IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1999/R113

BETWEEN	WINSOME PATRICIA CRAWFORD RAMSAY	PLAINTIFF
AND	THE JAMAICA PUBLIC SERVICE COMPANY LIMITED	DEFENDANT

Ms. Jacqueline Cummings instructed by Archer, Cummings and Company for the Plaintiff.

David Batts instructed by Livingston, Alexander and Levy for the Defendant.

Heard on 8th, 15th, 16th, 17th, 18th and 19th April 2002 and 7th February 2003

Campbell J,

On the 12th April 1999 at approximately 7:00am, Ingrid Newell, a neighbour of the plaintiff, was at a shop in Dunder Hill, in the parish of St. Elizabeth. She testified that the lights in the shop "kept going down and up", and on and off. As a result the shopkeeper unplugged her electrical appliances. She said that whilst standing at the doorway of the shop, she saw "the transformer sparked up, and everyone under the piazza jump up and ran in different directions". She testified further that, "I saw a ball of fire like my hand (the witness demonstrate with her fist) run up the line and went straight up the road". So impressed was she with the spectacle that she refused to walk under the transformer. The sparks she had seen she likened to that from a welding gun. Those sparks were distinguishable from

the "ball of fire", she had seen run along the lines. She said she heard that the plaintiff's house was on fire. She proceeded to the plaintiff's house where there were about five persons gathered. She noticed that at the front of the house "where the wire was connected to the front room, was engulfed in flames". There were no members of the plaintiff's household present at that time. She observed two men "chop off the two gas cylinders and push them away". She said by the time the fire truck came, the house was totally engulfed in flames. She noticed the defendants' truck came and the defendants' workmen removed the plaintiff's meter. She did not notice any of the men from the defendants' truck at the plaintiff's house. She stated that there was low voltage in the area four days prior to the fire, and that it was about eight minutes after she had noticed the sparks from the transformer that she had heard that the plaintiff's house was on fire. She describes the distance from the transformer to the plaintiff's house as being "about a five minutes walk". She said when she had reached home she realised that the electricity had returned to the district.

In cross-examination, she said she had been at Ms. Johnson's shop when she observed the sparks from the transformer. This transformer is situated directly across the road from Ms. Johnson's shop. From there she witnessed the "sparking", it was not possible to see the plaintiff's home. She said she never saw the defendants' workmen came and replaced the wiring.

Another neighbour of the plaintiff, Nicola Artwell, testified that she noticed her television set going "on and off". She said she observed "a ball of fire", on the light post running towards the plaintiff's house. She testified that she unplugged her television set and turned off the breaker. She heard something popping over at the plaintiff's house and saw smoke, next she saw "the awning, that's where the fire was". She said neighbours, in an attempt to slow the fire, gathered and removed zinc from the plaintiff's roof as also the gas cylinder. The witness said the reason she turned off the breaker was because she saw the lights going down. She testified in reference to the defendants' workmen that the "guys were there rolling up the burnt wire. A wire was there on the ground." She testified that the lights have behaved in a similar manner in the evenings around 7:00pm.

The Plaintiff had earlier testified that she left her home in Dunder Hill, St. Elizabeth, to her "little shop" that she operated in the Junction market. She had left her teenaged son and her nephew at home. Some three hours later, the police arrived at her shop and transported her to her home. On arrival she noticed "flames in the air and a lot of people were there". She testified that the entire roof of her house was on fire. She said she broke down in tears and had to be removed from the scene. The entire district was in darkness on her arrival.

On the 29th October 1999 the plaintiff filed a Writ of Summons and Statement of Claim against the defendant to recover damages for negligence,

alleging the defendants' failure to maintain their transformer and/or electrical wires located at close proximity to the plaintiff's said premises. As a consequences of which the plaintiff was inconvenienced and suffered loss and damage.

The Statement of Claim averred at;

Paragraph 3 At all material times the Defendant had an electricity pole with a transformer attached erected at close proximity to the Plaintiff's aforesaid premises.

