APPELLATE CIVIL.

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

DHANAL SOORMA AND OTHERS
v.
RANGOON INDIAN TELEGRAPH ASSOCIATION, LTD.*

1935
June 6.

Fatal accident—Master's duty towards servant—Electricity, use of—Rule in Rylands *v.* Fletcher *applies to electricity—Obligation not independent of negligence—Degree of care—Strict liability, exceptions to—Use of electricity for domestic purposes—Natural user of premises—Reasonable care—Sweeper's death—Statutory obligation—Consumer's liability—Electricity Act (IX of 1910), s. 37—Rule 41, Electricity Rules, 1922.*

A master's duty towards his servant is to take reasonable precautions to protect the servant from unnecessary risk. Whatever the dangers of the employment which the employé undertakes amongst them is not to be numbered the risk of the employer's negligence, and the creation and enhancement of danger thereby engendered.

Smith v. *Baker & Sons*, (1891) A.C. 325—*referred to.*

Electricity is an element to which the rule in *Rylands* v. *Fletcher* applies.

Charing Cross Electricity Supply Co. v. *Hydraulic Power Co.*, (1914) 3 K.B. 772; *Eastern and South African Telegraph Co., Ltd.* v. *Capetown Tramways Co., Ltd.*, (1902) A.C. 381; *National Telephone Co.* v. *Baker*, (1893) 2 Ch.D. 186—*referred to.*

The duty which the law imposes under the principles laid down in *Rylands* v. *Fletcher* is not an obligation independent of negligence and differing from it in kind, but a duty to take the degree of care in the circumstances which the law prescribes, and failure to perform that duty amounts to negligence on the part of the person by whom the duty is to be performed. Further, if by reason of such negligence injury is sustained by a person to whom the duty is owed a cause of action for negligence arises.

Lochgelly Iron & Coal Co. v. *M'Mullan*, 1934 A.C. 1—*referred to.*

The liability that *prima facie* arises upon failure to exercise the care prescribed in the rule is, however, not inevitable, and in certain circumstances can be avoided.

The use of electric energy for lighting or other domestic purposes is so reasonable and prevalent that to bring electricity upon land or premises for such purposes is to use the land or premises in a natural and not an unnatural way. A person who keeps on his premises electric energy for domestic purposes is bound to exercise reasonable care to prevent damage

* Civil First Appeal No. 31 of 1935 from the judgment of this Court on the Original Side in Civil Regular No. 301 of 1934.

1935

DHANAL SOORMA v. RANGOON INDIAN TELEGRAPH ASSOCIATION, LTD.

therefrom accruing, but he is not responsible for damage not due to his own default.

Bartlett v. *Tottenham*, (1932) 1 Ch. 114; *Blake* v. *Woolf*, (1898) 2 Q.B. 426; *Ricards* v. *Lothian*, (1913) A.C. 263; *Ross* v. *Fedden*, 7 Q.B. 661; *Rylands* v. *Fletcher*, L.R. 3 H.L. 338; *Wilkins* v. *Leighton*, (1932) 2 Ch. 106; *Wilson* v. *Waddell*, 2 A.C. 95—*referred to.*

A sweeper in the service of the respondent company met his death by electrocution as he put his hand on a stay wire supporting a pole in the compound of the company. The pole was part of the electric installation erected by the company for the supply of domestic energy from the main to the residential cottages in the compound. A storm occurred which caused injury to the installation. One result was that the bearer wire from one of the cottages to the pole was found to be sagging. To the wire was attached a lead casing inside which passed the live electric wires. The company employed a competent electrical engineer to put the installation in a safe and proper condition, and the work was completed before the accident occurred. The lead casing, however, became alive owing to an internal fault, and owing to its contact with the stay wire, the latter was electrified when the sweeper touched it.

Held, that there was no default on the part of the company, and the company was not liable under the Fatal Accidents Act.

Whether the effect of a statute is to create an obligation and the extent of that obligation depend upon the purview of the Legislature in enacting the particular statute, and the language in which it is couched.

Held, that rule 41 of the Indian Electricity Rules, made pursuant to s. 37 of the Indian Electricity Act, does not impose upon consumers of electricity an absolute obligation to maintain the electric supply lines belonging to them in a safe condition. They are only required to take reasonable care, and cannot be expected to detect latent defects in the plant through which electricity escapes.

