

HIS MAJESTY THE KING.....PLAINTIFF;

AND

THE CONSUMERS' GAS COMPANY }
OF TORONTO } DEFENDANT.

Negligence—Damages—Gas Explosion—Evidence, Inference of fact—Responsibility.

The plaintiff was the owner of certain buildings in the City of Toronto and had contracted with the defendant to supply gas for use therein. While the servants of the defendant were connecting the meters in one of the buildings, an explosion took place followed by fire which destroyed this and several other buildings. This operation necessitated reducing a 2-inch pipe to a 1-inch pipe to which was to be added two ¾-inch pipe in the form of an elbow, during which time gas would normally escape into the room where the work was being

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done. The evidence establishes that there were no fires or wires supplied with electricity in the buildings which could have caused the explosion. There was no positive evidence of how the explosion happened.

Held, on the facts, that the Court could infer that the explosion and fire was due to the negligence of the servants of the Gas Company in allowing an excessive amount of gas to escape, for which the defendant was liable in damages to the plaintiff.

INFORMATION by the Attorney General of Canada to recover from the defendant damages by reason of destruction of buildings in the City of Toronto due to the negligence of defendant's workmen and servants whilst installing gas connections into the said buildings.

Toronto, February 16th-17th, 1926.

Action now tried before the Honourable the President.

R. S. Robertson, K.C. and *David Henderson* for plaintiff.

W. N. Tilly K.C. and *W. B. Milliken K.C.* for defendant.

The facts are stated in the reasons for judgment.

Maclean J. now this 5th day of May, 1926, delivered judgment.

The plaintiff was the owner of eight buildings situate at Rosedale Heights, Toronto, and which were built for demobilization purposes at the end of the war. At the date of the occurrence later referred to, some of the buildings were being converted into barracks for the accommodation of officers and men of the permanent forces of the Militia of Canada. Upon a plan of the property and buildings, produced as an exhibit at the trial, the buildings are lettered from A to H. The defendant company, a producer and distributor of gas in the City of Toronto, contracted for a supply of gas for use in such of the buildings as were to be occupied, and it had installed a service pipe from the gas main and brought the same into the ground floor of the building C, at the rear end. The plaintiff had installed the gas pipe leading from the ground floor to the upper storey of this building. On February 22nd, 1923, at about 2.30 p.m., servants of the defendant were engaged in installing meters, and making the necessary connections to afford a supply of gas for domestic purposes for the occu-

pants of C, when as the plaintiff alleges, owing to the negligence of the defendant's workmen, a fire occurred destroying the eight buildings, and also the goods and effects of certain officers of the permanent forces of the Militia of Canada, and whose claims for loss and damage were assigned to the plaintiff. The defendant in its defence objected to the assignability in law of such claims, but at the trial this objection was abandoned, upon the plaintiff's undertaking to protect the defendant, against other claims for the same cause. The sole issue raised at the trial was as to the liability of the defendant, for the loss of property which occurred.

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The buildings in question were frame structures two stories high, and the building C, where the fire in question originated, had been converted into living apartments or quarters for married officers of the Militia, and some were actually engaged in moving into these quarters, at the very time the fire occurred. This building was apparently fully ready for occupation, except for the installation of gas. Partitioning between the separate quarters, and the rooms was of light construction, just ordinary studding and beaver board. There were two apartments on the ground floor, and two on the second floor.

The defendant's employees were, at the time in question, making the necessary gas connections to allow a domestic supply for the tenants just moving into C, and installing meters. This was being done in a room on the ground floor at the rear, where a two-inch service gas pipe came up through the flooring, six inches above the floor. In making the connections, it was necessary to reduce the two-inch service pipe to a one-inch pipe, and to the one-inch pipe was to be added two ¾-inch pipes, in the form of an elbow, from each of which an apartment, one on the upper floor and one on the lower floor, would be served with gas. In this operation, though plugs were used to minimize the flow of gas, there were moments when gas would escape, there being no stop-cock in the service pipes, below the ground floor or elsewhere. The witness Cook, who was in charge of the work, had proceeded to the last step in the installation of the meter and making the connections, when, he states, he heard a slight explosion at the ceiling of the room in which he was working, with a

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helper. He states he immediately looked upwards upon hearing the noise and saw a flame, and then instantly looking downwards, where he had been in the act of attempting to complete his connections by putting on a tap, he saw fire coming from the pipe which was in his hand and uncapped. He and his helper were immediately obliged to flee from the building, the clothes of the former having caught fire. The destruction of the building C followed, along with the other seven as well. Cook and his helper say they had not been using fire of any kind in their work, and they both deny smoking, or the use of matches. Cook states that only about a cubic foot of gas would escape in making the connections, though he admitted he had not accurate knowledge upon that point; that the cap or plug would be off the pipes on three separate occasions of about three seconds each, in making the connections, during which periods gas might escape. He had no explanation as to the cause of the happening, and neither did his helper.

