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# Negligence--Maintenance of Electric Wires

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The police power is not static but progressive. It moves with the movement of public opinion.[39] The time has come when the Courts should drop the mask of an exclusive concern for safety and health and frankly approve reasonable regulation of the use of property in the interests [40] of beauty.

ROSE L. LIPMAN.

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NEGLIGENCE—MAINTENANCE OF ELECTRIC WIRES.

One creating a possible danger is under a duty to take all possible precautions to insure the safety of those who might be in the vicinity engaged in an act which could be reasonably anticipated. Electricity of high voltage is inherently dangerous. Very little knowledge of its qualities is possessed by the average layman. Within the past few decades an increasing amount of litigation has arisen concerning electricity. The carrying of electric current through wires strung upon poles along streets and highways has added to the danger of our already complex life. Electrical companies, while not insurers of the absolute safety of the public against all dangers arising from the lawful erection and maintenance of their lines [1] are bound to exercise reasonable care in the maintenance thereof.[2] While some states require a high degree of care, the law in this State seems to be that "where potentiality of injury from electric current exists, reasonable care requires only foresight apparently commensurate with the danger." [3]

In a recent New York Court of Appeals case [4] the defendant had acquired by deed a right of way across the grantor's property to erect and to maintain high tension electric wires. The grantor's successor erected a railroad siding running diagonally under defendant's wires. At the expense of the railroad the wires were raised to a height of twenty-nine and one-half feet above the siding. Subsequently a contractor began to construct a roadway nearby. A movable crane with a boom forty feet in height was stationed near to or at the crossing. It was used to lift materials from cars standing upon the siding. All realized the danger of the boom forming a contact with the wires. The defendant had notice. The contractor had notice. The defendant did not refuse to erect higher poles but insisted that the contractor pay for the change. The latter refused.

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[39] *Supra* note 24.
[40] *Ibid.*

[1] W. U. Tel. Co. v. Thorn, 64 Fed. 287 (C. C. A. 3rd, 1894).
[2] *Ibid.;* N. Y. & N. J. Tel. Co. v. Bennett, 62 N. J. L. 742, 42 Atl. 759 (1899); JOYCE, ELECTRIC LAW (1900) §438.
[3] Van Leet v. Kilmer, 252 N. Y. 454, 169 N. E. 644 (1930).
[4] Buell v. Utica Gas & Electric Co., 259 N. Y. 443, 182 N. E. 77 (1932).

The intestate of the plaintiff was electrocuted while standing in a car on the siding. The boom of the crane apparently had struck the wire, transmitting an electric current of high voltage through the body of the deceased.

The Appellate Division[5] reversed a judgment for the plaintiff and dismissed the complaint upon the ground that the defendant by the grant of the easement and the oral agreement as to how the easement was to be enjoyed, acquired a continuing right to maintain the power line in the way that it was constructed. The employer of the plaintiff's intestate became tenant of the land subject to the defendant's rights and was bound to adjust his use of the land to the defendant's use of its easement. The fault was the employer's when he failed to do this. There was no duty on the defendant to raise the wires. Without deciding the truth and exactness of this holding, I think Taylor, *J.*, in concurring, comes closer to the real issue to be determined when he says:

> "the work which Law Brothers did with this long crane was not initially foreseeable by the defendant, whereby the power wires should have been originally strung higher."

The Court of Appeals decided that the duty to avoid the danger rested upon the contractor. The judgment of the Appellate Division was affirmed. The electric company had no reason to anticipate that the position of its wires would be a danger to anyone using the siding or the adjoining property in the usual and customary way. The danger arose when the contractor selected the crossing as the site to unload his material. He should have made it safe by moving the cars beyond the crossing, shifting his plant or arranging to have the wires raised. He took none of these precautionary measures. He continued with his work. The Court very pointedly said:

> "As the wires were reasonably safe for all usual and customary user of the siding or spur track, and were out of reach of any apparent danger—apparent from ordinary use—the company was not bound to move its wires because of some extraordinary, special and temporary use being made of the crossing by a contractor."

A review of the cases decided in the past, not only in this State but also in other jurisdictions, reveals that a similar line of reasoning was used in determining responsibility.[6] In *Wagner* v. *Brooklyn*

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[5] *Ibid.*

[6] Braun v. Buffalo G. E. Co., 200 N. Y. 484, 490, 94 N. E. 206 (1911); Adams v. Bullock, 227 N. Y. 208, 125 N. E. 93 (1919); Van Leet v. Kilmer, *supra* note 3; Troidle v. Adirondack P. & L. Co., 252 N. Y. 483, 169 N. E. 654 (1930); Wagner v. Brooklyn Hts. R. R. Co., 69 App. Div. 349, 351, 74 N. Y. Supp. 809 (2d Dept. 1902); Wabash, St. L. & P. Ry. Co., 112 Ind. 404, 14 N. E. 391 (1887); Griffin v. United El. L. Co., 164 Mass. 492, 41 N. E. 675 (1895); McLaughlin v. Louisville El. L. Co., 100 Ky. 173, 37 S. W. 851

*Heights R. R. Co.*,[7] the defendant operated an elevated railroad. It maintained a trolley feed wire carrying a powerful electric current. The city was permitted to attach its police telegraph wires to the feed wire. The plaintiff, a lineman of the police department, while repairing a broken telegraph wire, was injured by an electric shock which was due to the fact that the insulation on the defendant's wire had been worn away by contact with an iron brace. There was evidence that the defendant could have discovered such defect by means of instruments commonly used for that purpose. It was held that the defendant was bound to exercise ordinary care to inspect its wires to preserve the insulation from any impairment that would render them dangerous to those rightfully brought into proximity thereto.

