

the mortgage, whichever is least. Upon payment, Holden is to assign his mortgage to the company; and if within two weeks the company offers to restore the boat to Holden's possession, I think I ought to relieve the company from liability. There will be a stay for twenty days to allow an application for relief to be made. If this is not done, and if the parties cannot agree as to the amount for which judgment should be entered, there will be a reference.

HON. MR. JUSTICE MIDDLETON.

APRIL 14TH, 1913.

ROBERTS v. BELL TELEPHONE CO. AND WESTERN
COUNTIES ELECTRIC CO.

4 O. W. N. 1099.

Negligence—Death of Telephone Lineman—Contact between Electric Wire and Telephone Wire—Negligent Construction and Inspection of Electric Wire—Telephone Wire Subsequently Placed—No Legal Liability on Electric Company—Dangerous Substance—Statutory Authority—Liability for Wrongful Act of the Third Party.

Action for damages for alleged negligence against an electric light company on account of the death of a telephone lineman killed by a shock received through the telephone wire he was stringing coming in contact with another telephone wire which had come in contact with a live wire of defendants. The electric wire was strung first and the telephone wire later, some two feet six inches below it. Owing to the sagging of the electric light poles due to improper guying the two wires came in contact and this condition of affairs continued for some months owing to lack of inspection.

MIDDLETON, J., *held*, that the electric company was not liable either for the improper guying or for the lack of inspection, because negligence must be founded upon a breach of duty to some one and at the time the electric wire was strung there was no other wire in existence in this place.

Urquhart v. Farrant (1897), 1 Q. B. 241, and other cases referred to.

That defendants were not liable on account of their want of care in handling a dangerous substance, because they were upon the highway by legislative permission which relieved them from liability unless negligence were shewn.

National v. Baker (1893), 2 Ch. 186, and *Eastern, etc., v. Cape-town* (1902), A. C. 381, followed.

Action brought by the widow of Herbert Roberts, on behalf of herself and infant children, to recover damages by reason of his death on the 16th September, 1912, tried at Hamilton on April 1st, 1913. The action was settled between the plaintiff and the Bell Telephone Company. That