Atkinson v. *The Newcastle Waterworks Co.*, 2 Ex.D. 441; *Hammond* v. *The Vestry of St. Pancras*, L.R. 9 C.P. 316—*referred to.*

Sein Tun Aung for the appellants. There is *primâ facie* evidence of negligence on the part of the respondents. The deceased was electrocuted by a stay wire which should not normally be electrified. The deceased was on the premises on lawful business, and on the principle enunciated in *Indermaur* v. *Dames* (1) he was entitled to be protected from all unusual and hidden dangers which the respondents knew or would have known if they had used reasonable care. Further, as between master

(1) (1866) L.R. 1 C.P. 274.

and servant, the respondent company was under an obligation to take reasonable care to see that the deceased was not exposed to unexpected and unnecessary risk. *Smith* v. *Baker* (1). The respondent company had failed to discharge their duty towards the deceased.

There is also an absolute duty cast upon the respondents to see that any dangerous thing kept on their premises does not cause harm to any one. *Rylands* v. *Fletcher* (2). The rule in this case has been extended to electricity. *National Telephone Co.* v. *Baker* (3); *Eastern and South African Telegraph Co.* v. *Capetown Tramways Co.* (4).

[PAGE, C.J. Electricity, though a dangerous element, is of domestic utility. Was not *Rylands* v. *Fletcher* a case of non-natural user of the land?]

Yes. In this case the dangerous thing that caused the damage was brought on the land by artificial means, and is not naturally there. The two cases cited in *Rylands* v. *Fletcher*, namely, *Smith* v. *Kenrick* (5) and *Baird* v. *Williamson* (6) show that this is the meaning of non-natural user.

[PAGE, C.J. In *Donoghue* v. *Stevenson* (7) it was observed that it is inaccurate to regard the case of things dangerous in themselves as outside the ordinary law of contract or tort. The rule in *Rylands* v. *Fletcher* was only a special instance of negligence where the duty to take care amounted practically to insurance.]

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(1) (1891) A.C. 325.
(2) L.R. 3 H.L. 330.
(3) (1893) 2 Ch. 186, 200.
(4) (1902) A.C. 381.
(5) 7 C.B. 564.
(6) 15 C.B. (N.S.) 376.
(7) 1932 A.C. 562.

1935

DHANAL SOORMA v. RANGOON INDIAN TELEGRAPH ASSOCIATION, LTD.

In *Rylands* v. *Fletcher* the injury was also regarded as a nuisance. In *Midwood* v. *Manchester Corporation* (1) leakage from the electrical mains belonging to the Corporation caused an explosion which wrecked the premises of an adjoining owner. The Corporation was held liable for a nuisance, apart from any negligence. See also *Charing Cross Electric Supply Co.* v. *Hydraulic Power Co.* (2).

Moreover, the respondent company is liable under rule 41 of the Indian Electricity Rules which enjoins every owner of an electric supply line to keep it in a safe condition.

The evidence shows that the second respondent, The Rangoon Electric Tramway and Supply Co., Ltd., was also guilty of negligence, and the case should be remanded for a finding on this issue.

Moore for the respondent. Rule 41 of the Electricity Rules does not in any sense impose liability on the company. It is couched in very general terms, and does not impose any particular obligation on a consumer. Even if it has that effect there are limitations to statutory negligence. The law cannot expect a man to do what is in the circumstances impossible. The respondent company, the moment it became aware of the defects in its electrical installation, employed a competent engineer to repair them. Its duty was to keep the premises in a reasonably safe condition, and it has been found as a fact that it had done so. The company cannot be expected to warn people of hidden dangers of which it is unaware. To hold otherwise would be to impose on the respondent a liability for a thing

(1) (1905) 2 K.B. 597.

(2) (1913) 3 K.B. 442; on appeal, (1914) 3 K.B. 772.

"which no reasonable care and skill could obviate." *Hammond* v. *The Vestry of St. Pancras* (1).

Sein Tun Aung in reply. *Hammond* v. *The Vestry of St. Pancras* has no application to this case. That case dealt with the interpretation of a statute enacted for the benefit of the public. The vestry was merely carrying out its statutory duty.

