

**ALFONSA CARLOS ET AL., PLAINTIFFS AND APPELLANTS, VS. THE
MANILA ELECTRIC RAILROAD & LIGHT COMPANY,
DEFENDANT AND APPELLEE.***G.R. No. 10838. March 01, 1916*

Ponente: TRENT, J.

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This is an action for damages by Alfonsa Carlos and her daughter, Barbara, against the defendant for negligently causing the death of Alfonso Sobrevilla. From a judgment dismissing the action after trial upon the merits, the plaintiffs have appealed, and the case was submitted to us for consideration on August 3, 1915.

The facts are these: The defendant's street railway track on Calle Gagalangin, in 1905, was on the east side of that street and its trolley wire over the track was consequently between the eastern curb and the center line of the street. This trolley wire was uncovered and carried a current of high voltage. At the side of the street, carried on posts, were the feed wires and other wires of the defendant, all of which were insulated. Above these wires on another set of posts were the insulated galvanized-iron wires of the telephone company. There were trees at the side of the street on private land which towered above the wires. On September 26, 1905, Manila was visited by a typhoon of extraordinary violence. Early in the afternoon and when the storm had reached great intensity, one of the trees above referred to was broken or uprooted, and its fall broke one of the telephone company's wires. The free end of this wire, falling to the street, was carried by the wind across the trolley wire of the defendant and, striking the wet ground, established a circuit and became charged with the dangerous current of the trolley wire. Neither the trolley wire nor any other wire of the defendant was broken. A child, passing along the street, struck the live telephone wire and was killed by the electrical discharge. Alfonso Sobrevilla, a policeman on duty in the street, went to the assistance of the unfortunate child and, coming in contact with the same wire, was himself killed by the current. The defendant had no control over the poles and wires of the telephone company; neither did the defendant have any knowledge of the defect in the telephone wires or that the storm had broken such wires before Sobrevilla was killed. The record fails to disclose whether the telephone line was constructed before or after that of the trolley system. The defendant shut off the electrical current immediately upon receipt of an order from the city electrician. This order was not given, however, until after the accident had taken place.

The defendant company was authorized to lay its track and put its trolley wire at the place of the accident. The trolley wire was uncovered and carried a high voltage. This was necessary in order for the wire to serve its purpose. The trolley wire and other wires of the company were strung in accordance with the municipal ordinances. In fact, there is no contention that all the requirements of the city authorities as to the location of the defendant's tracks, poles, and wires in Calle Gagalangin were not complied with. So the whole case resolves itself into the question whether or not the defendant was negligent (a) in failing to guard its wires so that a falling telephone wire would not come in contact with them, and (b) in not cutting off its current upon its own initiative on account of the danger arising from the unusual severity of the storm which had been raging for some time prior to the receipt of the order of the city electrician.

Article 1105 of the Civil Code provides that:

"No person shall be liable for events which could not be foreseen, or which having been foreseen were inevitable, with the exception of the cases expressly mentioned in the law or those in which the obligation so declares."

The case at bar does not fall within the exceptions mentioned in this article. (Manresa, vol. 8, p. 91.) Article 1902 of the Civil Code provides that:

"A person who by an act or omission causes damage to another when there is fault or negligence shall be obliged to repair the damage so done."

We have, then, on the one hand, nonliability of the company for events which could not be foreseen and, on the other hand, its liability where fault or negligence may be attributed to it. It was not only the defendant's privilege, but its duty under its franchise, to supply electric current to the city and to keep its cars running as long as possible. The people depend upon this service and would have just grounds for complaint if the defendant were to discontinue its current without just cause. While it is true that when an electric railway company is given authority to use the public streets for its lines, the law implies a duty of using a very high degree of care in the construction, operation, and maintenance of its appliances, requiring it to employ every reasonable precaution known to those possessed of the skill and knowledge requisite to the safe conduct and control of such a dangerous agency for providing against such dangers incident to its use, and holds it accountable for the injury of any person due to the neglect of that duty (see cases cited in monographic note to the case of *Herbert vs. Lake Charles Ice, etc., Co.*, 100 Am. St. Rep., 505); that in the control and management of a dangerous agency such as electricity, the law exacts a degree of skill and diligence commensurate with the danger involved (*U. S. vs. Juanillo*, 23 Phil. Rep., 212); that a corporation, in stringing wires of a dangerous voltage, must be regardful of the presence of other wires and of the possibility of its own wires charging or coming in contact with them; that the ownership of the wire is not controlling as to the liability for an injury caused by coming in contact with it; that an electric railway company or an electric light company is responsible for an injury where it negligently permits its wires to come in contact with another company's telephone or telegraph wires, which transmits the current and thereby causes an accident (*Daltry vs. Media Elec, etc., Co.*, 208 Pa. St., 403, and cases cited); that the duty and liability of electric companies is not limited to keeping their own wires out of the streets, but extends to the prevention of the escape of the dangerous force in their service through any wires brought in contact with their own and of its transmission thereby to anyone using the streets. Yet such companies, in erecting and maintaining their wires, are bound only to anticipate such combinations of circumstances and accidents and injuries therefrom, as they may reasonably forecast as likely to happen, taking into account their own experience and the practice of others in similar conditions, together with what is inherently probable in the condition of the wires as they relate to the conduct of their business. (*Snyder vs. Wheeling Elec. Co.*, 43 W. Va., 661; 64 Am. St. Rep., 922.)

