whether it is what you call an overhead wire and not of a question of whether a man might get killed by brushing up against it, on a balcony ?

A. Its electrical qualities is one of the qualifications of it, of course.

40

Q. Why should not the same thickness of insulation be used on a wire that a person could, by standing within four inches of, as is used upon a wire twenty feet in the air, if the insulation has reference to the protection of human life?

A. It was an overhead wire that was used to connect up this transmitter; it is the only kind used for that purpose.

Q. But a man could not walk against an overhead wire twenty feet in the air, and yet he could walk against a wire next to a balcony; why should not that wire next to the balcony be of the same degree of thickness, as to insulation, as the wire out in the public highway?

A. It was; that is what we use for that purpose.

Q. Why should it not be heavier then, if a person might touch it?

A. It was sufficiently heavy for that purpose.

Q. Did you hear the testimony of Mr. Sanford when he said that he used rubber gloves in handling that wire that killed Mr. Brooks?

A. Yes, sir.

20 Q. Did you hear him say that he used rubber gloves for the reason that handling that wire with the naked hand might kill him?

A. Yes, sir.

Q. Is that so?

A. It would if there was no insulation on the wire.

Q. He said he used rubber gloves in handling wires insulated as that wire was insulated; do you say handling a wire as that was insulated, with a naked hand, would not kill or be likely to kill a person?

30 A. Not necessarily.

Q. But there is a possibility that it might?

A. There is a possibility that any insulation may break down.

Q. Without breaking down—the handling of the wire I am speaking of—might not that cause death?

A. Certainly; there is a possibility, but improbable.

Q. How many kinds of insulating material were there in the market that were available to your company at the time of this accident?

40 A. Practically one, for out-door work.

Q. How many kinds of insulation were there in the market available to that company for insulating a wire to protect human life?

A. I don't know ; there was a whole number of them.

Q. Had you tested a whole number of them for your company for the purpose of determining which was the best?

A. No, sir.

Q. You do not know whether or not your company used, on the wire that killed Mr. Brooks, a better or poorer insulation than was in the market?

A. I don't know but what there might have been better.

Q. You were in that business?

A. Yes, sir.

Q. Was it not your duty to know which was the best, from practical tests?

A. In my judgment, what we were using was sufficient for the purpose.

Q. How could you determine, unless you were testing the different insulations, which was the best? 20

A. We had what was considered sufficient.

Q. What who considered sufficient?

A. What I did.

By Mr. Smythe—

Q. You have done testing in general electric affairs, have you not?

A. Yes, sir.

Q. Have you tested insulation?

A. Yes, sir.

Q. So you have made tests of various kinds of insulation? 30

[Objected to as leading.]

A. I have.

Q. After making those various tests, what conclusion did you arrive at in regard to the kind of insulation best adapted to work such as has been described was done at the Asiel cottage.

A. What is called weather-proof insulation.

Q. Is, or is not, that the kind you have previously described as the standard kind used by the gas company? 40

A. The same kind.

By Mr. Patterson—

Q. He used the word “standard ;” do you know why he used that word ?

A. I do not.

Q. What do you mean by the word “standard?”

A. I didn’t use it.

Q. You do not mean that the standard kind of insulation was used in this case ; you say you used a kind that
10 you had bought, and that you had not bought any other kind ?

A. That is right.

Q. And you had not made any tests of any other kind, with reference to determining which was the better, at that time, had you ?

A. At that time I did not test it ; no, sir.

Q. Have you made any tests since then of the different kinds of insulation that were available to your company at that time ?

20 A. I have not.

Q. With a view of making a comparison between the weather-proof insulation in question and the kind that you could have bought ?

A. I have not.

Defendant rests.

Testimony closed.

Mr. Lewis—I move for the direction of a verdict in favor of the defendant, on the grounds that I stated in my motion for a non-suit, and that the testimony adduced by the de-
30 fendant has served to prove more conclusively the reasons stated by me for a non-suit. On those grounds I would respectfully request the court to direct a verdict.

I call your Honor’s attention to the declaration which simply states that the wires were not insulated. I do not think there has been sufficient proof of that fact to go to the jury, and I therefore request your Honor to direct a verdict for the defendant.

Mr. Hoffman—I can move to amend the declaration even at this time, if there is any difficulty about that.

The Court—Yes, but the issue has been tried on this declaration. Without stating any reasons, I shall refuse to direct a verdict for the defendant.

Mr. Patterson—I would like to amend the declaration by putting in the words “proper or sufficient insulation,” instead of saying “insulation.” Of course, we contend in this case that, in legal contemplation, that means adequate insulation, but I desire, with the permission of the court, 10 to add the words “without proper” or “sufficient” insulation.

Mr. Lewis—I object to the motion made by plaintiff’s counsel to amend at this time.

The Court—The case has been tried upon the theory within the pleadings, and I question whether I ought to permit you to amend at this time. If you had asked to amend at the beginning of the case, you would have had to amend on terms. I think the case had better go on, on record, as it is. 20

Mr. Patterson—I do not press the amendment.

The Court—The declaration charges that this part of the wire was not insulated. That declaration is within the issue that has been tried, and I shall refuse the motion to amend.

Defendant’s counsel excepts to the refusal of the court to direct a verdict in favor of the defendant, which exception is allowed and sealed accordingly.

J. FRANKLIN FORT, J. [L. S.]

Defendant’s counsel requests the court to charge as 30 follows :

1. The plaintiff is not entitled to a verdict if it has not been proven affirmatively that there was no insulation at the place of contact of the wire with decedent’s person.

2. If the wire was imperfectly insulated this is not sufficient to entitle the plaintiff to a verdict, because the plaintiff has charged, as the basis of her claim of negligence, that

there was no insulation on the wire at the place in question.

3. The defendant is entitled to a verdict if there was insulation on the wire at the place complained of, no matter how insufficient or improper it may have been.

4. The mere happening of the accident does not make the defendant liable.

5. No negligence can be charged against the defendant because of the position of the transformer and its connections on the side of the house.

6. The defendant did not select the place where the transformer was to be put, and so is not responsible for its position.

7. There is no evidence that the wire was uncovered at the place of the accident, before Brooks' injury.

8. No negligence can be charged against the defendant because of the quality of the insulation it used on its wires at the transformer.

9. If the jury believe that the place where the accident occurred was one so far removed from where persons ordinarily might be expected to come in contact with the wire, that an accident could not reasonably be anticipated, then the verdict should be for the defendant.

10. If the jury believe that decedent deliberately grasped the wire, the defendant is entitled to a verdict.

11. In estimating the damages, the jury should not multiply the gross earnings of the deceased by the number of years the deceased might have lived, because that would be capitalizing his earnings, and it should not be supposed that if deceased had lived, he would have left such a sum at his death twenty years hence.

CHARGE.

FORT, J. Gentlemen of the jury: On October 6th, 1900, John Brooks was killed by an electric shock received from a live wire attached to a transformer upon the premises of Mr. Asiel, at Long Branch, in this county, he being in the employ of Mr. Asiel at that time as a gardner, and on his premises as care-taker of his dwelling.