PAGE, C.J.—This case is of interest to all consumers of electricity for domestic purposes; because the question to be determined is the liability of such persons for injuries caused by defects in the electric plant on their premises.

The suit was brought by the wife and children of one Dhanal Jagiya, a sweeper employed by the Rangoon Indian Telegraph Association Club, Ltd. His duty *inter alia* was to keep clean the compound of the company's premises in Sandwith Road.

In the compound there are several cottages belonging to the respondent company, and electrical energy for the purpose of lighting the premises was obtained from the Rangoon Electric Tramway and Supply Co., Ltd. The Electric Supply Company was also impleaded in the alternative as a defendant in the suit, but as against that defendant the suit was dismissed, and an appeal from the decree in the Electric Company's favour was summarily rejected.

Now, the supply of electricity to the respondent company was effected in the following manner:

A service line was run from the Electric Company's main to the respondent company's premises, and a meter was fixed on one of the cottages in the compound. From the meter the current passed through a double-pole switch near the meter, and thence through a cut-out on the north wall of the

(1) L.R. 9 C.P. 316, 322.

1935

DHANAL SOORMA v. RANGOON INDIAN TELEGRAPH ASSOCIATION, LTD.

PAGE, C.J.

cottage. It was then carried by means of a bearer wire from the cottage to a pole some 25 feet away to the north. This pole was retained in position by a stay wire attached to the ground, and clipped on to the pole. To the bearer wire was attached a lead casing, and inside the lead casing passed the live electric wires. All the apparatus from the meter to the pole was erected by and belonged to the respondent company.

On the 3rd of June 1934 a storm passed over Rangoon. During the storm the lights in the compound were extinguished, and it was discovered that injury had been done to the electric installation, one result of which was that the bearer wire and the lead casing within which the live wires were carried from the cottage to the pole was found to be sagging. The secretary of the respondent company immediately took steps to repair the damage, and he employed Mr. Yettie, whom he had reason to believe was a competent electrical engineer, to do all that was necessary to put the installation in a safe and proper condition. Mr. Yettie undertook to do the work, and it was completed before the 10th June. On that day the sweeper Dhanal Jagiya happened to put his hand on the stay wire that was supporting the pole to which reference has been made, and met his death by electrocution. It appears that the cause of the accident, as found by the learned trial Judge, was "that a fault occurred between the wire inside the lead casing and the casing itself, with the result that the casing which carried the cable became alive; that casing was in contact at the top of the post No. 1 either with the band to which the stay was attached or with the stay itself, with the result that the stay became alive, and that was the direct cause of the accident."

The present suit has been brought by the appellants under the Fatal Accidents Act (XIII of 1855) which runs as follows :

"Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued shall be liable to an action or suit for damages notwithstanding the death of the person injured."

The question that falls for determination, therefore, is whether the sweeper Dhanal Jagiya met his death by reason of the "wrongful act, neglect or default" of the respondent company. Braund J. at the trial passed a decree in favour of the respondent company upon the ground that Dhanal Jagiya was a servant of the company, and that as between a master and servant the common law obligation of the master was "to take reasonable precautions to protect his servant from unnecessary damages." Upon the facts the learned trial Judge found that the respondent company had taken all reasonable steps to ensure that the electrical installation on the premises was in a safe condition, and he held that the company was under no legal liability in respect of the injury that resulted in the death of the sweeper Dhanal Jagiya. In so far as the cause of action in the present case rested upon the liability of a master to his servant, in my opinion, the conclusion at which the learned trial Judge arrived was correct.

In *Smith* v. *Baker & Sons* (1) Lord Herschell observed

"that the contract between employer and employed involves on the part of the former the duty of taking reasonable care

(1) (1891) A.C. 325 at p. 362.

1935

DHANAL SOORMA v. RANGOON INDIAN TELEGRAPH ASSOCIATION, LTD.

PAGE, C.J.

to provide proper appliances, and to maintain them in a proper condition, and so to carry on his operations as not to subject those employed by him to unnecessary risk. Whatever the dangers of the employment which the employed undertakes, amongst them is certainly not to be numbered the risk of the employer's negligence, and the creation or enhancement of danger thereby engendered."

