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such transfers might in the administration have been held to be binding upon the heirs as a family arrangement; but in the events that have happened and in the absence of a consensus among the heirs in respect of these agreements the learned District Judge, in my opinion, quite rightly held that the whole estate must be administered, notwithstanding the existence of these registered agreements.

The result is that the appeal fails, and must be dismissed. As to costs the proper order to make is that the two contesting respondents should have their costs out of the estate, and that no order should be made as to the costs of the appellant.

MACKNEY, J.—I agree.

APPELLATE CRIMINAL.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Mya Bu.

1933
 Feb. 6.

THE RANGOON ELECTRIC TRAMWAY & SUPPLY Co., LTD.

v.

KING-EMPEROR.*

Electricity—Licensee's responsibility—Meter outside consumer's premises—Supply line constructed by consumer—Dangerous condition created by leakage—Control of line—Licensee's liability—Company's liability for an offence—Electricity Act (IX of 1910), Rules 37, 107.

Under the provisions of the Indian Electricity Act and the Rules made thereunder the licensee is under an obligation to see that the electric supply lines, until they reach the consumer's premises and also after they have been carried into the consumer's premises so long as the licensee retains control of the current thereby transmitted, are maintained in a safe condition. The licensee is not at liberty to release himself from this obligation by agreement with a consumer.

* Criminal Appeal No. 2803 of 1932 from the order of the Western Sub-divisional Magistrate of Rangoon in Criminal Trial No. 208 of 1932.

A company is a legal entity, and where a duty is imposed upon it by statute the breach of which is made an offence, unless there is anything to the contrary expressed or implied in the statute a company can be convicted of the offence.

The King v. Cory Bros., (1927) 1 K.B. 810; *Pharmaceutical Society v. London & Provincial Supply Association*, 5 A.C. 857; *In re Tyler* (1891) 2 Q.B. 588,—*referred to*.

A stay wire attached to a wooden post outside a consumer's premises was not in a safe condition owing to leakage of the current from the live wire overhead, and it caused the death of a person by electrocution. The consumer's meter was outside his premises on a public road set in a concrete box on a concrete post belonging to the company. The wooden post and the electric supply line connecting the concrete post of the appellant company with the wooden post and thereafter with the premises of the consumer, were constructed by the consumer with the consent of the appellant company. The company contended that its responsibility for the maintenance of the supply lines in a safe condition ended at the meter.

Held, that the company retained the control of the supply line and the stay wire, and as these were rendered dangerous through the leakage of the electric current through the supply line, the company was guilty of a breach of Rule 37 made under the Indian Electricity Act for which it could be convicted under Rule 107.

McDonnell for the appellant company. S. 2 of the Indian Electricity Act, by defining the words "main," "distributing main," "electric supply line" and "service line" separately, draws a distinction between those words. The electrical energy is transferred from the main to the distributing main, and thence through the service lines it reaches the consumer. Rule 31 of the Electricity Rules defines the point of commencement of supply to the consumer, and, applying this rule to the present case, the appellant's responsibility ceased at the meter placed in a post on the public road from which the consumer obtained energy through his own private lines. The company had no control over these lines which were the property of the consumer, and therefore they are not responsible for maintaining them in a safe condition as required by Rule 37. Clause VI of the Schedule to the Electricity Act does not impose any

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obligation on the licensee to discontinue the supply if the electric fittings of the consumer are not in good order and condition; it merely says that the licensee shall be entitled, in such cases, to discontinue the supply, that is, at his option. Rule 23 requires the licensee to see that there is no leakage at the time when the consumer's fittings are tested before connection with the licensee's lines. There is no evidence in this case when the leakage occurred.

[PAGE, C.J. How can a company be sentenced to a term of imprisonment, and how can it be convicted in the person of its agent?]

Rule 107 shows that an agent may be proceeded against, and the agent of the company acted as the representative of the company for the purposes of this case. There was also another irregularity in this case; the company were convicted on alternative charges. But the appellant is now seeking relief not on these technical grounds, but on the broader ground that he cannot be punished under the Act.