I find the following facts to be clearly established. The fire originated in the room where the defendant's employees were making the gas connections. No other persons but Cook and his helper were there. No other work was in progress in that building that day, except that one person was calsoining the walls in the northeast corner of the lower floor, but quite a distance from where the defendant's employees were working. The smoke and flames which first issued from the building came from the rear part of the lower floor of the building, where this work was going on. The first intimation of the occurrence, which the occupants of the two apartments on the second floor had, was smoke coming from below, through the spaces where the radiator pipes came through the floor, in the rear part of the building. The building was heated by steam, and there were no stoves whatever in the building. While the building was wired for electric lighting, the fuses had not yet been put in the fuse box. There was of course no gas in use anywhere in the building. An oil stove had been used for cooking purposes, at about 12.30 p.m. that day at the latest, by Capt. Hodson, one of the occupants of the second floor, but there is nothing to sustain the suggestion of the fire originating from that source.

Major Nordheimer was occupying the other apartment on the second floor, having moved in on the morning of the day in question, and he testifies there was no fire of any kind in his apartment.

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Professor Bain testified that a test was made in his presence on the premises of the defendant just prior to the trial by Cook and a helper, when the several operations performed on the occasion of the fire in making the gas connections were repeated, and the whole test it is alleged was completed in $6\frac{1}{4}$ minutes, and the meter registered a total escape of gas of only $1\frac{1}{2}$ cubic feet. I am not impressed by evidence of this kind, as it would not in fact prove the time occupied by Cook in performing the work which he did in the building C on the occasion in question, nor would it disprove negligence on that occasion in permitting an unnecessary amount of gas to be released. The fact is, that a sufficient amount of gas did escape, which, coming in contact with a flame, caused the fire.

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It is quite clear, that in some way a sufficient volume of gas escaped and became mixed with the air, which, coming in contact with a spark or flame in some way introduced, caused an explosion and a fire. I am irresistably led to the conclusion, that an unnecessary volume of gas was allowed to escape owing to the negligence of the defendant's workmen, and which was the cause of the fire. Whether the introduction of the spark or flame, necessary to cause ignition of the gas, was due to the defendant's workmen, it seems to me matters little, because the real negligence which caused the fire was in permitting so great a volume of gas to escape that when it came into contact with a flame or spark, it caused an explosion followed by fire. The excess of gas and the flame or spark were conditions both requisite for the occurrence. There should not have been permitted such a release of gas as to produce such unfortunate consequences. The presence of a flame or fire, or other ignition means, should always have been considered as possibly existent, or liable at any time to be introduced in some way or other in a building that was occupied, and in any operations necessary and incident to making the gas connections, this contingency should have been effectually guarded against in some way or other, and I do not think it was. It was suggested by

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counsel for the defendant, that some person on the upper floor might have been smoking, and a spark or light might thus have supplied the ignition. Even if any persons present in the upper storey, or any other persons properly in the building had been smoking or using a fire, and gas had escaped through the ceiling into the upper apartments or elsewhere, in such quantities as to become ignited from a light or fire of any kind, I do not quite see that this would change the duty and obligation of the defendant, to ensure that there was no such quantity of gas escaping as to cause ignition, and it should not have been a difficult task for competent mechanics to ensure against this. The essence of the negligence in the circumstances, I should think, was in allowing in an occupied building so much gas to escape that ignition occurred by coming into contact with some fire or flame, whether introduced improperly and negligently by the defendant's workmen or by others who had a right to do so. The facts here exclude negligence on the part of all other persons but that of the defendant's servants. There is absent any intervening agency, which negatives the idea of negligence on the part of the defendant. I am also of the opinion that even if the ignition of the gas was due to a third party that the defendant against whom the action is brought for injury which flows naturally from his wrongful act, cannot be heard to say that but for the intervention of another party the wrongful act might have been prevented.

Finding as I do, that the fire was attributable to the negligence of the servants of the defendant, there would seem to be no occasion for any lengthy discussion of the legal principle generally applicable to causes of this kind. The principle here to be followed, I think, is to be found in the judgment of Erle C.J., in *Scott v. London and St. Katherine Docks Company* (1), in which he said:—

There must be reasonable evidence of negligence. But where the thing is shown to be under the management of the defendant or of his servants, and the accident is such as, in the ordinary course of things, would not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care.

(1) [1865] 3 H. & C. 596 at p. 601.

The following cases might usefully be referred to: *Rapson v. Cubitt* (1); *Blenkiron v. Great Central Gas Consumers' Co.* (2); *Burrows v. March Gas and Coke Co.* (3); and Lopes L.J. in *Parry v. Smith* (4).

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There will be judgment for the plaintiff together with his costs of action. Should the parties fail to agree upon the amount of damages, there will be a reference to the Registrar to assess the same.

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Judgment accordingly.

Henderson & McGuire, Solicitors for plaintiff.

Mulock, Milliken, Clark & Redman, Solicitors for defendant.