IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO C.L. K048/94

BETWEEN	HAROLD KEIZE	PLAINTIFF
A N D	THE JAMAICA PUBLIC SERVICE	DEFENDANT

Mr. E.A. Smith and Mrs. N. Smith instructed by Ernest Smith & Co.

Mr. M. Manning instructed by Messrs Nunes Scholefield, DeLeon & Co.

Heard: 25/9/97, 30/9/97, 2/10/97, 3/10/97, 14/11/97

JAMES G.G, J.

JUDGMENT

The Plaintiff is an 81 year old tailor living at Chester in the parish of St. Ann. At about 8 o'clock on the morning of December 14, 1993, his house was destroyed by fire, the contents were also destroyed. It is the Plaintiff's contention that the fire arose through negligence on the part of the Defendants. Defendants deny that they were negligent.

The case for the Plaintiff is that he was and is a customer of The Jamaica Public Service Company (hereinafter referred to as The Company). The Company supplied electricity to his premises. There was a utility pole at the front of Plaintiff's house, this pole belonged to The Company. A service wire extended from the pole to the Plaintiff's house. Sometime in July, 1993, the utility pole shifted and according to the Plaintiff, 'the wire became stiff'. As a result, he went to The Company's office in St. Anns Bay where he reported to an officer of The Company that something was happening to the pole, he also told him about the 'strain' on the wire. The officer told him that he would send someone to see 'the danger of it'. Someone from The Company visited his home on the same evening, the situation of the pole and the wire was pointed out to him and in particular the fact that the service wire was resting on the roof. The officer from The Company promised to return and have the situation rectified. Plaintiff returned to The Company's Office on two further occasions but no one came to rectify the situation.

On the morning of 14th December, 1993 the Plaintiff was at the front of his house, he was in his yard. He knew of one power outage earlier that same morning. Plaintiff observed that there was fire coming from the post and 'running' towards his house, in other words, the service wire was on fire. The fire extended from the post to the 'pothead' and down into the house. The fire spread throughout the entire house. The Plaintiff made attempts to extinguish the fire but to no avail. According to the Plaintiff, "the house was burnt down flat, leaving only the walls standing".

Replacement costs for the building is given as $1,421,112.50. The value of personal and household effects destroyed is stated to be $2,000,000.

Two witnesses were called for the Defence, they were Howard Small, an electrical engineer employed to The Company and Charles Dowdie a Technical Assistant, also employed to The Company.

In his evidence, Mr. Small said that in December, 1993 he was stationed in St. Ann, he worked out of St. Anns Bay. On 14th December, 1993 he received report of a fire at Chester in St. Ann. He saw and spoke with the Plaintiff who alluded that the damage done by the fire was the responsibility of The Company. According to Mr. Small, Plaintiff reported that his grandson heard a 'popping sound' inside a front room and thereafter the house was on fire. Mr. Small also said in evidence that Plaintiff made no mention that he saw fire running from the pole to the pothead. The witness visited the premises at Chester on the same day that he received the report. He confirmed that the house had been destroyed, there were also burnt household items outside.

Mr. Small said that he examined the premises and in particular, he went to a room where the fire was supposed to have started, based on information he got from the Plaintiff. The breaker panel for electricity supply to the premises was located in that room, all that remained of the breaker panel was the housing, the interior was completely burnt. Next, he went to the verandah where the meter and the conduit to the pothead were located, according to Mr. Small, he saw no evidence of burning on the conduit. The witness further said that the pothead itself appeared to be in reasonably good condition, there was no sign of burning on it.

The witness said further that the service line from the pole to the pothead was intact and that he saw no evidence of fire along that line.

This is the line along which the Plaintiff said he saw fire. At the rear of the premises the witness (Mr. Small) said that he saw a length of telephone cable which appeared to have been used to extend electricity supply to an out-building. He also said that the zinc roofing in the region of the pothead was not affected by the fire. Mr. Small said that in addition to his inspection of the premises he spoke with persons in the neighbourhood and he made observations of The Companys' installations in the area, including the transformer. According to Mr. Small, based on the information he received and based on his observation he concluded that the fault occurred internally although he did not know exactly where.

In cross examination Mr. Small was asked, "Could a popping sound in the panel causing the fire have resulted from some fault on the part of Jamaica Public Service?" Answer: Yes and no.

Mr. Small also said in cross examination that if there was a strain in the service wire between the pole and the pothead, that could disturb the connection at the pothead and thereby give rise to overheating resulting in a fire. This witness concluded that he did not know what was the cause of the fire.

The other witness who was called on behalf of The Company is a Technical Assistant who accompanied Mr. Small to the scene of the fire. His evidence substantially supported what Mr. Small had said. This witness took photographs at the premises and two of these were tendered and received in evidence. One of these pictures seem to show that the pothead and a small section of the roof were not burnt. The other picture of what is said to be part of a telephone cable attached to the house is of little significane from an evidential point of view. The Technical Assistant did admit that he had not inspected the connection between the pothead and the service wire to see if the connection was loose. He said that the service wire from the pole to the pothead was not burnt although he admitted that he carried out his inspection of the wire from a distance of twenty five to thirty feet.

After giving very careful consideration to all the evidence I conclude that the Plaintiff is substantially a witness of truth. I believe that he saw fire along the service wire on the morning in question. It is also my finding that the service wire had become unsafe due to the condition of the pole on which it rested. This unsafe situation had been reported to The

Company but to no avail.

I find that The Company is liable in damages for the destruction of Plaintiff's house and contents.

Damages are awarded as follows:

Replacement costs of building	$1,421,112.50
Value of personal and household effects	660,000.00
Total	$2,081,112.50

With interest on $1,421,112.50 at 10% per annum, with effect from 14th December, 1993 to 14th November, 1997.

Plus costs to the Plaintiff to be taxed if not agreed.