

but would not swear it was not then hanging over and from these wires, which are some 30 feet above the ground. The suggestion made by plaintiffs was that the workmen of the gas company cut this guy wire loose for the purpose of straightening a pole of the gas company to which it was attached, and which had certainly been straightened by these workmen. While this is not improbable, I could not find, upon the evidence adduced by plaintiffs, that it was established as a fact that this guy wire was cut loose by the workmen of defendant gas company. But the evidence adduced by defendant city corporation, upon their defence, made it perfectly clear that the guy wire was in fact cut loose by the workmen of their co-defendants.

Plaintiffs are, I think, entitled to ask that this evidence should be taken as part of their case. It was made clear that the witness who gave it was subpoenaed for plaintiffs, and that but for his refusal to make any statement to plaintiffs' solicitor, he would have been called as a witness for plaintiffs. If necessary, I would permit plaintiffs' case to be re-opened and this evidence made part of it.

I, therefore, find the fact established that the guy wire in question was cut and left loose by the workmen of defendant gas company engaged in straightening the company's pole to which it was attached.

But it has not been shewn that the company's workmen placed or drew this wire across or put it in contact with the power wires which they had been stringing. . . . The circumstances would, I think, justify an inference that the workmen of defendant company did headlessly—perhaps unintentionally—put the guy wire in the position which, when the electric current was turned into the company's wires, made it dangerous. But, if the actual throwing of the loose guy wire over the other wires were the act of some passer-by, who thought thus to put it out of the way, or even of some mischievous urchin, it seems to me such a likely and probable thing to happen that it is not too remotely connected with the act of cutting the guy wire from its fastenings and leaving it loose on the ground to render those guilty of the latter negligence liable for the consequences which ensued, though an independent agency had intervened as their immediate cause. The original negligence of the workmen of defendant company was an effective cause of the injury to plaintiffs: *McDowell v. Great Western R. W. Co.*, [1902] 1 K. B. 618.