[see also *Griffiths* v. *The London and St. Katharine Docks Company* (1) ; *Williams* v. *Birmingham Battery and Metal Company* (2) ; *Fanton* v. *Denville* (3)].

It is not pretended or contended that Dhanal Jagiya either knew of the danger that would be created by the electrification of a stay wire, much less that he undertook to run the risk of meeting his death by electrocution if the stay wire became charged with electricity. So far, therefore, as the appellants' claim was based on the duty which the respondent company owed to its servant Dhanal the suit was rightly dismissed.

The case, however, does not rest there ; because it was contended on behalf of the appellants that the duty which the respondent company owed to Dhanal was not merely the duty that a master owes to his servant, but the far higher duty that attaches to a person who brings upon his land or premises something dangerous in itself under the rule laid down in *Rylands* v. *Fletcher* (4). This aspect of the case is not adverted to in the judgment of Braund J., but, in my opinion, it involves the most substantial issue in the suit. The rule as enunciated by Blackburn J. when that case was before the Court of Exchequer Chamber, is

"that the person who for his own purposes, brings on his land and collects and keeps there anything likely to do mischief if it

(1) (1884) 13 Q.B.D. 259.
(2) (1899) 2 Q.B.D. 338.
(3) (1932) 2 Q.B.D. 309.
(4) L.R. 3 E. & I.A. 330.

escapes, must keep it in at his peril, and if he does not do so, is *primâ facie* answerable for all the damage which is the natural consequence of its escape."

Fletcher v. *Rylands* (1). It is well settled that electricity is an element to which the rule in *Rylands* v. *Fletcher* (2) applies [*National Telephone Company* v. *Baker* (3); *Eastern and South African Telegraph Company, Limited* v. *Capetown Tramways Companies, Limited* (4); *Charing Cross Electricity Supply Company* v. *Hydraulic Power Company* (5)]. I am of opinion that the duty which the law imposes under the principles laid down in *Rylands* v. *Fletcher* (2) is not an obligation independent of negligence and differing from it in kind, but a duty to take the degree of care in the circumstances which the law prescribes, and failure to perform that duty, in my opinion, amounts to negligence on the part of the person by whom the duty is to be performed. Further, if by reason of such negligence injury is sustained by a person to whom the duty is owed a cause of action for negligence arises. In *Lochgelly Iron and Coal Co.* v. *M'Mullan* (6) Lord Wright pointed out that

"in strict legal analysis negligence means more than heedless or careless conduct, whether in omission or commission: it properly connotes the complex concept of duty, breach, and damage thereby suffered by the person to whom the duty was owing."

The rule laid down in *Rylands* v. *Fletcher* (2), I apprehend, merely quantifies the degree of care which the person by whom the duty is owed must

(1) L.R. 1 Ex. 265.
(2) L.R. 3 E. & I.A. 330.
(3) (1893) 2 Ch.D. 186.
(4) (1902) A.C. 381.
(5) (1914) 3 K.B. 772.
(6) (1934) A.C. 1 at p. 25.

1935

DHANAL SOORMA v. RANGOON INDIAN TELEGRAPH ASSOCIATION, LTD.

PAGE, C.J.

take. In *M'Alister (or Donoghue)* v. *Stevenson* (1) Lord Macmillan observed :

"The exceptional case of things dangerous in themselves, or known to be in a dangerous condition, has been regarded as constituting a peculiar category outside the ordinary law both of contract and of tort. I may observe that it seems to me inaccurate to describe the case of dangerous things as an exception to the principle that no one but a party to a contract can sue on that contract. I regard this type of case as a special instance of negligence where the law exacts a degree of diligence so stringent as to amount practically to a guarantee of safety."

Primâ facie, therefore, the respondent company is liable to pay compensation to the appellants in the present suit.

The liability that *primâ facie* arises upon failure to exercise the care prescribed in the rule laid down in *Rylands* v. *Fletcher* (2), however, is not inevitable, and in certain circumstances can be avoided.

