

MAY 5TH, 1913.

HUDSON v. SMITH'S FALLS ELECTRIC POWER CO.

Negligence—Injury to Person from Contact with Broken Live Wire upon Highway—Evidence—Judge's Charge—Findings of Jury—Insufficiency—New Trial.

Appeal by the defendants from the judgment of SUTHERLAND, J., upon the findings of a jury, in favour of the plaintiffs, in an action for damages arising from injuries sustained by the plaintiff Elizabeth Hudson by coming in contact with a broken live wire of the defendants upon a street in the town of Smith's Falls. The plaintiff Elizabeth Hudson was awarded \$800 damages, and the plaintiff Henry Hudson, her husband, \$500 damages.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

C. A. Moss and H. A. Lavell, for the defendants.

D. L. McCarthy, K.C., for the plaintiffs.

The judgment of the Court was delivered by HODGINS, J.A.:—The respondent Elizabeth Hudson is found by the jury to have met with an accident caused by the negligence of the appellants, which negligence is, according to the answer to question 2, "insufficient inspection of service wire." There was evidence that the electric light service wire, running into Captain Foster's house, broke, and fell upon the street, and that the respondent Elizabeth Hudson, while walking along the street, came in contact with it and received a shock affecting her health and bringing on a miscarriage. There was a considerable difference among the witnesses called as to whether the wire broke on Saturday night or on Sunday night, the 19th or 20th March, 1910. Mrs. Hudson placed it definitely on Saturday night, while Captain Foster was certain it was on Sunday night. Both related circumstances which rendered the true date a question of considerable doubt, but no question was put to the jury on the subject.

If the accident happened on Saturday night, the appellants did not render the wire harmless until Sunday night; whereas, if it occurred on Sunday evening, they attended to it that night. It was upon the question of negligence in this regard that the pleadings were framed and the case opened.