

action by a linesman in the employment of defendants the Ottawa Electric Company to recover damages for injuries sustained in the course of his employment by the alleged negligence of defendants. The trial Judge nonsuited plaintiff as against defendants the Ottawa Electric Company, but as against Ahearn & Soper left three questions to the jury, in answer to two of which they found that negligence of Ahearn & Soper was the proximate cause of plaintiff's injury, and that the negligence consisted in using uncovered wires and careless construction of tie-wires. They did not answer the third question, which was, whether the plaintiff might, by the exercise of ordinary care, have avoided the injury. The trial Judge treated what occurred as a disagreement of the jury and discharged them.

W. Nesbitt, K.C., and C. Murphy, Ottawa, for defendants Ahearn & Soper.

H. M. Mowat, K.C., for plaintiff.

THE COURT (MEREDITH, C.J., MACMAHON, J.) held that the standard for measuring the duty which Ahearn & Soper owed to plaintiff was not the same standard as that which would have been applicable if the line the current from which as it was alleged, caused the injury to plaintiff, had belonged to his employers, and the action had been against the employers; but the duty which was owed by Ahearn & Soper to plaintiff was to take reasonable care that he should not suffer injury from the dangerous current of electricity which they were conducting on their line in close proximity to the place where he was working: *Thrussell v. Handyside*, 20 Q. B. D. 359; *Carr v. Manchester Electric Co.*, 7 Am. Electrical Cas. 746. It was for the jury to say whether there was "absence of care according to the circumstances," having regard, on the one hand, to the highly dangerous character of the element which Ahearn & Soper were dealing with, and the means that were open to them of avoiding altogether or reducing to a minimum the danger, and, on the other hand, to the obvious and ordinary means of protection and of avoiding injury that were available to plaintiff in the circumstances. The circumstance that bare wires were used for tie wires, which was apparent to the eye, and the circumstance that plaintiff was not wearing gloves when he was engaged in the work, were not sufficient to justify the withdrawal of the case from the jury: *Paine v. Electrill Co.*, 7 Am. Electrical Cas. 651.

Both motions dismissed, and case to go down for a new trial. Costs of both motions and of the last trial to be costs in the cause, unless the trial Judge otherwise orders.