The wires through which the electric shock was received are admitted, under the evidence, to be the wires of the defendant company. The voltage carried upon the wires 10 from the power-house to the cut-off at the transformer was about two thousand volts. This voltage is sufficient to produce death if introduced into the human body. The transmission of electricity thus carried upon wires is a dangerous agency, and a company transmitting it is required to exercise a high degree of care to prevent injury to persons who may, in the exercise of a lawful right, come in contact with such agency. The care cast upon a person handling dangerous agencies is always that which is commensurate with the danger. Applying these principles to 20 the case in hand, what was the duty of the defendant company in introducing wires in places where there might be a possibility of their coming in contact with human beings?

The usual rule applies, and that is, that they are charged with introducing the agency by the use of the best known means and appliances for so doing. Some cases say "standard" means and appliances. It will appear somewhat doubtful from the evidence, whether there is a standard insulation for a wire used for outside work in transmitting electricity, as shown in this case. If there is 30 not a standard found by you from the evidence to exist, then it is the duty of the defendant to use that which is the accepted and universally recognized best quality of material usually used in the trade for like purposes. The company must also use skilled and competent workmen in attaching the appliances and making the necessary connections, and then, after the appliances are thus up, the company is required, from time to time as necessity requires, to inspect and keep

the wires and appliances in proper and reasonably safe condition. That would be the whole duty of the defendant in this case. No one can do any better than he can. No man is charged with impossibilities in this life, but we are charged with the exercise of reasonable care, commensurate with the duty and the danger under which we exercise it.

Did the defendant do its whole duty in this case? Did it fail to do anything it was required to do? They were not trespassers upon the premises of Mr. Asiel. Was the insulation of the wire used by the defendant in this case imperfect or defective, and did the conditions exist which are alleged in the plaintiff's declaration—that is, that the defendant had not and would not insulate the electric wire at or near the transmitter? If that condition existed, and the evidence shows it, then you may find from that state of facts, if you find them to exist, negligence in the defendant, because if they did put up a non-insulated wire, the defendant did a wrong to anyone who by duty might be called to come in contact therewith.

20 It appears that the place where this transformer was placed was at a point where, by the act of the agent of Mr. Asiel, the defendant was required to place it, and from its location alone, no inference of negligence on its part can be drawn by you under the evidence.

With this brief statement of the duty of the defendant in cases of this character, what was the duty of the deceased, if any? You have a right to presume, in this day and time, that every sane man knows, if he comes in contact with a live electric wire, it is dangerous. That is a fact that the jury may take into consideration from its own observation. An uninsulated wire is one that a person may be able to observe by observation, and hence it is an obvious risk, and if he does not see it when the jury believe he could, he cannot recover, because in that event it is contributory negligence for him to touch or handle that which his senses show him is dangerous and liable to produce injury or death.

Another thing: The deceased was also charged with the duty to exercise ordinary care in all his approaches and handling of such a wire, as well as to prevent himself com-

ing in contact therewith, when there is reason to believe or fear that the wires he is about to approach or handle, is charged with an electric force.

Did the deceased do any act of negligence which contributed to his death? If you think he did—that he in any way failed to exercise the ordinary care and prudence requisite to the situation and the labor about which he was—then the deceased was negligent and the plaintiff cannot recover, and your verdict must be for the defendant.

These are, briefly stated, the propositions of law applicable to both the plaintiff and the defendant. 10

I do not propose to discuss the facts, because they have been so thoroughly and ably presented to you by both parties. I propose simply now to call your attention to the one remaining question in this case, which is the question of damages. If you conclude that the deceased, in this case, was without negligence which contributed to this injury, and that the defendant was guilty of negligence in any of the respects to which the court has called your attention, under the law as the court has declared it, then you pass to the next proposition, and that is, what shall be the damages for which the defendant shall answer because of its negligence? Prior to our statute and at common law, there was no right to recover damages for the death of a person. In our day and age, another policy has been adopted by legislation, and we have a statute in this state which fixes the method of recovery in this class of cases, and declares that the administrator of a person deceased, killed by the negligence of another, may recover certain damages as compensation to the widow and the next of kin. The statute should be read to you because it is short, and it is a great deal better statement of the law than any words might be otherwise than the very words themselves: "That every such action shall be brought by and in the names of the personal representatives of such deceased person, and the amount recovered in every such action shall be for the exclusive benefit of the widow and next of kin of such deceased person, and shall be distributed to such widow and next of kin in the proportions provided by law in 40 30

relation to the distribution of personal property left by persons dying intestate, and in every such action the jury may give such damages as they shall deem fair and just, with reference to the pecuniary injury resulting from such death to the wife and next of kin of such deceased person."

- You will note there that the measure of damages is the pecuniary injury to the wife and next of kin. In this class of cases you have no right to consider anything but the coldest kind of a money verdict. There must not be any
- 10 sympathy in this case; it is a case where nothing enters into it but the pecuniary loss. You cannot consider the pain and suffering of the deceased; you cannot consider the fact of the affliction to the wife and the children of the lost husband and father; the heart-break and sorrow or desolation of the home. Nothing of that kind goes into your verdict. This is a statutory procedure to recover pecuniary damages for the cold dollars which the wife and next of kin lost by the failure to have the head of the family to support them. Chief Justice Beasley, speaking for the Supreme Court on
- 20 the measure of damages in this class of cases, said: "The action is given by statute. The language of the act upon the subject of the damages is, 'The jury may give such damages as they shall deem fair and just, with reference to the pecuniary injury resulting to the wife and next of kin of such deceased person.' It is manifest from the structure of this section that it was not designed to vest an arbitrary discretion in the jury to give what damages they may think fair and just, without reference to any fixed standard by which to estimate them. The important qualifying words
- 30 are added, referring to the pecuniary injury resulting to the widow and next of kin. The injury forming the basis of calculation must be pecuniary; nothing else can enter into the estimate. There can be no recovery for loss of society or wounded feelings, or anything else which cannot be measured by money and satisfied by pecuniary recompense. The theory of the statute is that the next of kin have a pecuniary interest in the life of the person killed, and the value of this interest is the amount for which the jury are to give their verdict."

You are the arbiters to determine what you think is just and fair, as the pecuniary loss to this widow and next of kin, by the death of John Brooks, the head of the family. How will you arrive at that? You have a right, and it is your duty, to consider the earning capacity; to consider his state of health; to consider the time that he might live; to consider what his wife and these little children growing up would probably have received from that father in a pecuniary way, in dollars and cents; not society; not love and affection; not care at home, but dollars and cents; how much would they have been likely to receive. You fix that in such way as to measure the pecuniary loss to this widow and these next of kin—the children—and that verdict, when you have satisfied your minds as to what is just and fair, will be the proper one. The law leaves it to the jury to determine, and you should want to go into the ascertainment of that, with everything out of your minds of sympathy and sadness for the death of the husband and father, and only treat it as a cold business transaction, as two men dealing on a money basis, and say what is a fair loss in money. I have no more to say to you. I leave it to you, on your oaths and conscience under the evidence, to do what is just and fair.

I have some requests that have been handed me by the defendant's counsel.

No. 1. I refuse to charge except as I have charged.

No. 2. I refuse to charge except as I have charged.

No. 3. I refuse to charge.