Lambert (Assistant Government Advocate) for the Crown. The meter from which the consumer drew his energy was on the property of the licensee and the consumer had no right to open it. In fact he would be guilty of an offence under Rule 29 if he were to break the seal on the box. The electric current was therefore under the control of the licensee. The licensee also tests all service lines before connection with the distributive main, and hence he is responsible for maintaining them in good condition.

A meter is merely a measuring instrument, indicating the point of the commencement of the supply of energy. The licensee's responsibility continues up to the point when the energy is actually utilised

by the consumer, that is, up to the main switch under the control of the consumer.

PAGE, C.J.—The appellant company has been convicted by the Western Subdivisional Magistrate of Rangoon in the alternative of an offence under Rule 107 of the Indian Electricity Rules for committing a breach of Rule 37, and of an offence under sec. 47 of the Indian Electricity Act (IX of 1910) for committing a breach of clause VI (2) of the Schedule to the said Act. The appellant was sentenced to pay a fine of Rs. 51 or in default to suffer seven days' simple imprisonment.

The material facts can be shortly stated, and are not in dispute. On the 6th June 1932 one Yankasami, an Indian cooly, was electrocuted on a road outside the premises known as No. 20 Golden Valley and in the occupation of U Lun. The circumstances in which Yankasami met his death are set out as follows in the judgment of the Western Subdivisional Magistrate :

“ It appears that from the Rangoon Electric Tramway & Supply Company's distributing mains running along the road overhead wires are carried from one of the company's concrete posts to a house occupied by U Lun. These wires are supported in transit by four wooden posts. The first of these is outside U Lun's compound, on the side of the road. To the post is attached a stay wire tied to a wooden peg driven into the ground, also on the side of the road. It was this stay wire which the man touched, and which caused his death.

At an inspection by Mr. Boldy, Electrical Engineer, Public Works Department, it was found that this stay wire formed part of the electrical circuit. The wire did not stop at the post to which it was attached, but continued to all four posts carrying the live wire to U Lun's house. At the fourth post it was joined to a second galvanised iron wire, which supported the live wire, from this point on encased in lead, to the house. This casing had not been earthed. At two points the

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current from the live wire had leaked through it to the supporting wire, and so to the above stay wire which thus carried a potential charge of 230 volts. If a man standing on the ground with his bare feet happened to touch this stay wire with his hands, such charge would be sufficient to kill him.

It is clear that the wire from the company's post to U Lun's house was not maintained in a safe condition."

It is further to be borne in mind (i) that the man met his death on a public road, (ii) that the appellant as licensee alone was entitled to erect the wooden pole and stay wire on the road where the cooly was killed, (iii) that a meter was set up by the appellant in a concrete box (with fuses inside under lock and key) on the concrete post belonging to the appellant on the side of the road further from U Lun's premises, (iv) that there was evidence—and for the purpose in hand it may be assumed—that the wooden post on the road and the electric supply line connecting the concrete post of the appellant with the wooden post, and thereafter with the premises of the consumer were constructed by U Lun with the consent of the appellant, (v) that the appellant alone was entitled and able to render "dead" the electric supply line from the concrete post until it reached the switches in the consumer's house.

Now, electricity is a highly dangerous element, and its generation and transmission, unless carried out with skill and care, may cause the death of any person who comes into contact with it.

For this reason a great responsibility is laid upon persons or undertakings like the appellant company who are granted a license to generate, transmit or supply electricity in any particular area. No persons, other than licensees or persons entrusted with powers in that behalf under Part III of the Act, are entitled

to carry on the business of supplying electric energy, and, in my opinion, it is clear that the appellant is under an obligation to see that the electric supply lines until they reach the consumer's premises, and also after they have been carried into the consumer's premises so long as the appellant retains control of the current thereby transmitted, are maintained in a safe condition.

The case presented on behalf of the appellant company is simple and clean cut, but, in my opinion, it cannot be sustained. It is contended that the responsibility of the appellant as licensee for the maintenance of the electric supply lines in a safe condition ends at the meter, which under Rule 31 is "the point at which the supply of energy by a licensee to a consumer shall be deemed to commence." On behalf of the appellant it is urged that the obligation of the licensee to protect the public from danger through contact with the electric current by reason of faulty lines or works ceases after the electric energy has been supplied to the consumer, and that thereafter the responsibility for maintaining the lines and works in a safe condition falls upon the consumer.