Paragraph 4 On or about the 12th day of April 1999, through the negligence of Defendant, their servants and/or agents, the service wire at close proximity to the Plaintiff's said premises became ignited and as a consequence of which the Plaintiff's dwelling house was set on fire and subsequently destroyed.

Particulars of Negligence:

(a) Failing to ensure that the service wire at close proximity to the Plaintiff premises was connected in a manner whereby no damage would result to the Plaintiff's dwelling house

(b) Failing to maintain the transformer in a proper condition and workmanlike manner.

(c) Failing to take steps to ensure that the electrical current flowing through the wires was consistent.

(d) Failing to take steps to prevent asurse of electricity to the Plaintiff's premises

(e) Failing to prevent the electrical wire from becoming ignited from power surges.

The Defence, which was filed on the 6th January 2000, states inter alia

4 Save that on 12th April 1999 the Plaintiff's premises was affected by fire, paragraph 4 of the Statement of Claim are expressly denied. The Defendant say

that at all material times its service wire, transformer and other equipment were in proper working order.

5 The Defendant says that the Defendant, its servants or agents, its equipment and services had nothing to do with the fire at the Plaintiff's premises and neither did the Defendant, its servants or agent caused or contributed to the creation or the igniting of the said fire.

The parties each brought an expert to prove their respective cases. Mr. Fitzmore Coates was brought by the plaintiff. He is a Senior Forensic Officer in the Ministry of National Securiy and Justice. Among his duties is the investigation of fires. In this, he has twenty-five years experience. He has a Bachelor of Science degree in Chemistry from U.W.I in 1976, with a minor in Biochemistry and Physics, electronics as a part of his physics course. He has had specialised training at Home Office Research, in Reading England. Among major fires he has investigated was at the Golden Age Home called Eventide in 1976.

Coates visited the plaintiff's home two days after the fire. He testified that his examination revealed that the fire was *electrical in nature* and had started at the "pothead" at the northeastern section of the house. He opined that the building burnt from that section and the fire spread throughout the roof, following the electrical wiring. He noted that all the electrical appliances with the exception of the refrigerator was unplugged prior to the fire. He came to that conclusion because the wires and plug had carbon on them, which would not be the case if they had been plugged in at the socket at the time of the fire. In respect of the

refrigerator, he opined that it was only slightly burnt from the top, and where it was plugged in was not burnt, from which he concluded that the refrigerator played no part in the start of the fire. There was no short circuit "from the fridge or any area of the fridge". The breaker in the northeast bedroom had tripped. Coates testified that the building had burnt from the top, with the most severe burning in the area of the pothead. He defined the pothead as the area where the external service joins the wiring of the building. There was The evidence of short-circuit (leading to an internal fire), in the opinion of Coates, would be "fusing and beading" of the wire with a resultant lost of tensile strength, "the wire would become brittle and break easily." This could be contrasted with an external fire which would have the effect of burning off the insulation, but the wire would still be pliable. Asked if there was any difference in the wiring immediately outside the dwelling house and what he had observed within, Coates responded that, "There were no wires outside the dwelling house for observation except the remains of some wires that were coming from the pothead, which was what was joined to the external wire." This response as to his observation about wires at the area of the pothead is supported by the testimony of Nicola Artwell. When Artwell during the course of her testimony was shown exhibit 6 (which the defence claims shows the defendants' wires coming from the "pothead") she said, "the following day the guys were rolling up the electrical wire. "It was suggested to Artwell that she was mistaken as to seeing

the burnt wire being rolled up. The defendants' linesman who visited the scene the night of the fire testified that he did not see any wires on the ground. Coates opined that the wires, the remains of aluminum cable which appear to have been burnt off through "shorting" and had jagged edges and characteristic consistent with being "short-out". He explained that "arching" would take place where the fire runs along the wire and jump a gap, "shorting out" on the other wire. On the other side of the gap, this arching would cause the wire in the household to become inflamed, the insulation would burn, as would the area where the "shorting" occurs. Coates continued that combustible material would "catch a fire", the insulation travelling along the ducts in which the wires are placed. Coates' opinion of such an event is that, "it was unlikely that could affect the entire district. It is not possible that a fire on Mrs. Ramsay's house would cause a fireball to run along the wire into the community. If there was a feedback, it would not reach the general community. Sometimes there is a ground wire, that causes feedback that runs along it and goes to the ground. I have never observed fires to run back and feedback."