No. 4. "The mere happening of the accident does not make the defendant liable." I charge that; that is a rule of law and well settled.

No. 5. "No negligence can be charged against the defendant because of the position of the transformer and its connection on the side of the house." I so charge, and have practically done so already.

No. 6. "The defendants did not select the place where the transformer was to be put up, and so are not responsible for its position." I so charge, and have already charged it.

No. 7. I decline to so charge, because that is for the jury.

No. 8. I decline to charge other than I have charged.

No. 9. This is rather doubtful, but I propose to charge it. It is, "If the jury believe that the place where accident occurred was one so far removed from where persons ordinarily might be expected to come in contact with the wire that an accident could not reasonably be anticipated, then the verdict should be for the defendant." I so charge, if you believe that.

- 1) No. 10. "If the jury believe that decedent deliberately grasped the wire, the defendant is entitled to a verdict." I so charge, on the theory of obvious risk, to which I have already referred.

I am handed another request just now, by counsel, which proposition states the law, and I think I should charge it, although it came late, and I am not required to do so: "In estimating the damages, the jury should not multiply the gross earnings of the deceased by the number of years the deceased might have lived, because that would be capital-
20 izing his earnings, and it should not be supposed that if deceased had lived he would have left such a sum at his death twenty years hence." I will charge that. You are not to take \$480 and add it together for a certain number of years, and find a verdict; you understand that is not the proper way to arrive at your verdict.

Defendant's counsel excepts to each and every refusal of the Court to charge as requested.

J. FRANKLIN FORT, J. [L. s.]

- Also excepts to that portion of the charge wherein it says
30 that it is the duty of the company transmitting this agency to exercise a high degree of care.

J. FRANKLIN FORT, J. [L. s.]

Also to that part of the charge wherein the court left the proposition to the jury: "What is the care required in introducing wires in places where persons may come in contact with them?"

J. FRANKLIN FORT, J. [L. s.]

Also to that portion of the charge wherein it says it is the company's duty from time to time to inspect the wires.

J. FRANKLIN FORT, *J.* [L. S.]

Also to that portion where the court submitted as a proposition which is to form a basis for a charge of negligence, to wit: "Was the insulation imperfect or defective?" in the language of the charge.

J. FRANKLIN FORT, *J.* [L. S.]

Also excepts to that portion wherein it states that the defendant was required to use the best known means and 10 appliances, in the words of the charge.

J. FRANKLIN FORT, *J.* [L. S.]



COURT OF ERRORS AND APPEALS.

CATHERINE BROOKS, ADMINIS- TRATRIX, ETC., Defendant in Error, and CONSOLIDATED GAS COMPANY OF NEW JERSEY, Plaintiff in Error.	}	In Error.
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WRIT OF ERROR.

[Filed January 30, 1903]

New Jersey, *ss.*—The State of New Jersey to the Chief
Justice of our Supreme Court of Judica-
[L. s.] ture, greeting:

Forasmuch as in the record and proceed-
ings, and also in the giving of judgment in a certain
plaint, which was in our said Supreme Court of Judica-
ture, before you, between Catherine Brooks, administra-
trix, &c., plaintiff and defendant in error, and the Con- 10
solidated Gas Company of New Jersey, defendant and
plaintiff in error, in an action in tort, manifest error
hath intervened, to the great damage of the said defend-
ant, as it is said, we being willing that the error, if any
there be, should, in due manner, be corrected and full
and speedy justice done to the parties aforesaid in this
behalf, do command you, that if judgment be thereupon
given and affirmed, then you distinctly and openly send,

under you seal, the record and proceedings aforesaid, with all things touching the same, to our judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the thirteenth day of January next, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right, and, according to the law and custom of the State of New Jersey, ought to be done.

- 10 Witness our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the tenth day of January, nineteen hundred and three.

S. D. DICKINSON,

LEWIS, BESSON & STEVENS,

Clerk.

Attorneys.

- 20 The answer of the Justices of the Supreme Court of the State of New Jersey within named: The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.

WM. S. GUMMERE, [L. S.]

C. J.

COPY OF JUDGMENT.

- 30 New Jersey Supreme Court. Catharine Brooks, administratrix of John Brooks, deceased, *v.* Consolidated Gas Company of New Jersey, body corporate. In error. Affirmance. Samuel A. Patterson, Attorney.

As yet of the term of November, in the year of our Lord nineteen hundred and two.

Witness WILLIAM S. GUMMERE, ESQUIRE,

Chief Justice.

WILLIAM RIKER, JR.,

Clerk.

New Jersey, ss.—The State of New Jersey sent to the Judge of the Circuit Court of the county of Monmouth its writ, in these words, to wit:

New Jersey, ss.—The State of New Jersey to J. Franklin Fort, Esquire, Judge of our Circuit Court, at Freehold, in and for the county of Monmouth, or such Justices of the Supreme Court of the State of New Jersey as shall hold such Circuit Court, greeting:

Because, in the record and proceedings, and also in the giving of judgment in a plaint which was in our Circuit Court, holden at Freehold, in and for the said county of Monmouth, between Catharine Brooks, administratrix of John Brooks, deceased, plaintiff, and Consolidated Gas Company of New Jersey, a corporation, defendant, of an action in tort, manifest error hath intervened to the great damage of the said Consolidated Gas Company of New Jersey, a corporation; as by its complaint we are informed, we being willing that speedy justice should be done to the parties aforesaid in this behalf, do command you distinctly and openly to send, under your seal, the record and proceedings aforesaid, with all things touching and concerning the same, to our Justices of our Supreme Court of the State of New Jersey, on the eighteenth day of March next, together with this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon what of right and according to law ought to be done. 10 20

Witness William S. Gummere, Esquire, our Chief Justice, at Trenton aforesaid, the fifth day of February, 30 nineteen hundred and two.

WILLIAM RIKER, JR.,
 LEWIS, BESSON & STEVENS, Clerk.
Attorneys.

The answer of J. Franklin Fort, Esquire, one of the Judges of the Circuit Court within named, the record and proceedings of the plaint whereof mention is within made, with all things touching the same, I certify to the Justices of our Supreme Court of the State of New Jersey, at Trenton, at the day and year within contained, in a certain schedule to this writ annexed, as I am commanded.

J. FRANKLIN FORT,
Judge.

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State of New Jersey, County of Monmouth, ss.—I, Joseph McDermott, clerk of the county of Monmouth and *ex-officio* clerk of the Circuit Court in and for said county, do hereby certify the foregoing to be a true and correct copy of the judgment entered in above-stated cause as the same remains of record in my office.

In testimony whereof I have hereunto set my hand and seal of said county, which is the seal of said court, at Freehold, this twenty-eighth day of February, in the year of our Lord one thousand nine hundred and two.

20

[SEAL.]

JOSEPH McDERMOTT,
Clerk.

Monmouth County, ss.—The State of New Jersey to the Sheriff of the county of Monmouth afore-

[L. S.] said, greeting:

You are commanded to summon Consolidated Gas Company of New Jersey, body corporate, if
30 in your county it may be found, so that it be and appear before our Circuit Court to be holden at Freehold, in and for said county of Monmouth, on Thursday, the twenty-fifth day of July, nineteen hundred and one, to answer unto Catharine Brooks, administratrix of John Brooks, deceased, in an action of tort to her damage twenty-five thousand dollars, as is said, and have you then and there this writ.