"It is not every use to which land is put that brings into play that principle. It must be some special use bringing with it increased danger to others, and must not merely be the ordinary use of the land or such a use as is proper for the general benefit of the community"

[*per* Lord Moulton in *Ricards* v. *Lothian*, 1913 A.C. 280]. This exception to the general rule was laid down by Lord Cairns in *Rylands* v. *Fletcher* (L.R. 3. H.L. at p. 338), and was restated by Lord Blackburn himself in *Wilson* v. *Waddell* (3).

It is now settled law [*Ross* v. *Fedden and another* (4) ; *Blake* v. *Woolf* (5) ; *Rickards* v. *Lothian* (6) ; *Bartlett* v. *Tottenham* (7) ; *Wilkins* v. *Leighton* (8)].

(1) (1932) A.C. 562.
(2) L.R. 3 E. & I.A. 330.
(3) 2 A.C. 95.
(4) L.R. 7 Q.B. 661.
(5) (1898) 2 Q.B. 426.
(6) (1913) A.C. 263.
(7) (1932) 1 Ch. 114.
(8) (1932) 2 Ch. 106.

In *Blake* v. *Woolf* (1),

"the defendant was the owner of certain premises in Wood Street, Cheapside. He had laid on water to the premises, and had a cistern upon them on the fourth floor. After the water had been laid on the plaintiff became tenant of the ground-floor and basement of the premises, and received his water supply from the defendant's cistern. On a certain Friday it was discovered that there was a leakage from the cistern. The defendant being informed of this, instructed a plumber to put the cistern to rights. The plumber was negligent in doing so, and on Monday morning it was found that water had escaped from the cistern and damaged the plaintiff's goods, which were upon the portion of the premises occupied by him."

Wright J., in the course of his judgment, observed:

"The general rule as laid down in *Rylands* v. *Fletcher* (2) is that *primâ facie* a person occupying land has an absolute right not to have his premises invaded by injurious matter, such as large quantities of water which his neighbour keeps upon his land. That general rule is, however, qualified by some exceptions, one of which is that, where a person is using his land in the ordinary way and damage happens to the adjoining property without any default or negligence on his part, no liability attaches to him. The bringing of water on to such premises as these and the maintaining a cistern in the usual way seems to me to be an ordinary and reasonable user of such premises as these were; and, therefore, if the water escapes without any negligence or default on the part of the person bringing the water in and owning the cistern, I do not think that he is liable for any damage that may ensue;"

see also *Ross* v. *Fedden* (3).

In *Rickards* v. *Lothian* (4) Lord Moulton, delivering the judgment of the Judicial Committee, held that

"the provision of a proper supply of water to the various parts of a house is not only reasonable, but has become, in accordance with modern sanitary views, an almost necessary feature of town life. It is recognized as being so desirable in

(1) (1898) 2 Q.B. 426.
(2) L.R. 3 E. & I.A. 330.
(3) L.R. 7 Q.B. 661.
(4) (1913) A.C. 263 at p. 281.

1935

DHANAL SOORMA v. RANGOON INDIAN TELEGRAPH ASSOCIATION, LTD.

PAGE, C.J.

the interests of the community that in some form or other it is usually made obligatory in civilized countries. Such a supply cannot be installed without causing some concurrent danger of leakage or overflow. It would be unreasonable for the law to regard those who instal or maintain such a system of supply as doing so at their own peril, with an absolute liability for any damage resulting from its presence even when there has been no negligence . . . In such matters as the domestic supply of water or gas it is essential that the mode of supply should be such as to permit ready access for the purpose of use, and hence it is impossible to guard against wilful mischief, . . . In having on his premises such means of supply he is only using those premises in an ordinary and proper manner, and, although he is bound to exercise all reasonable care, he is not responsible for damage not due to his own default, whether that damage be caused by inevitable accident or the wrongful acts of third persons."

In my opinion those principles apply to the case of electricity which is brought upon land or premises merely for domestic purposes. It appears to me that the time has come when the Court ought to hold that the use of electric energy for lighting or other domestic purposes is so reasonable and prevalent that to bring electricity upon land or premises for such purposes is to use the land or premises in a natural and not an unnatural way.

For these reasons, in my opinion, the rule laid down in *Rylands* v. *Fletcher* (1) is not applicable in the circumstances of the present case, and the claim of the appellants in so far as it is based upon the rule enunciated in that case also fails.