Coates' evidence as to the inability of a fire in the plaintiff's house to feedback into the community, is a point of departure between the two experts. Tomlinson opinion that such a feedback is consistent with a "shorting" in the area

of the "pothead". It should be noted that of the two experts, Tomlinson has greater specialist knowledge in electricity.

Coates was asked: can fluctuation in the electricity supply cause a short circuit?

Answer: Yes it can. The fluctuation causes surges it sometimes by-pass protectors and you can have a fire and equipment being damaged.

Coates admits that his expertise does not extend to transformers. A power surge was defined by Coates as "a sudden flux of electricity which is higher than the rating than the fuse is made to withstand and could cause the fuse to blow." He said most of the "beading" and fusing were observed in the upper north-eastern corner of the bedroom, leading to the breakers. Coates was firmly of the view that if fire had run along the wires to the pothead in the way the witnesses described, you could have an arch-over, as was evident, and it could lead to the fire in the plaintiff's house.

In answer to Mr. Batts, he could not say if the copper wire was joined to the aluminum wire before the meter or after. He knew that both wires were joined with clamps. He agreed that it was the customers' responsibility to ensure that the clamp was properly insulated. If the insulation was not proper there would be a high probability of "arching" or "shorting", at that point. He agreed with Counsel that such "arching" or "shorting" could occur without a fireball. Coates said it

could be caused by a surge of electricity. Further, anything that causes the wires to touch could cause a short circuit. He maintained that the massive generation came from outside the plaintiff's building and before the pothead. If the meter was on a pole before the pothead, he said "you might or might not see evidence of the shorting in the same way that a surge of electricity will by-pass one of these protectors, and do damage to the equipment." The same phenomena could occur with the meter in place. He said that at the time he did his examination he expected the meter to be at the pothead. Coates opined that a surge, if not caused by the transformer could cause damage to the transformer. He was asked the following questions:

Q: Is what you have said consistent with inadequate insulation at the pothead, being the cause?

A: I would not say so.

Q: What rules out inadequate insulation at the pothead being the problem?

A: I did not observe anything regarding the insulation at the pothead that was out of the ordinary.

This evidence of the insulation of the wires at the pothead being in order has not been contradicted by the defendant. Shown Exhibit 6, he disputes that the wires shown were electric wires, but testifies that they were cables, telephones and wires for other purposes, "there were no electric wires going to the 'pothead'".

Coates claim that the uppermost wire was that of the telephone; he was unsure what the other was but was certain it was not an electrical wire. Coates said around the pothead the wires were fused, those leading away for the most part was burnt off. He was unable to say whether the insulation was adequate or not before the fire. He disagreed with the suggestion that a break or defect in the insulation could have caused the massive surge that he noted. The basis of this disagreement was the damage to the end of the aluminum wires that he had observed which was more consistent with arching as a result of a surge. Coates said that it was caused by more than a simple coming together of wires.

It is of fundamental importance to recognize that the defendant is denying that the electrical wires leading to the pothead were damaged. However, there is no evidence adduced by the defendants that there was an inspection of the defendants' wires leading to the "pothead" at anytime after the fire but prior to the visit of Tomlinson some months later. The evidence of the linesman who visited the scene the night of fire speaks to damage to "the private wire", but was silent as to the condition of the defendants' (public) wires.