In *Braun* v. *Buffalo General Electric Company*[8] an electric company, with permission, had strung two electric wires across a vacant lot in a thickly settled part of the town. Subsequently building was commenced upon the lot. While engaged in working upon the second floor a carpenter raised the wires in order to pass to another part of the floor. Upon grasping them he received a shock from which he died. It was held error for the trial court to have dismissed the complaint. It was a question for the jury whether the company ought not in the exercise of reasonable care and foresight to have apprehended that the lot might be so used as to bring people in contact with the wires. To quote Hiscock, *J.*:

> "While the convenience of electric and telephone wires is obvious and their maintenance should not be burdened with excessive liabilities, still it seems clear that a company maintaining dangerous wires should not be relieved from the affirmative duty of exercising a reasonable degree of care to maintain proper insulation and thereby prevent accidents reasonably to be apprehended to those lawfully coming in the neighborhood of such wires."

In *Adams* v. *Bullock*[9] the defendant ran a trolley line which is crossed by a bridge. The plaintiff, a boy of twelve, crossed the bridge swinging a wire about eight feet long. This came into contact with defendant's trolley wire which ran beneath the structure. The plaintiff was denied a recovery for the burns and shock suffered on the ground that the defendant had adopted all reasonable precautions to minimize peril. Only some extraordinary casualty, not fairly within the area of ordinary prevision, could make it a thing of danger.

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(1896); Fitzgerald v. Edison El. Ill. Co., 200 Pa. St. 540, 50 Atl. 161 (1901); Daltry v. Media El. L., H. & P. Co., 208 Pa. St. 403, 57 Atl. 833 (1904); Rowe v. Taylorville El. Co., 213 Ill. 318, 322, 72 N. E. 711, 713 (1904); Connell v. Keokuk El. Ry. & P. Co., 131 Iowa 622, 109 N. W. 177 (1906); Byerly v. Con. L., P. & I. Co., 130 Mo. App. 593, 109 S. W. 1065 (1908).

[7] Wagner v. Brooklyn Hts. R. R. Co., *ibid.*

[8] Braun v. Buffalo G. E. Co., *supra* note 6.

[9] Adams v. Bullock, *supra* note 6.

In *Troidle* v. *Adirondack P. & L. Corporation*[10] the plaintiff, in order to erect a radio aerial wire, threw one end over the defendant's wires, twenty feet above the ground, carrying a heavy voltage of electricity. As the aerial came into contact with defendant's wires, that part which remained on the ground uncoiled and struck plaintiff, causing a current of electricity to pass through his body and to injure him. The defendant was held to have owed no duty to the plaintiff so to insulate his wires that in a perilous situation of plaintiff's own creation, in which he voluntarily placed himself, he might suffer no harm. Five judges concurred; Cardozo, *Ch. J.*, concurred in result on the ground that the defendant was not proved to have been negligent in that the insulation was not shown to be inadequate in view of the contingencies reasonably to be foreseen.

And finally in the very recent case of *Van Leet* v. *Kilmer*[11] the plaintiff's intestate, while standing upon a ladder placed against a building, was fishing for a baffle plate inside a blower with an iron rod. This rod came into contact with the defendant's low voltage wires strung along the side of the building, shocking the deceased, causing him to fall, from which he sustained a fractured skull and died. The plaintiff was denied recovery since the defendant was not bound to foresee and to make provision against such an accident.

So it will be seen that no liability for the creation of a dangerous situation exists where it could not reasonably be foreseen that in the ordinary course of events such situation would be fraught with danger to anyone rightfully and customarily in the vicinity. Liability does arise when there is a failure to provide the necessary safeguards where the danger is reasonably to be anticipated.

HARRY BAUER SAMES.

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RIGHTS OF PARTIES TO A SUBORDINATION AGREEMENT.

The recent decision of the Court of Appeals in the case of the *Brooklyn Trust Co.* v. *Fairfield Gardens, Inc.*,[1] reversing the decision of the Appellate Division[2] has again caused much discussion among attorneys concerning the policy of the Courts and the Legislature concerning building loan mortgages, the rights of prior and subsequent lienors, and the rights of mortgagees who subordinate their liens to such a building loan mortgage.

The ruling of the Court in the instant case is, that where a mortgagee, at the instance of the owner of the property, agrees to

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[10] Troidle v. Adirondack P. & L. Co., *supra* note 6.
[11] *Supra* note 3.

[1] 260 N. Y. 16, 182 N. E. 231 (1932).
[2] 235 App. Div. 768, 256 N. Y. Supp. 719 (1st Dept. 1932).