Witness John Franklin Fort, Judge of our said Circuit Court, at Freehold aforesaid, the eighth day of July, nineteen hundred and one.

JOSEPH McDERMOTT,
Clerk.

SAMUEL A. PATTERSON,
Attorney.

Due and legal service of the within summons is hereby acknowledged this 9th day of July A. D. 1901.

LEWIS, BESSON & STEVENS,
Attorneys for Defendant. 10

Filed July 12th, 1901.

JOSEPH McDERMOTT,
Clerk.

Monmouth County Circuit Court of the twenty-fifth day of July, nineteen hundred and one.

Monmouth County, ss.—The Consolidated Gas Company of New Jersey, a corporation duly organized under the laws of the State of New Jersey, the defendant in this suit, was summoned to answer unto Catharine Brooks, administratrix of John Brooks, deceased, in an action of tort, and thereupon the said plaintiff, by Samuel A. Patterson, her attorney, complains for that whereas heretofore, to wit, on the sixth day of October, in the year of our Lord nineteen hundred, the said defendant, the Consolidated Gas Company of New Jersey, was in possession of and did own and operate a certain electric light and power plant in the township of Ocean, in the county of Monmouth, State of New Jersey, and also was at the date aforesaid in possession and control of certain wires connected with said electric power and plant strung upon poles and extending in, through and over certain of the public streets of said township, and in, through and over certain lands and premises belonging to one Lina Asiel, in Elberon, in said township, and which said poles and wires were used by the said Consolidated Gas Company of New Jersey for the purpose of conducting powerful currents of electricity for light

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30

ing purposes in, through and over the said premises of the said Lina Asiel.

And the said plaintiff avers that it was then and there the duty of the said defendant and its employes to so carefully manage, guard, protect and insulate said wires so that the same should not be dangerous and fatal to the lives of persons lawfully coming in contact therewith or being at or near the said wires upon the said premises of the said Lina Asiel.

- 10 And the said plaintiff avers that it was the duty of the said The Consolidated Gas Company of New Jersey to keep and maintain said wires at all times upon the said premises of the said Lina Asiel so that the same should be safe for all persons lawfully upon said premises to discharge their business or duties without their lives being endangered by the improper and negligent use of said wires or said electric current by the said defendant or its agents.

- And the said plaintiff avers that on or before the said
20 sixth day of October, nineteen hundred, the said John Brooks was lawfully upon said premises of the said Lina Asiel, then and there discharging his duties as superintendent of the said premises and as caretaker of the house erected thereon and belonging to the said Lina Asiel for and in her behalf, and while so employed it became and was the duty and business of the said John Brooks to paint and repair a balcony porch attached to and a part of said house for and in behalf of the said Lina Asiel; and thereupon the said John Brooks did proceed to paint
30 and repair the said balcony in pursuance of his said duties.

And the said plaintiff avers that upon and outside of the said building of the said Lina Asiel and about two feet from where the said John Brooks was engaged in said employment, was a certain electric transmitter, the property of the said The Consolidated Gas Company of New Jersey, and placed and maintained upon the said building at said point by said company, defendant, and connected with and attached to the said transmitter was

an electric wire running from said transmitter to poles placed, owned and maintained upon said premises by the said defendant and running thence from said poles to a public highway, and thence to the power house of the said defendant, in the township of Ocean aforesaid, which transmitter, wires and pole were then and there used and maintained and owned by the said defendant for the purpose of transmitting electricity in and through the said wires and building.

And the said plaintiff avers that notwithstanding the said transmitter was placed and maintained by the said defendant as aforesaid in close proximity to said balcony, and notwithstanding the said wires were then and there charged with electricity, a dangerous and powerful element, the said defendant did not and would not insulate the said electric wire at or near the said transmitter, but caused the same to be and remain without insulation or any other protection, and then and there caused and continued the said electric wire to be exposed in such a manner as that contact therewith by a human being would cause instant death.

And the said plaintiff avers that the said defendant, well knowing the premises and knowing that the said electric wire was not insulated and that it was without any protection or guard whatever, and that it would cause instant death to any person touching the same or getting in contact therewith, did, on the said sixth day of October, nineteen hundred, charge the said electric wire with a powerful, dangerous and deadly electric current.

And the said plaintiff avers that on the said sixth day of October, nineteen hundred, the said John Brooks, deceased, while engaged as aforesaid in the performance of his said duties of painting and repairing the said balcony, without carelessness, negligence or fault on his part, was, by coming in contact with the said uninsulated wire, at the point where it connected with the said transmitter, shocked by the electric current then and there in said wire and transmitted by said defendant, so that he, the said John Brooks, was then and there, to wit, on the sixth day of October, nineteen hundred, killed.

And the said plaintiff avers that the death of the said John Brooks was caused wholly by and was the result of the negligent and careless conduct and management by the said defendant and its employes in placing said wire upon said premises and maintaining it there as aforesaid without insulation, and that without any fault or negligence on the part of the said John Brooks.

And the said plaintiff avers that the said John Brooks, deceased, left him surviving his wife and next of kin, as
 10 follows: Catharine Brooks, widow; John Alexander Brooks, son; Florence May Brooks, daughter, and Blanche A. Brooks, daughter.

And the said plaintiff avers that great pecuniary injury resulted to said next of kin from the said death of the said John Brooks, deceased, to wit, the sum of twenty-five thousand dollars, whereby and by force of the statute in such case made and provided, an action hath accrued to the said plaintiff as the personal representative of the said John Brooks, deceased, to recover from the said The Con-
 20 solidated Gas Company of New Jersey, body corporate, damages for the said death of said John Brooks, deceased, for the exclusive benefit of the said next of kin of the said John Brooks, deceased, amounting in the whole to a large sum of money, to wit, the sum of twenty-five thousand dollars, wherefore she brings her suit, &c.

And the said plaintiff brings here into court her letters of administration of the goods, chattels and credits of the said John Brooks, deceased, granted to her on the twenty-second day of October, in the year of our Lord
 30 nineteen hundred, by the surrogate of the county of Monmouth, in the State of New Jersey, which was the county and State wherein the said John Brooks resided at the time of his decease.

SAMUEL A. PATTERSON,
Attorney of Plaintiff.

Filed August 14th, 1901.

JOSEPH McDERMOTT,
Clerk.

Monmouth County Circuit Court. Catharine Brooks,
administratrix of John Brooks, deceased, plaintiff,
v. The Consolidated Gas Company of New Jersey,
defendant. Plea.

And the said defendant, by Lewis, Besson & Stevens,
its attorney, comes and defends the wrong and injury,
when, &c., and says that it is not guilty of the said sup-
posed grievances above laid to its charge, or any or
either of them, or any part thereof, in manner and form
as the said plaintiff hath above thereof complained 10
against it, and of this the said defendant puts itself upon
the country, &c.

LEWIS, BESSON & STEVENS,
Attorneys of Defendant.