Coates stated that he went to the scene three times for the week; his investigations took approximately four hours. He said he spoke to some three or four persons who were present at the scene. He opined that the reason for the breaker tripping was that there was an overload and a short circuit. Coates was of

the view that a short circuit at the pothead could have an effect of going back from the pothead to the meter and probably back into the line.

The defendant called three witnesses, the chief of whom was the expert, Kenston Tomlinson, he had been employed at Jamaica Public Service for forty-one years. He started as a trainee in the Engineering Department and had worked in every department of the defendant, and was Manager of the Claims Unit. He has a Batchelor of Science, National Science, with minor in physics and maths from the U.W.I. He has participated in several in-house training courses. Done overseas courses at APP Industries (Manufacturers of Insulators, in New York) and short courses at Georgia Technical University.

In his experience as Manager of Claims made against the defendant, he would investigate all claims dealing with electricity, and submit a report to the defendants' lawyers. In respect of the plaintiff's claim he received a report in July 1999. This claim included a report from a linesman who attended on the night of the incident. He visited the location on 10th November1999. He testified that the purpose of that visit was *to* make a sketch of our (i.e. the defendants) distribution system and the layout of our (i.e. the defendants) supply to the plaintiff's premises. He testified that he considered the layout of the system important to the determination of the Claim. From the sketch that he made (ex.9), he considered that his first concern was to identify what constituted the defendants' property.

Referring to that exhibit, he said the "portion marked at b to c was J.P.S. property. He also determined that the wires running from one of the poles at c through d and onwards was private property. He noticed that the conductors running along the road a – b are open wiring, running singly at about one foot apart. Conductor b – c are triplets, meaning that it comprised one insulated conductor with two separately insulated conductors. "Three wires bundled up and they run as one".

Mr. Tomlinson said his next assignment was to examine the section owned by J.P.S. to see if there was any damage or any repairs to any property in that section. In this regard he said that he went on the assumption that in the report that was submitted, the workmen lied. He gave no reasons for such an assumption. Could this have been from his experience with reports submitted by the defendants' workmen in the past? Or was this an attempt by himself to approach his examination in an objective manner. He said he neither saw sign of damage nor repairs. On this visit it rained and his inspection of the wires was not as close as he would have liked. He returned in January 2000, with a photographer. He examined the joints closely to see if there were new clamps; he saw none. This he said provided him with proof that no repairs had been effected. It is noteworthy that after his examination he concluded that if an electrical disturbance emanated from J.P.S. transformer, it would damage some part of the section A to B to C (Ex. 9), that is, some part of the defendants' property. In addition, all the customers

who were fed from J.P.S. system, approximately 18 would be affected. No claims were received from the other persons. He examined the meter socket, the property of the plaintiff, and saw no sign of damage on the jaws of this meter socket. He had specifically looked at these because all current going to the plaintiff's house must pass through those points. He had not thought it necessary to examine the transformer because it was working. He said when the transformer was not working for any reason; it would be evidenced by the switch hanging down. The switch opens the connection from the transformer, so that it is no longer electrically connected to the wires running along the street. On this occurring all customers being fed from that transformer will lose supply. The transformer has this feature, according to Tomlinson, to protect the customers from persistent low voltage.

Of the tripping of the electrical breaker in the plaintiff's house, Tomlinson says that this reinforces his point that there was a short circuit in the house, "probably" brought on by the improper insulation of the wires. Similarly, Coates evidence that the fire started at the pothead, bolstered his (Tomlinson's) conclusion that if the insulation that connects the aluminum and the copper wires were not properly insulated, then that could cause a fire at the "pothead". He says Coates identifies the point where the fire took place as being the pothead. His (Tomlinson's) best analysis was "that whatever caused the problem occurred

downstream of the meter closer to the customer's house". I regard this bit of evidence by Tomlinson a concession that Coates was able to identify the point that the fire started with greater precision than Tomlinson was able to do.