It is further contended on behalf of the appellants, however, inasmuch as under rule 41 of the Indian Electricity Rules, 1922, made pursuant to section 37 of the Indian Electricity Act, 1910 (Act IX of 1910)

(1) L.R. 3 E. & I.A. 330.

" every electric supply-line shall be maintained in a safe condition as regards both electrical and mechanical conditions by the person to whom the same belongs,"

and it is common ground that the death of Dhanal Jagiya was caused by a defect in the electric supply line which was attached to the post and which was not in a safe condition, that upon this ground also the appellants were entitled to succeed.

U Sein Tun Aung on behalf of the appellants urged that the effect of rule 41 was to impose upon the respondent company an absolute obligation to maintain this electric supply line in a safe condition at all events and whether negligence was or was not proved, and, as it is not disputed that the electric supply line as well as the post and the stay wire attached to it were the property of the respondent company, that the respondent's liability is established. Now, whether this contention is sustainable or not depends upon the extent of the obligation that is laid on the respondent company under rule 41 upon a true construction of its terms. Rule 41 falls under Chapter V which is headed " Precautions for the safety of the public."

The rules are not artistically drafted, and it may reasonably be contended that the rules in Chapter V do not apply to " consumers " except where " consumers " are specifically mentioned (see rules 34, 40A, 105, 106A, 107 and 109). I am disposed to hold, however, that as the defective electric supply line with which we are concerned belonged to the respondent company rule 41 did apply to the respondent company although the respondent company was not a " licensee " or " owner " within the meaning of these rules. The question, therefore, is whether under the terms of rule 41 an absolute obligation to maintain the electric supply line in a safe

1935

DHANAL SOORMA v. RANGOON INDIAN TELEGRAPH ASSOCIATION, LTD.

PAGE, C.J.

condition was imposed upon the respondent company or whether the duty that was created was only to take reasonable care to maintain the electric supply line in a safe condition. In *Atkinson* v. *The Newcastle and Gateshead Waterworks Company* (1) Lord Cairns observed that whether the effect of the statute is to create an obligation and the extent of that obligation " depend upon the purview of the Legislature in the particular statute, and the language which they have there employed." In my opinion in each case not only must the terms of the statute be taken into consideration, but the Court must also have regard to the subject-matter of the obligation thereby imposed.

In *Hammond* v. *The Vestry of St. Pancras* (2) in which case under section 72 of 18 and 19 Vic. C. 170 it was provided that the Vestry Board " shall cause the sewers vested in them to be properly cleared, cleansed and emptied." Brett J. observed :

" The words of section 72 are susceptible of either meaning,—that an absolute duty is cast upon the defendants, or that they are only bound to exercise due and reasonable care. What, then, is the proper rule of interpretation ? The defendants are a public body having a duty imposed upon them by parliament to do a thing which even with the exercise of the utmost care and diligence may not always be capable of being done. It is obvious that circumstances may arise in which a sewer notwithstanding the exercise of reasonable care may be obstructed. The terms of the finding in this case assume that . . . It would seem to me to be contrary to natural justice to say that parliament intended to impose upon a public body a liability for a thing which no reasonable care and skill could obviate. The duty may notwithstanding be absolute ; but, if so, it ought to be imposed in the clearest possible terms. The intention of the Legislature is to be gathered from the language used and the subject-matter. Where the language used is

(1) 2 Ex.D. 441 at p. 448. (2) L.R. 9 C.P. 316 at p. 322.

consistent with either view, it ought not to be so construed as to inflict a liability, unless the party sought to be charged has been wanting in the exercise of due and reasonable care in the performance of the duty imposed ; "

[see also *Blyth* v. *Birmingham Waterworks Company* (1) ; *Parnaby against The Lancaster Canal Company* (2) ; *River Wear Commissioners* v. *Adamson* (3) ; *Groves* v. *Winborne (Lord)* (4) ; *Lambert* v. *Lowestoft Corporation* (5) ; *Butler (or Black)* v. *Fife Coal Company, Limited* (6) ; *Watkins* v. *Naval Colliery Company* (1897), *Limited* (7) ; *Blumdy, Clark & Co.* v. *London and North-Eastern Railway Company* (8) ; *Noble* v. *Harrison* (9) ; *Great Western Railway Company* v. *Owners of S.S. Mostyn* (10) ; *Lochgelly Iron and Coal Company, Limited* v. *M'Mullan* (11)].

