

APPELLATE CIVIL.

Before Mr. Justice Scott-Smith and Mr. Justice Fforde.

KARORI MAL (PLAINTIFF) Appellant,

versus

THE E. T. AND LIGHTING COY. LTD., DELHI

(DEFENDANT), Respondent.

Civil Appeal No. 374 of 1920.

Indian Electricity Act, IX of 1910, Schedule, clause VI, proviso (2) (c) — power of Electric Company to discontinue the electric supply where the seals of the cut-out were not in good order.

Held, that as a part of the electric apparatus on the plaintiff-appellant's premises, namely the seals of the cut-out were not in good order and condition, and as a result of this defect there had been a leakage of energy, the defendant Electric Company were entitled, upon discovering this condition of things, to discontinue the electric supply under the provision of clause VI, *proviso (2) (c)* of the schedule to the Indian Electricity Act.

Lahore Electric Supply Company v. Durga Das (1), followed.

Second appeal from the decree of J. Coldstream, Esquire, District Judge, Delhi, dated the 10th November 1919, affirming that of Khwaja Abdus Samad, Sub-Judge, 2nd Class, Delhi, dated the 12th March 1919, dismissing plaintiff's suit.

SHAMAIR CHAND, for MOTI SAGAR, for Appellant.

DALIP SINGH and SARDA RAM, for Respondent.

The judgment of the Court was delivered by—

FFORDE J.—The appellant sued the respondent Company for damages alleged to have arisen by reason of the latter having disconnected the supply of electricity to the former's mills. The respondents in defence contended that they were justified in the course they had adopted in view of the fact that the seals on the cut-outs on the appellant's premises were not in good order and condition, with the result that the supply of electric energy was injuriously affected.

The justification relied upon is alleged to be contained in the statutory provisions which govern the company's contractual rights and liabilities. The particular provision relied upon is to be found in clause VI 1) *proviso* (2) (c) of the schedule to the Indian Electricity Act of 1910, which provides that the licensee (*i.e.* the Electric Company) shall be entitled to discontinue the supply of electricity to the consumer—

“if the electric wires, fittings, works and apparatus in such property are not in good order and condition, and are consequently likely to affect injuriously the use of energy by the licensee, or by other persons.”

The Court of first instance held that this clause did not apply to the facts of the present case; but further held that the appellant had not proved that he had suffered any loss from the act of disconnection, and dismissed the suit on that ground. The learned District Judge agreed with this finding on the question of damages, and held, for that reason, that it was unnecessary to give a decision on the other issue, but suggested that, assuming the defective condition of the cut-out was due to its having been tampered with by the appellant, sub-clause (1), *proviso* (2) (d) of clause VI might be applicable.

We find ourselves unable to agree with the views of the lower Courts as to the proper construction of the enactment.

It has been found as a fact that a part of the electric apparatus on the appellant's premises, namely the seals of the cut-out were not in good order and condition. As a result of this defect there had been a leakage of energy, whether by theft of the current or otherwise it is unnecessary to decide. Such a state of things must certainly be deemed to be “likely to affect injuriously the use of energy by the licensee or by other persons,” and accordingly, the respondents were entitled, upon discovering this condition of things, to discontinue the electric supply.

The attention of the Courts below does not appear to have been called to a decision on this very point in *Lahore Electric Supply Company v. Durga Das* (1).

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The powers of an electric supply company under the Indian Electricity Act, IX of 1910 were, there, very fully considered by Scott-Smith J., and amongst other questions the effect of clause VI (1), *proviso* (2) (c) was a subject of decision. It was held in that case that where a main fuse was burnt out—in other words, where the cut-out became defective—the company was entitled to discontinue the supply of energy to the consumer. Precisely the same facts appear here, the only difference being that in the reported case the cause of the defect in the cut-out was apparent, whereas in the present case the cause is only to be conjectured.

As we hold—following the reasoning in the relevant passages of the judgment above referred to—that the respondent-company was fully justified in the steps they took, it is unnecessary to consider whether or not the lower Courts were justified in their finding as to the failure of the appellant to prove damage.

For the reasons we have given the appeal is dismissed with costs.

C. H. O.

Appeal dismissed.