Although there appears to be some agreement as to the point where the fire started, the cause of the fire was still a point of confusion. Tomlinson said that a short circuit would cause an outflow of current from the transformer. This causes the wires to sag and come together, because of magnetic forces created by the current when the wires come close. An observer on the ground would see sparks flying between the conductors. These sparks would appear to be moving. He said that if fires were burning in the wire he would expect the conductors would become brittle. Because of the heat the wires would sag greatly, which would be evident days after the fire. The fires would have had to pass the wooden pole. He would therefore expect to see burnt marks on all these poles. He agrees with the idea of a surge and insists that the most likely place such a surge would begin is at the pothead.

Tomlinson opines that for the surge to start in the defendants' system it would require a big demand for current, such a big demand could be created by a short circuit. He says that there were two high demand periods for electricity, generally, about 11:00am and 7 – 8pm. He says that the only surge that could start outside the customer's area is a surge from voltage. This he insists would affect all

customers. In addition, equipment would be burnt. A short circuit would affect the voltage in that the current going to the short circuit would go up whilst the other customers' voltage would fall. He says that each transformer supplies a defined number of customers. The number of customer attached to each transformer is based on the electrical expected demand of the equipment they possess. The expected demand is arrived at by the information provided by the customers. In the absence of this information, a factor is assigned each customer which attributes to the customer a higher than normal demand. Tomlinson says that this is to ensure that if all customers turn on at the same time, the transformer is properly sized and no customer will experience any adverse effects. He testified that the customer has been informed that on acquiring electronic appliances, the defendants should be informed. In addition to sizing the transformer based on expected demand a special monitoring device is attached to the transformer which records the electronic consumption over an extended period. As a further alternative method, the bills from a particular transformer are examined.

Tomlinson says that as a matter of principle a surge cannot start on the defendants' side. He regarded this as an absolute principle. He attributes this "ironclad rule" to the operation of the breaker. He rules out voltage surge because it would require a voltage with a high value, this would result in all the customers seeing high voltage and equipment damaged and the coil in each meter would be

burnt. In cross-examination, he said that he never inspected the plaintiff's house and that the community served by the transformer is a mixed community, commercial and residential. He said he did not know that Dunder Hill District had suffered low voltage before the 12th April 1999. He testified that overload can cause low voltage and if the low voltage is intermittent it can cause short circuits. The voltage in the transformer only changes when there is an overload and if there is a fault at one of the places supplied by the transformer. He admits that he did not examine the transformer. Sparking at the transformer could be caused by large amount of current flowing out, particularly suddenly. Tomlinson was unable to deny Artwell's testimony that at about 7:00pm on the evening of the fire, there was low voltage. He disagreed initially that a surge in electricity supply can cause a short circuit, admitting that the change has to be significant. Arching, he opined, would result in the wire being "pitted" or gouged out. He said that the defendants prepared two damage claim reports in July and Sept of 1999. Tomlinson admitted that he had no clue as to what caused the fire. This admission is significant, particularly against the background of questions put to the plaintiff and to Mr. Coates by the defendants' Counsel, Batts. Coates was asked whether his involvement in the investigation of the matter was as a result of the intervention of the police. Several questions were put to the plaintiff concerning an alleged discord in the home between her husband and son prior to the fire.

Tomlinson said there is a schedule of maintenance in respect of the defendants' wires and transmission, however he cannot recall that schedule. He testified that there is no requirement that the defendant satisfy itself that a customer can properly receive electricity. He did not examine the meters of the other customers. Asked if a surge in current can bypass the mechanism in a surge protector, Tomlinson opined that a surge in current "cannot eliminate the process that the protector is assigned to do, this assumes that the surge protector was working properly". This bit of evidence has to be examined beside Coates answer in cross-examination, that surges can sometimes by-pass protectors and that the same phenomena could occur with the meter in place. He was of the view that there was similarity between the breaker and the transformer. He admits that a surge of voltage can cause a fuse to blow, but the breaker would act before that happens. Tomlinson was asked the following question: "In the absence of a switch being turned, can a surge of current occur?" He replied that, "there can be situations where 'bare wires come together', this would cause the breaker or the fuse at the transformer to operate." When customers are using supply there is usually a small surge of electricity. He said that a surge can be started in the defendants' system, but there is system to protect the consumer, he said in his forty years at J.P.S., "I have never heard of a breaker and fuse at the transformer malfunctioning."