The learned advocate for the appellant conceded, as he was bound to do, that if a consumer required the licensee to supply electric energy to the consumer's premises the appellant would be compelled to transmit the energy from the distributing main to the consumer's premises, though it may be, as provided in the Act, that part of the cost of so doing would have to be defrayed by the consumer. The learned advocate further conceded that for the purpose of supplying energy to the consumer on his premises the appellant, if required to do so by the consumer, would be compelled to place the

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meter on the consumer's premises; indeed, both in the appellant's license and the "conditions of supply" it is so provided. But the appellant contends that if the consumer elects to take a supply of energy from the appellant's distributing main at any point outside his premises, as in the present case, and receives the supply through the appellant's meter, and thereafter it is conveyed through a line which has been constructed by the consumer and at his cost, the obligation to keep in a safe condition the line and works from the point of commencement of supply (*i.e.* the meter) to the consumer's premises, and also the line and works on the consumer's premises, is cast upon the consumer and not on the licensee. In my opinion, such a contention cannot be accepted, for it runs counter to what I conceive to be the object and effect of the Indian Electricity Act. As I read the provisions of the Act and the rules made thereunder the licensee is not entitled by agreement with the consumer to release himself from the obligation to see that the lines, apparatus and works by which electricity is transmitted, so long as he retains control of them, are maintained in a safe condition; because this obligation is cast upon him not merely for the benefit of the consumer and the licensee, but also for the protection and in the interest of the public generally. Now, was the defective supply line in U Lun's premises, and the dangerous stay wire in the road outside U Lun's premises—which were the cause of Yankasami's death—under the control of the appellant? In my opinion, it cannot be doubted that they were. Who could render the supply line "dead," and the line and stay wire innocuous? The appellant, and no one else. By means of the apparatus enclosed in the concrete meter box the supply of current to U Lun,

the consumer, was not only measured but controlled. Any person other than the licensee or an agent or servant of the licensee duly authorized under the Act who interfered with the meter box would commit an offence, and in the present case it is common ground that the appellant alone could render "dead" the supply line between the concrete post on the appellant's distributing main and the switches in U Lun's house.

The evidence of the witnesses for the Crown that the death of the cooly was caused by the unsafe condition of the supply line on U Lun's premises before it reached the house, and of the stay wire of the wooden post on the road outside U Lun's premises, is not challenged or disputed; and, in my opinion, the appellant was guilty of a breach of Rule 37, and ought to have been convicted of an offence under Rule 107. It is also clear, to my mind, that by allowing the stay wire in the road to be in an unsafe condition the appellant failed to perform an obligation imposed upon it under the Act. A conviction in the alternative under Rule 107 and s. 47, however was not in accordance with law, for, in my opinion, the present case falls neither under s. 236 nor s. 367 (3) of the Criminal Procedure Code.

The Magistrate who tried the case has exhaustively analysed the material sections and rules, but for the purpose of deciding this appeal it is unnecessary, and I do not propose, to embark upon a general discussion of the various sections of the Act and the rules made under the Act; because, in my opinion, justice will be met by setting aside the conviction and sentence of the appellant in the alternative, and convicting the appellant company under Rule 107 for a breach of Rule 37, and sentencing the appellant company to pay a fine of

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Rs. 51. The finding that the company was guilty "in the person of their agent Mr. Kitchen" cannot, of course, be sustained. A company is a legal entity, and, as pointed out by Bowen L.J., In re *Tyler* (1) "where a duty is imposed upon a company in such a way that a breach of the duty amounts to a disobedience to the law, then, if there is nothing in the statute either expressly or impliedly to the contrary, a breach of the statute is an offence which can be visited upon the company."

See also *The Pharmaceutical Society v. The London & Provincial Supply Association* (2) and *The King v. Cory Bros. & Co., Ltd.* (3).