State of New Jersey, County of Monmouth, ss.—C.
Henry Irwin, treasurer, of full age, being duly sworn
according to law, on his oath says that he is the treas-
urer of the Consolidated Gas Company of New Jersey,
the defendant in the above-named plea; that the said
plea about to be filed by the said defendant is not in- 20
tended for the purpose of delay, and that this affiant
verily believes that the said defendant has a just and
legal defence to said action, on the merits of the case.

C. HENRY IRWIN,
Treasurer.

Sworn and subscribed to at Long Branch, New Jersey,
before me, this 20th day of September, A. D. 1901.

HENRY SCHOENLIEN,
[L. s.] *Notary Public for the*
State of New Jersey. 30

Filed September 23d, 1901.

JOSEPH McDERMOTT,
Clerk.

Therefore it is commanded to the sheriff that he cause
to come before the judge aforesaid, at Freehold afore-
said, on the first Tuesday of January, in the year of our

Lord nineteen hundred and two, twelve, &c., by whom, &c., who neither, &c., to recognize, &c., because, &c., and the same day is given to the parties aforesaid.

And now on this day, to wit, on the sixteenth day of January, A. D. nineteen hundred and two, to which this cause was continued, come the parties aforesaid, by their said attorney, before the said judge, at the place aforesaid, and the sheriff of the county of Monmouth returned here into court the writ of the State of New Jersey, to
 10 him directed and delivered and in all things executed, with the panel of the names of the jurors thereunto annexed, and the jurors of the said jury being demanded, to wit:

- | | |
|-----------------------|--------------------------|
| 1. M. Lester Terry, | 7. William F. Madge, |
| 2. Vincent Miller, | 8. Thomas Riordan, |
| 3. Joseph R. Cranmer, | 9. Frederick Smith, |
| 4. Chas. H. Tuttle, | 10. Archibald A. Tilton, |
| 5. John Brehany, | 11. John B. Ivins, |
| 6. Joseph Kaplan, | 12. William D. Hulse. |

20 Also come, who, to say the truth of the within-contained premises, being duly elected and sworn on their oaths say that they find in favor of the plaintiff, Catharine Brooks, administratrix of John Brooks, deceased, and against the defendant The Consolidated Gas Company of New Jersey, and they further say that they assess the damages at five thousand dollars, and so say they all; that it is considered that the said plaintiff do
 30 recover against the said defendant her said damages, the sum of five thousand dollars, and also the sum of fifty-two dollars and twenty-one cents for her costs and charges in her said suit in this behalf expended, which said damages, costs and charges in the whole amount to the sum of five thousand fifty-two dollars and twenty-one cents.

J. FRANKLIN FORT,
Judge.

Judgment entered January 16th, 1902.

Afterwards, to wit, on the eighteenth day of March, nineteen hundred and two, in the Supreme Court of the State of New Jersey, comes the said The Consolidated Gas Company of New Jersey, by Lewis, Besson & Stevens, its attorneys, and says that in the matters recited and contained in said bill of exceptions and also in the giving of judgment, there is manifest error in this, to wit:

1. That at the trial of said cause at the Circuit and at the close of the plaintiff's testimony, the defendant, Consolidated Gas Company of New Jersey, moved the court for judgment of nonsuit, which motion the justice who tried said cause refused to grant, to the injury of the defendant, Consolidated Gas Company of New Jersey. 10

2. That at said trial the defendant, Consolidated Gas Company of New Jersey, by its counsel, at the close of the defendant's testimony, renewed the motion to nonsuit, which motion the said justice who tried said cause refused to grant, to the injury of the defendant, Consolidated Gas Company of New Jersey. 20

3. That at said trial the defendant, Consolidated Gas Company of New Jersey, by its counsel at the close of the defendant's testimony, moved the court to direct a verdict in favor of the defendant, which motion the said justice who tried said cause refused to grant, to the injury of the defendant, Consolidated Gas Company of New Jersey.

4. That at said trial, the plaintiff, Catharine Brooks, administratrix, &c., by her counsel, asked Elias Asiel, a witness on the part of the plaintiff, the question: "Did you call at the office of the Consolidated Gas Company of New Jersey at all in the summer of 1900?" To which the defendant objected, and the said justice overruled the objection, to the injury of the defendant, Consolidated Gas Company of New Jersey.

5. That at said trial the plaintiff, Catharine Brooks, administratrix, &c., by her counsel, asked Charles R. Zacharias, a witness on the part of the plaintiff, the ques-

tion: "Then from which do you deduce your statement that the overhead wires of electric companies usually in vogue at the present time are not sufficiently covered by insulation to avoid a shock to a person taking hold of them?" To which the defendant objected and the said justice overruled the objection, to the injury of the defendant, Consolidated Gas Company of New Jersey.

6. That at said trial, the plaintiff, Catharine Brooks, administratrix, &c., by her counsel, asked John T. Lovett,
10 a witness on the part of the plaintiff, the question: "What are the average wages of a first-class gardener, if you know?" To which the defendant objected, and the said justice overruled the objection, to the injury of the defendant, Consolidated Gas Company of New Jersey.

7. That at said trial the plaintiff, Catharine Brooks, administratrix, &c., by her counsel, asked Harry E. Shaw, a witness on the part of the plaintiff, the question: "You cannot tell whether there had been any insulation
20 on there at the time of the accident or not?" To which the defendant objected, and the said justice overruled the objection, to the injury of the defendant, Consolidated Gas Company of New Jersey.

8. That at said trial, the plaintiff, Catharine Brooks, administratrix, &c., by her counsel, asked James R. Shields, a witness on the part of the defendant, the question: "Suppose it did kill him?" To which the defendant objected, and the said justice overruled the objection, to the injury of the defendant, Consolidated Gas Company of New Jersey.

30 9. That at said trial the defendant, Consolidated Gas Company of New Jersey, by its counsel, requested the court to charge the jury that the plaintiff is not entitled to a verdict if it has not been proven affirmatively that there was no insulation at the place of contact with the wire with decedent's person. To charge which the said justice refused, to the injury of the defendant, Consolidated Gas Company of New Jersey.

10. That at said trial the defendant, Consolidated Gas Company of New Jersey, by its counsel, requested

the court to charge the jury that if the wire was imperfectly insulated, this is not sufficient to entitle the plaintiff to a verdict, because the plaintiff has charged as the basis of her claim of negligence that there was no insulation on the wire at the place in question. To charge which the said justice refused, to the injury of the defendant, Consolidated Gas Company of New Jersey.

11. That at said trial the defendant, Consolidated Gas Company of New Jersey, by its counsel, requested the court to charge the jury that the defendant is entitled 10 to a verdict if there was insulation on the wire at the place complained of, no matter how insufficient or improper it may have been. To charge which the said justice refused, to the injury of the defendant, Consolidated Gas Company of New Jersey.

12. That at said trial, the defendant, Consolidated Gas Company of New Jersey, by its counsel, requested the Court to charge the jury that there is no evidence that the wire was uncovered at the place of accident before Brooks' injury. To charge which the said justice 20 refused, to the injury of the defendant, Consolidated Gas Company of New Jersey.

13. That at said trial the defendant, Consolidated Gas Company of New Jersey, by its counsel, requested the court to charge the jury that no negligence can be charged against the defendant because of the quality of the insulation it used on its wires at the transformer. To charge which the said justice refused, to the injury of the defendant, Consolidated Gas Company of New Jersey.