Donovan Williamson, linesman of the defendant, testified of arriving at the Dunder Hill, and it "was out of supply". He testified that he observed that "private wire was burnt down to the meter, however it was still strung up. This damage was not noted in the inspection done by Tomlinson when he visited. What was the nature of the damage? Was it of the external nature or internal. He removed the meter and he disconnected the defendants' wire at the pothead. He reset the switch-stick at the transformer. He spent about twenty minutes in doing his checks. He states that, " there were no lines on the ground."

Weyman Scarlett, maintenance supervisor for operations, with responsibility for requisitioning, installing or changing the transformer in the Dunder Hill area, testified that there was no change of transformer in that area, since the fire.

The evidence of the experts is crucial in the determination of the cause of the fire. The qualifications and experience of the two experts have not been challenged. The approach to be undertaken by a trial Judge was outlined in the Jamaica Flour Mills Limited v West Indies Alliance Insurance Company Limited and others, SCCA 92/94, delivered on the 21st 1997, where Rattray P; said at page 123.

> "A trial Judge may well conclude that a theory or viewpoint expressed by one expert or another is flawed. Indeed, we are very much in the realm of theory in many aspects of this case. The flaw may emanate from several

> reasons. The experts may have strayed outside the specific areas of his expertise. He may have failed to take factors into account which, had he done so, could have led him either to a different conclusion or affected the certainty with which his opinion was proffered. Furthermore, since even experts can err, he may have been in error. None of this supports a conclusion of dishonesty which must rest almost reluctantly on the most compelling indicators."

And at page 128;

> "It is most important to identify the particular expertise of each witness so as to pinpoint the specific area in which the witness is qualified as an expert."

Mr. Coates is a Senior Forensic Officer in the Ministry of National Security and Justice. Among his duties is the investigation of fires, he has twenty-five years experience and cites that he was the Forensic Officer investigating the celebrated Eventide Home fire. On the other hand, Mr. Tomlinson had served the defendant for forty-one years, working in every department. Tomlinson concluded that, if the electrical disturbance had emanated from the defendants' transformer it would have damaged some part of the defendants' transmission system, i.e., some part of a to b to c in Exh. 6. The evidence of such damage would be brittle wires, and that the wire would sag greatly and would be so evident for days later. Tomlinson, however, did not think it necessary to examine the Transformer, neither in his November visit or the visit in January 2000. This evidence would therefore not be available in Tomlinson's visit to the scene approximately seven months after the

fire. Was the fire the result of a surge that originated in the defendants' part of the transmission system and bypassed the meter and arched the pothead, resulting in a short circuit that started the fire, or was the fire the result of improper insulation of aluminum wires with the copper wire, in the area of the plaintiff's pothead? Or did the short circuit at the plaintiff's pothead result in a feedback into the J.P.S. system, which caused a fireball to develop resulting in the fire?

It is important to note that it was uncontradicted that the only appliance that was plugged in at the home of the plaintiff was the refrigerator. It was not the source of the fire. There was no evidence from the defendants that there was poor insulation in the area of the plaintiff's pothead. No proper examination of the wires were done by the defendants sufficiently proximate to the date of the fire to allow the Court to rely on the defendant's evidence in this area. I accept the evidence of Coates that there are no electric wires in Exh. 6. On the question of the transformer and the role it played, if any, in the incident on the 12th May 1999. The evidence of Ingrid Newell was significant. Mr. Coates has admitted that he is not an expert on transformers. The evidence of Tomlinson suffers from the fact that he never thought it necessary to visit the transformer on either of his visits to Dunder Hill, albeit some months later. His evidence in relation to the operation of transformers was to the effect that it was an absolute principle that because of the functioning of the breaker in the transformer, a surge could not start on the J.P.S.