In the United States it has been held that if an electric corporation places wires, designed to carry powerful currents of electricity, in the streets where there are telephone wires above, thus making the telephone wires, which before were harmless, dangerous, it is the duty of the electric company to guard its wires so that a falling telephone wire will not come in contact with them. (*Rowe vs. New York etc., Tel. Co.*, 66 N. J. L., 19; *Electric Ry. Co. vs. Shelton*, 89 Tenn., 423; 24 Am. St. Rep., 614; *Richmond etc. Ry. Co. vs. Rubin* (Va.), 47 S. E., 834.) There are other cases in that country holding that it cannot be said, as a matter of law, that it is the duty of an electric company to place guards over its trolley wires in such a way as to prevent telephone wires, in the event of their falling, from coming in contact with the trolley wires. (*City of Albany vs. Watervliet. Turnpike & R. Co.*, 27 N. Y. Supp., 848; *Block vs. Milwaukee St. Ry. Co.*, 89 Wis., 371; 46 Am. St. Rep., 849.)

In the case at bar the accident did not occur at a place where the, telephone wire crossed the trolley wire, but at a

place where the former was running above the latter and parallel with it. The defendant's trolley wires withstood the severity of the storm and they, of themselves, were rendered in no way dangerous. They were in their proper place, performing their necessary and proper functions in the propulsion of the cars. The only precautionary measure which the defendant could have taken was the stringing of guard wires over the trolley wires so as to prevent the telephone wires, suspended above, from falling on those uninsulated and highly charged wires. But the record fails to show whether such means of protection would lessen the danger of contact or not. No testimony was offered on this point. Neither are we informed whether guard wires are actually employed in electrical construction under similar circumstances to that in question. It may be that practical experience has proved that guard wires are not effective, because, themselves liable to be blown down or disarranged by storms and thereby coming in contact with the heavily charged wires, aggravating, rather than lessening, the menace to persons passing along the streets. We must therefore conclude that the record before us does not justify a holding that the defendant was negligent in failing to place or string guard wires between its trolley wires and the wires of the telephone company.

The city electrician, whose peculiar duty it was to act in such matters, did not think it was necessary to order the defendant to shut off its current until he actually acted, and If he saw no sufficient reason for shutting off the current earlier, should the defendant be expected to have acted differently? This is the question involved in the second proposition.

The defendant is bound by its franchise to furnish at all times cars sufficient to satisfy the public demand and to carry comfortably all the members of the public desiring to ride thereon. During such a typhoon as the one referred to above, there is special need for street cars to get the people to their homes in order that they may be able to care for their families and property. No other adequate means of transportation are available to the general public during such a crisis.

Again, under section 17 (ii) of the Manila Charter, the municipal board has provided that the city electrician is authorized, empowered, and directed to have general supervision over the placing, stringing, attaching, and construction of electric railway wires, poles, and other apparatus, and the inspection of the same. (Sec. 315, Malcolm's Revised Ordinances.) The city electrician shall as frequently as possible inspect all wires, poles, and other apparatus installed or used for generating, containing, or measuring electricity; and shall condemn all such wires, poles or other apparatus as are dangerous or defective, and so notify the owner thereof (Id., 316). The city electrician and his subordinates have a right to enter upon any premises for the purpose of making such inspection (Id., 320) and to charge therefor. (Id., 324.)

It will thus be seen that the city authorities have a real supervision, and in some particulars a real control, over the defendant's electric railway and light system. The city has designated one of its officials who has technical knowledge of electricity, to act in these matters. This official did, as we have said, act by directing the defendant to cut off its current just as soon as he thought it was necessary. Under all the facts and circumstances above set forth, we think it would be going too far to hold that the defendant was negligent in failing to cut off its current before the receipt of the city electrician's order. Cases may arise in which it would be the duty of the defendant to act upon its own initiative, but the case under consideration is not one of that character.

For the foregoing reasons, the judgment appealed from is affirmed, without costs in this instance. So ordered.

Arellano, C. J., Torres and Carson, JJ., concur.

Moreland, J., concurs in the result.

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