14. That at said trial the said justice charged the jury 30 as follows: "The transmission of electricity thus carried upon wires is a dangerous agency, and a company transmitting it is required to exercise a high degree of care to prevent injury to persons who may in the exercise of a lawful right come in contact with such agency." To charge which was to the injury of the defendant, Consolidated Gas Company of New Jersey.

15. That at said trial the said justice charged the jury as follows: "The usual rule applies, and that is that they are charged with introducing the agency by the

use of the best known means and appliances for so doing. Some cases say, standard means and appliances." To charge which was to the injury of the defendant, Consolidated Gas Company of New Jersey.

16. That at said trial the said justice charged the jury as follows: "It will appear somewhat doubtful from the evidence whether there is a standard insulation for a wire used for outside work in transmitting electricity, as shown in this case. If there is not a standard found by
10 you from the evidence to exist, then it is the duty of the defendant to use that which is the accepted and universal recognized best quality of material usually used in the trade for like purposes." To charge which was to the injury of the defendant, Consolidated Gas Company of New Jersey.

17. That at said trial the said justice charged the jury as follows: "The company must also use skilled and competent workmen in attaching the appliances and making the necessary connections, and then, after the
20 appliances are thus up, the company is required, from time to time, as necessity requires, to inspect and keep the wires and appliances in proper and reasonably safe condition." To charge which was to the injury of the defendant, Consolidated Gas Company of New Jersey.

18. That at said trial the said justice charged the jury as follows: "Was the insulation of the wire used by the defendant in this case imperfect or defective, and did the conditions exist which are alleged in the plaintiff's declaration—that is, that the defendant had not and
30 would not insulate the electric wire at or near the transmitter? If that condition existed and the evidence shows it, then you may find from that state of facts, if you find them to exist, negligence in the defendant because if they did put up a non-insulated wire, the defendant did a wrong to anyone who by duty might be called to come in contact therewith." To charge which was to the injury of the defendant, Consolidated Gas Company of New Jersey.

19. That the verdict in said case was in favor of the plaintiff and against the defendant, Consolidated Gas

Company of New Jersey, as by law said verdict, under the testimony of the cause, ought to have been for the defendant, Consolidated Gas Company of New Jersey.

20. That the judgment in said case was given in favor of the plaintiff, whereas by law said judgment ought to have been given in favor of the defendant, Consolidated Gas Company of New Jersey.

Wherefore the said defendant prays that the judgment aforesaid, by reason of the errors aforesaid, may be reversed and for nothing holden, and that the said defendant, Consolidated Gas Company of New Jersey, may be restored in all things that it has lost by reason of said judgment, and that said defendant in error may rejoice to the said errors. 10

And hereupon, afterwards, to wit, on the eighteenth day of March, nineteen hundred and two, the said Catharine Brooks, administratrix of John Brooks, deceased, by Samuel A. Patterson, her attorney, comes into court and says that there is no error either in the record and proceedings aforesaid or in giving the judgment aforesaid, and she prays here that the court here may proceed to examine as well the record and proceedings aforesaid as the matters assigned for error, and that the judgment aforesaid in manner aforesaid given may in all things be affirmed, &c. 20

But because our said Supreme Court now here are not yet advised what judgment to give of, in and upon the premises, a day is therefore given to the parties aforesaid, to wit, until the eighth day of January, nineteen hundred and three, to hear the judgment of the said court thereupon. At which day, before the said court, at Trenton, come the parties aforesaid by their attorneys aforesaid. 30

Whereupon all and singular the premises being seen and by the court now here fully understood, and as well the record and proceedings aforesaid, and the judgment given in form aforesaid, as the matters aforesaid, by the said The Consolidated Gas Company of New Jersey, above for error assigned, being diligently examined and inspected and mature deliberation being thereupon had,

it appears to our said court now here that there is no error, either in the record and proceedings aforesaid or in the giving of the judgment aforesaid.

Therefore it is considered that the judgment aforesaid, in form aforesaid given, be in all things affirmed and stand in full force and effect, the said causes and matters above for errors assigned in anywise notwithstanding.

And it is further considered that the said Catharine
 10 Brooks do recover against the said The Consolidated Gas Company of New Jersey, as well her said damages so found to be the sum of five thousand dollars, together with the sum of fifty-two dollars and twenty-one cents, costs of judgment below, besides the sum of twenty-one dollars and seventeen cents for her double costs and charges which she has sustained and expended by reason of the delay of execution of the judgment aforesaid, on pretence of prosecuting the said writ of error of our Supreme Court now here adjudged to the said Catharine
 20 Brooks, and with her assent, according to the form of the statute in such case made and provided, which said damages, costs and charges in the whole amount to five thousand and seventy-three dollars and thirty-eight cents.

And it is further ordered that the said Catharine Brooks have execution thereof.

Judgment signed this eighth day of January, A. D. nineteen hundred and three.

WILLIAM S. GUMMERE,
C. J.

30 I, William Riker, Jr., clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above-stated cause as the same remains of record in my office.

In testimony whereof I have set my
 [L. s.] hand and the seal of said court at Trenton, this twenty-eighth day of January, A. D. nineteen hundred and three.

WILLIAM RIKER, JR.,
Clerk.

ASSIGNMENT OF ERRORS.

[Filed March 3, 1903]

Afterwards, to wit, on the twenty-fourth day of February, nineteen hundred and three, before the judges of the Court of Errors and Appeals, comes the said Consolidated Gas Company of New Jersey, by Lewis, Besson & Stevens, its attorneys, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and also in giving the verdict and judgment and in giving of the judgment of the Supreme Court aforesaid, there is manifest error in this, to wit:

1. That at the trial of said cause at the Circuit and at the close of the plaintiff's testimony, the said Consolidated Gas Company of New Jersey, moved the court for judgment of nonsuit, which motion the justice who tried said cause refused to grant, to the injury of the said Consolidated Gas Company of New Jersey.

2. That at said trial the said Consolidated Gas Company of New Jersey, by its counsel, at the close of the defendant's testimony, renewed the motion to nonsuit, which motion the said justice who tried said cause refused to grant, to the injury of the said Consolidated Gas Company of New Jersey.

3. That at said trial the said Consolidated Gas Company of New Jersey, by its counsel, at the close of the defendant's testimony, moved the court to direct a verdict in favor of the said Consolidated Gas Company of New Jersey, which motion the said justice who tried said cause refused to grant, to the injury of the said Consolidated Gas Company of New Jersey.

4. That at said trial the plaintiff, Catherine Brooks, administratrix, &c., by her counsel, asked Elias Asiel, a witness on the part of the plaintiff, the question: "Did you call at the office of the Consolidated Gas Company at all in the summer of 1900?" To which the said Consolidated Gas Company of New Jersey objected, and the

said justice overruled the objection, to the injury of the said Consolidated Gas Company of New Jersey.