side of the system. He conceded that this absolute rule only applied in the absence "of a big demand for current". The transformer at the time of the incident had been installed for over twenty years. The plaintiff had over thirty electrical appliances. Would she have had all those items twenty years ago? I think not. Is this plaintiff unique in regard to the acquisition of these appliances? Its important to note that prior to the fire being observed on the lines, two of the plaintiff's witnesses had testified that they had experienced fluctuations in the power supply. Newell testified that it was about 7:00pm (the period of peak demand, according to Tomlinson), she observed "the lights in the shop kept going up and down". Nicola Artwell, had sworn that "she noticed the T.V. going on and off, as a result, she unplugged her T.V. and turned off the breaker. Importantly, Artwell's testimony to the effect that the lights would go up and down each evening at about 7:00pm was unchallenged. Tomlinson cites two circumstances that can cause a voltage change in the transformer. The first is where there is an overload and secondly, if there is a fault in one of the places supplied by the transformer. I accept this unchallenged evidence of Tomlinson. There is no evidence before this Court of any fault whether through faulty installation or otherwise in any of the defendants' customers in Dunder Hill. The plaintiff only had one appliance plugged in and there is no challenge that it was not the cause of the fire. Neither is there one scintilla of evidence to support the suggestion that the plaintiff's wires at the

pothead were poorly insulated. Scarlett had no record of the transformer being repaired. Although he bears responsibility for the maintenance, his testimony was "there is no schedule of maintenance for the transformer in my section". I accept Coates opinion that a fluctuation in electricity supply can cause a short circuit. Sparking from the transformer, (as per the evidence of Ingrid Newell) according to Tomlinson, would be caused by a large amount of current flowing out particularly suddenly. That the transformer sparked minutes prior to the fire at the plaintiff's home as not been challenged. What then precipated the sparking? Was it overload?

The time of the sparking was at the peak demand period. There is also the question of the increase in demand as evidenced by the number of appliances that the plaintiff owned. There was no evidence that the defendant was able to properly monitor and adjust its supply services to deal with an increase in demand. None of the defendants' witnesses was able to refute or verify the plaintiff's contention through the mouth of Artwell that there were prior instances of low voltage in the area. I am fortified in that view by the similar inability of the defendants' officers with responsibility for the maintenance to report on the schedule of maintenance for the transformer. The defendants' response was to say that any such surge would affect all customers. There has been no reason supplied for concluding that

all customers would be affected in any event, and the customers that we heard of had unplugged their appliances.

Was there a fault in one of the places supplied by the transformer? The entire theory that the defendants' espouse as to the probable cause of the fire revolves around the proposition that there was a lack of proper insulation at the pothead of the plaintiff's home. Coates agreed with Counsel for the defendant that the insulation of the clamps that joined the aluminum wire to the copper wire, were the responsibility of the customer, and if insulation was not proper "there would be a high probability of arching or shorting, and that anything that causes wires to touch could cause a short circuit. Coates was clear that his examination did not reveal "anything regarding the insulation at the pothead that was out of the ordinary". None of the witnesses called by the defendants was able to say that there was any fault in the plaintiff's line or for that matter any fault in any of the places supplied by the defendants. The entire defense is based on the conjecture or on the assumption that there was a fault in the insulation of the plaintiff's wires. There is not one scintilla of evidence adduced to support that proposition. Mr. Tomlinson's experience appears to cover all areas of the operation of the defendant. He has not however claimed any specialist knowledge in the area of investigation of fires. I therefore bear in mind the dictum in the Flour Mills case, where at page 128, Rattray P. said; in speaking of the expert witness, said;

> "In so far as all or any of them strayed outside their areas of specific expertise, their evidence must be treated with caution. As engineers, they have a general knowledge which invests them with an ability to speak in general terms beyond their specialist expertise. This cannot be ignored. Their experience as established in evidence in specific areas can give additional weight to an opinion given. In assessing their evidence in terms of weight on particular issues, a discriminating balance must be applied in order to determine the validity of an opinion given in a particular field beyond the boundaries of their specialisation and experience."