Now, in construing rule 41 I desire to express no opinion as to the degree of care which thereunder or otherwise it is incumbent upon " licensees " or " owners " to exercise, and I desire to reserve my opinion upon that question until a proper occasion for determining it arises. In the present case it is necessary only to consider the obligation that is imposed upon consumers of electricity for domestic purposes.

It is to be observed that, whereas under the rules penalties for breaches of the rules are provided as against " licensees " and " owners " (rules 105, 107 and 109 ; see also sections 39—47 of the Act) no penalties are imposed upon " consumers " except under rules 106 and 106A, and I am of opinion that under rule 41 an absolute obligation

(1) 11 Ex. 781.
(2) 11 A. & E. 223.
(3) 2 A.C. 743.
(4) (1898) Q.B. 402.
(5) (1901) 2 K.B. 590.
(6) (1912) A.C. 149.
(7) (1912) A.C. 693.
(8) (1931) 2 K.B. 351.
(9) (1926) 2 K.B. 332.
(10) (1928) A.C. 57.
(11) (1934) A.C. 1.

1935

DHANAL SOORMA v. RANGOON INDIAN TELEGRAPH ASSOCIATION, LTD.

PAGE, C.J.

to maintain the electric supply lines that belonged to them in a safe condition was not imposed upon consumers, and that under that rule the obligation of the consumers at common law towards those to whom they owed a duty to take care was neither increased nor affected. To hold that consumers of electric energy for domestic purposes should be liable to pay compensation for injuries caused by defects in their electrical installation apart from negligence on the part of the consumers and however the defects were caused would, in my opinion, be to lay upon their shoulders an intolerable and unjustifiable burden. Electricity cannot be seen. It cannot be heard or smelt, and it may often happen that a defect in the plant through which electricity can escape will develop which it is not possible for an ordinary person to detect. Consumers are not to be treated as though they were experts in matters relating to electricity, and therefore to compel them to remedy defects in electrical installations on their premises which could not be discovered whatever might be the care they exercised would be to impose on them a duty which it might often be impossible for them to discharge. But the law *non cogit ad impossibilia*, and unless the terms of the rule are so plain that the Court must needs hold that rule 41 imposes an absolute obligation on a consumer to maintain electric supply lines under his control in a safe condition, the Court in such circumstances ought to hold that the obligation imposed by rule 41 upon a consumer of electricity for domestic purposes is to take reasonable care to keep the electric apparatus on his premises in a safe condition. I am clearly of opinion that the obligation of the respondent company under rule 41 as a private consumer of electricity for

domestic purposes is of this nature, and that the care which they must take in that behalf is the same as that which they must exercise at common law.

Now, it has been found by the learned trial Judge that all reasonable steps that the respondents could have taken to render the electric supply line and apparatus innocuous had been taken in the present case. We are not disposed to interfere with that finding of fact, and in such circumstances, in my opinion, the claim of the appellants based upon this third contention also cannot be sustained.

For these reasons, in my opinion, the appeal fails and must be dismissed. The respondents do not ask for costs. The appellants must pay the Court-fees which they would have had to pay if they had not been allowed to appeal *in formâ pauperis*.

MYA BU, J.—I agree.

APPELLATE CIVIL.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Ba U.

1935

June 7.

D. K. CASSIM & SONS

v.

SARA BIBI AND OTHERS.*

"Actio personalis moritur cum persona"—Interpretation of statute—Succession Act (XXXIX of 1925), s. 306—"Personal injuries" mean only bodily injuries—Term ejusdem generis *with assault, not with defamation—Injury to credit and reputation—Survival of cause of action on death—Rule of "actio personalis" at common law—Applicability of rule in India—Statutory modifications—Cause of action survives against executors and administrators, not heirs.*

If the language used in a statute is precise and unambiguous all that the Court is called upon or entitled to do is to construe the statute according to its plain meaning. But where the terms of a statute are not clear, and certain

* Civil Misc. Appeal No. 120 of 1933 from the order of this Court on the Original Side in Civil Regular No. 275 of 1925.