

law would defeat the purpose of the enactment. The legislature, which could have excepted the application of the general law in express terms, must be deemed to have done so by implication in such cases. Nor need a use of the power conferred, which is injurious to others, be excluded from the ambit of that which is necessarily incidental to their enjoyment merely because the progress of discovery or invention reveals some extraordinary means of preventing that injury to others which has previously been unavoidable. This point arose and was settled in connection with sparks falling from locomotive engines many years ago. It therefore becomes necessary to consider how far such an escape of electricity as took place in this case was incidental to the use of overhead cables and how far and by what reasonable precautions injurious consequences were preventible.

The question, whether it was necessary to hang the two sets of cables on the same poles or in such proximity to one another that the fall of the branch upon one would lead to the flow of the high tension current into the other, hardly seems to have been examined at the trial. The main contention is this. It was the result of voluminous evidence called at the trial, and indeed in their Lordships' view the Company's case, that, if the wires of the transformers, which are used at intervals along the line of cable, had been grounded, the escaping high-tension electricity would have found its way innocuously to earth instead of entering the houses and setting them on fire. The value of this precaution had been established by the experience of several years, but it was the view of some distributors of electricity, and of the defendant Company among them, that there was an offset to this advantage in the fact that, if the wiring of the customers' houses was defective, the grounding of the transformer wires would substitute new difficulties for the old. It was not, however, shown that the wiring of the plaintiffs' houses was defective to this extent, although it was "démodé," nor did the evidence compare the one disadvantage with the other quantitatively. The Company could have inspected the wiring and, if it was not safe, could have declined to supply current. It is plain that the Company was quite willing to have carried out the grounding of the transformer wires, if the representatives of the Fire Insurance Companies, who advised this course, had given an instruction instead of a recommendation. The latter naturally pointed out that they had no authority to issue instructions but must confine themselves to advice, and as their Lordships are neither prepared to assume that this request on the appellants' part for instructions was a mere quibble, designed to disguise their own

reluctance to do anything, nor even to infer that they saw any objection to the proposal except the expense of it, they conclude that the grounding of the wires of the transformers would, some substantial time before the accident in question, have been a practicable and efficient safeguard against the injury which in fact was inflicted. If so, it is impossible to say that the escape of electricity into customers' houses and the consequent damage in time of storm was a necessary incident of the exercise of the power to distribute high tension current by overhead cables along roads, such as would by implication relieve the Company from liability for the consequences.

Two decisions which were pressed on their Lordships' attention require particular examination, viz., *Roy's case* (1902 A.C. 220) and *Dumphy's case* (1907 A.C. 454). The former is a case of damage by the escape of sparks from a locomotive engine and the decision in terms is in line with the well-known authorities of *Vaughan v. The Taff Vale Railway Company* (5 H. & N. 679) and *Brand v. The Hafjersmith Railway Company* (L.R. 4 H.L. 171); it is a case of "plain words authorising the doing of the very thing complained of." *Dumphy's* is a case of high tension electricity released by the act of a third party's workman, whom the jury acquitted of negligence. No specific Article of the Code is mentioned, and the presence of a high tension current in the cable was only the *causa sine qua non* and the human action which released it was the *causa causans* of the accident. There was statutory authority to circulate high tension electricity overhead, but on the simple issue, whether the damage caused by the escape of that electricity was caused by the Company's negligence, it was held that no negligence had been proved, and indeed but for the act of a stranger, who himself was not careless, the Company's electricity would have done no harm to anybody.

Whether in the present cases the evidence established affirmatively a case of negligence against the defendants is a question on which the Supreme Court arrived at no definite conclusion. Had it been necessary, the respondents would have been entitled to claim before their Lordships' Board that this issue should be decided now, since the terms imposed on the appellants under the special leave to appeal bound them to rely on points of law only but did not preclude the respondents from meeting those points upon the facts in any way which the evidence warranted. In the view, however, above taken of the case no decision on this question is needed.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.