The conviction of the appellant of an offence under Rule 107 for a breach of Rule 37 is clearly permissible, but the appellant company cannot in law be convicted in the person of an agent who is detailed for immolation on its behalf. Neither can a company be sentenced to a term of imprisonment for the best of all reasons, that a company is not endowed with a physical body that can be confined. In the present appeal, however, the appellant has refused to challenge the correctness of the conviction on any formal or technical ground, and the appeal has been presented on behalf of the company and upon the footing that it was the company and not its agent Mr. Kitchen which had been convicted. The result is that the conviction and sentence of the appellant in the alternative is set aside, the appellant is found guilty of an offence under Rule 107 of the Indian Electricity Rules for committing a breach of Rule 37, and the appellant is convicted of the said offence, and sentenced to pay a fine of Rs. 51.

MYA BU, J.—I concur in the judgment of the learned Chief Justice.

(1) (1891) 2 Q.B. 588 at p. 592.

(2) (1880) 5 A.C. 857.

(3) (1927) 1 K.B. 810.

I have no doubt that the appellant company is guilty of an offence under Rule 107 read with Rule 37 of the Indian Electricity Rules, 1922. Rule 37 applies to all electric supply lines, and in considering whether the case is governed by this rule or not, it is unnecessary to determine whether the line in question is a service line or not. Under this rule the licensee is responsible that all electric supply lines under his control, even if they are on a consumer's premises, are maintained in a safe condition. Therefore, the question that falls for determination in this appeal with reference to Rule 37 is whether the line from the concrete post outside U Lun's compound to his house was at the time of the fatal accident under the appellant company's control or not. It is obvious that as a matter of fact the line was under the control of the appellant company, because it was only the company who could make the line "dead." Interference with the live electric wire cannot normally be undertaken without the risk of bodily injury, and, therefore, it is impossible to conceive of any person other than the company being normally in a position to interfere with the line in question without reference to the company. In my opinion the provisions of Rule 31 deal with the point of commencement of supply of energy by the licensee to the consumer and not with the question of control over an electric line as a matter of fact. Rule 31 is one of the rules relating to the conditions of supply, which is a matter of concern between the licensee and the consumer rather than a matter affecting the public; whereas Rule 37 is one of the rules of precaution for the safety of the public. In truth and in fact the consumer gets the use of the control of the electric current only when it reaches his switch and not

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as soon as it passes through the meter, and it would be opposed to the real facts to say that the line in question was under the consumer's control. I am unable to subscribe to the view that the point of measurement of the supply, which is a matter affecting only the licensee and the consumer, affects the question of control over the supply line with reference to the regulating of responsibility in a matter of public concern, so as in law to run counter to the real facts.

I agree that the conviction and sentence passed by the trial Court in the alternative should be set aside, and that instead the appellant company should be convicted of an offence punishable under Rule 107 read with Rule 37 of the Indian Electricity Rules, 1922, and sentenced to pay a fine of Rs. 51.

INCOME-TAX REFERENCE.

Before Sir Arthur Page, Kt., Chief Justice, Mr. Justice Mya Bu and Mr. Justice Baguley.

1933
 Feb. 7.

IN RE THE COMMISSIONER OF INCOME-TAX, BURMA

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BOMBAY BURMAH TRADING CORPORATION. *

Income-tax Act (XI of 1922), ss. 7 (1), 18 (2)—Salaries—Provident Fund—Contributions by employer—Interest on contributions—Fund usable by employer—Payment to employé on termination of service—Fund when taxable as salary.

Where an employer holds a provident fund for his employés with power to utilise the money in the fund for his business, sums standing to the credit of the employés are taxable as "salaries" when paid to them, including the employer's contributions and the interest on such contributions, and the tax is to be deducted by the employer when the sums are so paid out.

Unless and until the salary has been received by the employé and has been paid by the employer to him, such salary is not assessable to income-tax.

Commissioner of Income-tax v. The Burma Corporation, Limited, I.L.R. 7 Ran. 608; Commissioner of Income-tax, Madras v. The Nedungadi Bank, I.L.R. 49 Mad. 910; London County Council v. The Attorney-General, (1901) A.C. 26—referred to.