5. That at said trial the plaintiff, Catherine Brooks, administratrix, &c., by her counsel, asked Charles R. Zacharias, a witness on the part of the plaintiff, the question: "Then from which do you deduce your statement that the overhead wires of electric companies usually in vogue at the present time are not sufficiently covered by insulation to avoid a shock to a person taking hold
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6. That at said trial the plaintiff, Catherine Brooks, administratrix, &c., by her counsel, asked John T. Lovett, a witness on the part of the plaintiff, the question: "What are the average wages of a first-class gardener, if you know?" To which the said Consolidated Gas Company of New Jersey objected, and the said justice overruled
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7. That at said trial the plaintiff, Catherine Brooks, administratrix, &c., by her counsel, asked Harry E. Shaw, a witness on the part of the plaintiff, the question: "You cannot tell whether there had been any insulation on there at the time of the accident or not?" To which the Consolidated Gas Company of New Jersey objected, and the said justice overruled the objection, to the injury of the said Consolidated Gas Company of New
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13. That at said trial the said Consolidated Gas Company of New Jersey, by its counsel, requested the court to charge the jury that no negligence can be charged against the defendant because of the quality of the insulation it used on its wires at the transformer. To charge which the said justice refused, to the injury of the said Consolidated Gas Company of New Jersey.

14. That at said trial the said justice charged the jury as follows: "The transmission of electricity thus carried

upon the wires is a dangerous agency, and a company transmitting it is required to exercise a high degree of care to prevent injury to persons who may in the exercise of a lawful right come in contact with such agency." To charge which was to the injury of the said Consolidated Gas Company of New Jersey.

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16. That at said trial the said justice charged the jury as follows: "It will appear somewhat doubtful from the evidence whether there is a standard insulation for a wire used for outside work in transmitting electricity, as shown in this case. If there is not a standard found by you from the evidence to exist, then it is the duty of the
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30 to time, as necessity requires, to inspect and keep the wires and appliances in proper and reasonably safe condition." To charge which was to the injury of the said Consolidated Gas Company of New Jersey.

18. That at said trial the said justice charged the jury as follows: "Was the insulation of the wire used by the defendant in this case imperfect or defective, and did the conditions exist which are alleged in the plaintiff's declaration—that is, that the defendant had not and would not insulate the electric wire at or near the transmitter?"

If that condition existed and the evidence shows it, then you may find from that state of facts, if you find them to exist, negligence in the defendant, because if they did put up a non-insulated wire, the defendant did a wrong to anyone who by duty might be called to come in contact therewith." To charge which was to the injury of the said Consolidated Gas Company of New Jersey.

19. That the verdict in said case was in favor of the plaintiff and against the said Consolidated Gas Company of New Jersey, as by law said verdict, under the 10 testimony of the case, ought to have been for the said Consolidated Gas Company of New Jersey.

20. That the judgment in said case was given in favor of the plaintiff, whereas by law said judgment ought to have been given in favor of the said Consolidated Gas Company of New Jersey.

Wherefore the said Consolidated Gas Company of New Jersey prays that the judgment aforesaid by reason of the errors aforesaid may be reversed and for nothing holden and that the said Consolidated Gas Company of 20 New Jersey may be restored in all things that it has lost by reason of said judgment, &c.

LEWIS, BESSON & STEVENS,

Attorneys for Plaintiff in Error.

February 24th, 1903.

Due and legal service of the within assignment of errors made and accepted this 25th day of February, 1903.

S. A. PATTERSON,

Attorney for Defendant in Error. 30

OPINION.

On error to the Monmouth Circuit Court.

Argued at June Term, 1902, before GUMMERE, CHIEF JUSTICE, and Justices VAN SYCKEL, FORT and GARRETSON.

For the plaintiffs in error, *E. A. S. Lewis*.

For the defendant in error, *S. A. Patterson*.

PER CURIAM.

The plaintiff's decedent was a gardener in the employ of one Elias Asiel at Long Branch. While engaged 10 in painting a gutter on the edge of one of the balconies on the house of his employer, the decedent came in contact with an electric wire which ran up the side of the house some eight or ten inches from the corner of this balcony, and received a shock which instantly killed him.

But two errors are assigned—*first*, the refusal of the court to grant the defendant's motion to nonsuit the plaintiff, and, *second*, the refusal of the court to grant the defendant's motion to direct a verdict in its favor.

Both of defendant's motions were rested on two 20 grounds—*first*, that the case showed that the death of the plaintiff's decedent was partly due to his own negligence, and, *second*, that it failed to show that his death resulted from any neglect on the part of the defendant of any duty which it owed to him.

We find nothing in the case which would have justified the trial court in holding that the negligence of the deceased conclusively appeared. No one saw the accident, and there was no testimony to show how it occurred. The mere fact that while engaged in painting the gutter 30 upon this balcony he came in contact with an electric wire of the defendant company, is not in itself conclusive evidence of negligence on his part. Nor would the

trial court have been justified in directing a verdict for the defendant upon the ground that there was no evidence from which a jury could conclude that it was neglectful of any duty which it owed the decedent; there was evidence from which such negligence could have been found.

Our conclusion is that both of the requests of the defendant were properly refused, and that the judgment below should be affirmed.

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New Jersey Court of Errors and Appeals

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Catharine Brooks, Administratrix of John Brooks, Defendant in Error, vs. Consolidated Gas Company of New Jersey, Plaintiff in Error.	}	In Tort.
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Brief of S. A. PATTERSON
Attorney for Defendant in Error

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John Brooks, the deceased, and husband of the plaintiff was employed as a gardener, care-taker and superintendent of a cottage near Long Branch, in October, 1900. (Book, page 14, line 27; also page 17, line 29.)

His duties required him to sweep the porches, wash the porches, repair leaks on the roof and elsewhere upon the premises. (Book, page 17, line 29.)

On the sixth of October, 1900, John Brooks was killed by an electric shock received from a wire running in- 30
to the house where he was employed. The wire led into a converter fastened on the house adjacent to a balcony where Brooks was doing some work at the time of his death. (Book, page 27, line 7 to page 28, line 40.)

The electric wire and current which shocked Brooks to death were owned and maintained by the defendant. (Book, page 54, line 32.)

The wires were strung to the cottage by the defendant. (Book, page 54, line 35.)

The electric current was cut off inside the house July 40

31st, preceding October 6th, 1900. (Book, page 55, line 16.)

This cutting off the current from the inside of the house still left the wire running into the converter charged with 2,000 volts. (Book, page 22, line 11.)

The defendant was ordered to turn off the current on July 30th, 1900. (Book, page 16, line 30), and said it would be done. (See page 16, line 40.)

It was the duty of defendant to turn the current off
10 the entire cottage under these directions; and to maintain the current into the converter, which was adjacent to the balcony, was a constant menace to life.

The converter was only four inches from the baluster, a highly dangerous place (Book, page 28, line 18; also page 37, line 11), and charged on October 6th, with a current sufficient to kill instantly if touched without gloves. (See evidence of Frank G. Sanford, Book, page 96, lines 1 to 15.)

At the time of his decease, Brooks was upon the balcony engaged in performing his duties. (Book, page 31,
20 lines 28 to 40; also page 32, lines 1 to 15.)

He was with his son who was playing nearby on the balcony. (Book, page 32, line 20.)

The boy heard his father make an exclamation and ran to him; he took hold of him and was himself shocked. He could not at first release himself from his father so great was the force of the electric current. The boy was scarred and burned. (Book, page 33, lines 1 to 30.)

