

assuming that no further sagging took place between the time of the stringing of the electric light wire and the time of the placing of the messenger wire.

It was shewn that the stretching of the copper wire on a span of this kind would be infinitesimal. The increase in the sag between the time of stringing and the time of contact was occasioned by the settlement or bending of the electric light poles, which were not sufficiently guyed to prevent the sagging. Experts stated that as a matter of calculation as well of experiment, if the tops of the poles each moved two inches inwardly, this would bring the wire down from the two feet to the four feet six inches. It is altogether probable that most of this settlement took place when the poles were newly erected; so that I am satisfied that there was not anything like a clearance of two feet six inches when the messenger wire was placed in position.

All parties agree that to insure safe construction wires should not be placed closer than three feet, as some sagging is inevitable and there is always danger of extra sagging being caused by sleet and ice.

I find as a fact that the Electric Light Company in the erection of its poles did not take adequate precautions, by guying or otherwise, to prevent the increase of the sag in their wire, and that they did not inspect the wires, or they would have discovered the contact, which existed from early in the summer until the time of the accident.

It was shewn in evidence that throughout the summer this wire, when swung by the breeze or otherwise, emitted sparks when it came in contact with the messenger wire; and some children were called to testify that their summer evening amusement was the making of fireworks by swinging on the guy wire so as to cause the wires to separate and come in contact, and to emit flames.

It is contended on behalf of these defendants that, however short of perfection their construction may have been, and however negligent their inspection may have been, they had no duty to the telephone company or its employees to protect the wire improperly placed by the telephone company in a dangerous position, and that the accident being in truth caused by the negligence of the telephone company, in placing its wires in undue proximity to the electric wires, neither the telephone company nor its employees is entitled to recover.