I respectfully submit that the wire from which the
30 electric current killed Mr. Brooks was not insulated, or if insulated was so insufficiently insulated as to be highly dangerous to life, and that its insufficient insulation caused the death of Mr Brooks.

A company authorized to place its wires in a public highway, which wires it uses in its business to transmit an electric current which is dangerous, must exercise a high degree of care to prevent injury to persons using the highway for passage. Newark Power Co. vs. McGilvey, 33 Vroom, 451.

40 There is a public duty to exercise great care and skill

incumbent on those having charge of instruments which if mismanaged are highly dangerous to the lives of men who happen to be in their neighborhood, and for the non-performance of such duty a person specially injured is entitled to sue.

Van Winkle vs. American Steam Boiler Co., 23 Vroom, 240.

It was the duty of the defendant to notify the deceased of the lurking danger.

Lechman vs. Hooper, 23 Vroom, 253.

Electric wires carrying a dangerous current must be carefully kept in place and properly insulated, and those who maintain them are liable to the public and to their own servants for negligence in this respect.

Keasby on Elec. Wires, Sec. 13, page 166.

In Ennis vs. Gray, 87 Hun, N. Y., page 355, the Court said:

"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 contractual relations, a duty was created on the part of the defendant, not only towards the public generally who in the streets might be liable 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 to be."

The plaintiff in the above case was a roofer by trade who was injured while at work on the roof of a building, upon authority of the owner of the building, by coming in contact with the wires of the defendant. It was held that the plaintiff was entitled to recover.

In the case of Anderson vs. Jersey City Electric Light Company, 34 Vroom, 387, the Supreme Court, per Mr. Judge Garrison, said:

"One who uses, controls and manages an electric current of high destructive power in a place where it is reasonably probable others must enter to work, owes to each person who so enters a duty to use reasonable care

to maintain proper insulation of such current."

Therefore, was the insulation at the point where the wire reached the converter and where it was within four inches of the balcony, sufficient?

Or was the insulation of such a character as to indicate a lack of ordinary prudence on the part of defendant to guard against death?

The insulation used was such that an expert (Sanford) (see Book, page 96, line 2,) used rubber gloves to handle or touch it.

10 Heavier and safer insulation could have been used. (Book, page 24, line 3.)

Mr. Zacharias, an expert electrician, testifies (Book page 24, line 40; page 25, lines 1, 2 and 3,) that an insulation could have been used so that Mr. Brooks would not have lost his life.

The defendant sought to show that the insulation of what is known as overhead wiring was used on the wire in question, and that there is a custom to use such a kind of insulation. (Book, page 64, line 17.)

20 Doubtless it is the practice of electrical companies to use a different kind of insulation on wires strung twenty feet over a highway than that used in houses, but I submit there can be no lawful system of wiring or insulation that permits a company to place a wire within four inches of a balcony or other place where a person is likely to go lawfully, where contact with such wire will cause instant death.

The wire that killed Brooks would have killed any
30 person who happened to touch it intentionally or inadvertently, and the company owed the same duty to Brooks that it did to any person rightfully upon the balcony.

The witness Sprong, an electrician called for defendant, testifies (Book, page 104, line 36) that the wire that killed Brooks, though insulated as claimed by defendant, might cause death. Surely such a wire should have been insulated to a high degree at that point.

The witnesses for defendant were not exact or certain that the system of insulation used on the wire in question
40 was the best or safest obtainable or in use.

Sprong, for defendant, testifies (Book, page 105, line 12) that there might have been better, and there were many systems of insulation he had not tested. (See page 105, line 8.)

Sprong in fact testifies (Book, page 106, lines 8 to 12) that the insulation on the wire in question was not of the standard kind, and that he had made no tests of various kinds of insulation. (Book, page 106, lines 13 to 25.)

It is not clear from the evidence whether the wire, where the deceased came in contact with it, was insulated at all, but it does appear that if it was insulated there in the same manner as the rest of the wire, contact with it would cause death. (Evidence of Shields, Book, page 73, lines 2 to 10.)

It cannot be denied that the deceased had a right to be upon the balcony; whether he slipped and fell against the wire, or touched it inadvertently is a matter of conjecture. It is certain, however, that the burden of showing contributory negligence was upon the defendant, and it was for the jury to determine where such negligence was established.

Hughes vs. Camden and Suburban R. R., 36 Vroom, 203.

Whether the wire was insulated at all when it met the converter was a question for the jury. The defendant had no system of regular inspection and the evidence shows that there had been no inspection for a long time before the accident.

It is true that Sanford, witness for defendant, testified (Book, page 82, line 22) that he examined the transmitter and wire a few days before the accident, but his cross-examination disclosed a different state of facts. (See page 85, lines 1 to 21.) Note line 23, page 85, where Sanford says he didn't have to go to the house before the accident; note line 27, where he says it was not necessary to go there.

See also his evidence (Book, page 87, lines 20 to 28) where he testifies his inspection was made after the accident.

Page 90, line 24, Sanford is asked on cross-examina-

tion, "How do you fix the month you made the inspection of these premises?" See his replies. He fails utterly to show any inspection. (Book, page 90, lines 24 to 40; also page 91, lines 1 to 38.) Note Sanford's absurd explanation (Book, page 91, line 15) for fixing the date of his inspection in October by something that occurred in July.

He also says that he made an inspection standing 15 feet away. (Book, page 95, line 8.)

Motion to non-suit, see Book, page 60, line 34.

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This motion was based upon an alleged absence of negligence on the part of defendant. This motion was properly refused.

"When a trial judge is requested to non-suit or direct a verdict in the trial of an action to enforce a liability for negligence, his duty is to determine whether facts have been established by evidence from which negligence may be reasonably inferred. If the real facts are in substantial dispute, the case cannot be taken from the jury."

See.

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Newark Passenger Ry. Co. vs. Block, 26 Vroom, 605.

See also Hughes, Camden R. R., 36 Vroom, 203.

Kulman v. Erie Rail Road, 36 Vroom, 241.

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Milledale v. Citizen Co

62 N. J. 297

"There was evidence that the call wire had become weakened by long exposure and that it had been mended and patched in several places so that it was liable to be broken from any slight cause and that there was no guard or dead wire to prevent its falling across the electric wire and becoming dangerously charged. Held, that the question of negligence and of proximate cause were properly left to the jury.

Hallen v. Edison Co

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Western Union Telegraph Co. vs. Thorn, 64, Federal Report, 287.

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The defendant requested a verdict (Book, page 107, line 31) on the ground that the naar alleged no insulation, whereas it was not shown affirmatively by plaintiff that there was no insulation.

Whether there was no insulation at all was for the jury, but I submit that an allegation that there was no insulation is sustained if it be shown there was an insufficient or dangerous insulation.

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Insulation in a legal sense certainly means that which

guards life, and dangerous insulation is in fact no insulation.

The third request to charge of defendant (Book, page 108, line 3) that any kind of insulation was sufficient, was manifestly improper.

I respectfully submit that the judgment of the Supreme Court and the court below should be affirmed.

S. A. PATTERSON,

Attorney and of counsel for defendant in error.