I must bear in mind Mr. Tomlinson has, for the last forty-one years, worked in the employ of the defendant, and that his last employment was that of Claims Manager. On the other hand, although Mr. Coates lacked the extensive experience in electric transmission, his forensic skills gave more weight to his evidence and caused Tomlinson to defer to him as to the identification of the point of origin of the fire. Tomlinson was at a disadvantage not having examined the transformer or the remains of the plaintiff's house. His investigation was not as detailed as that of Coates, or as extensive. His thesis is speculative and devoid of evidentiary support. Tomlinson with refreshing candour admits in cross-examination that he had no clue as to what started the fire. Counsel for the defendants contended that Coates knows nothing about transformers or commercial transmission of electricity, that he had not examined the meter or its socket or the defendants' transmission lines or transformer. Mr. Batts also argued that there was no damage to J.P.S. poles or wire or equipment.

No examination was made of the transformer by the defendants or its agents either, and it certainly appears that the report that was examined by Tomlinson was not informed by such an examination either or had the vital input that sparking had taken place at the transformer. The sparking and the fireball that were seen are only explainable on the defendant's case if the surge created by the lack of insulation at the plaintiff's pothead was able to feedback past the plaintiff's meter without creating any damage to the said meter. Mr. Tomlinson opined that it was not possible for such a surge to bypass the meter without creating damage. He said that when the transformer was not working for any reason, it would be evidenced by the breaker switch hanging down.

I find that the plaintiff's residence was destroyed as a result of a voltage surge emanating from the transformer probably due to an overload. The resultant surge arched the plaintiff's meter and "short circuit" in the area of the pothead of the plaintiff's house. The defendant's workmen testify that the switch for the transformer was down and the area was without electricity. The plaintiff had alleged that the defendant had failed to maintain the transformer in a proper condition and workmanlike manner. I find that on a preponderance of evidence that the plaintiff has demonstrated that the defendants' transformer malfunctioned. On the question of quantum of damages to property the award is either the replacement cost or the fall in value of the Damage as a result. Where the property

is a dwelling house, the Court looks at all the circumstances before making a determination. In Philips v Ward [1956] 1 ALL ER. 874 per Lord Denning at 876:

> "We are referred to the cases where a house is damaged or destroyed by the fault of a tortfeasor. These cases are, I think, different. If the injured person reasonably goes to the expense of repairing the house, the tortfeasor may well be bound to pay the cost of repair, less an allowance because new work takes the place of old: see *Lukin v. Godsall* (2) (1795) (Peake, Add. Cas. 15); *Hide v. Thornborough* (3) (1846) (2 Car. & Kir. 250). In other cases, the tortfeasor may only have to pay the value of the house: see *Moss v. Christchurch Rural District Council* (4) ([1925] 2 K.B. 750). It all depends on the circumstances of the case: see *Murphy v. Wexford County Council* (5) ([1921] 2 I.R. 230). The general rule is that the injured person is to be fairly compensated for the damage he has sustained, neither more nor less."

The valuation report dated 19th February 1997, (exhibit 4) totalled a value of $3,150,000.00; of this amount, the value of the land gravity tank and outbuilding of which no evidence of damage was adduced amounted to $550,000.00 of that sum ($3,150,000 - $550,000).

The plaintiff claim for lost of furnishings, personal effects, utensils, etc., were chiefly itemized at $3,353,300.00 in exhibit 2. However, item 22 of the estimate sheet (ex.8) allowed $850,000.00 for household furniture equipments, clothing and other personal effects. I make an award of $1,250,000 for furniture and personal effects.

In all the circumstances, I assessed the loss of the house at $2,600,000.00, and the loss of furniture and personal effects at $1,250,000.00.

Judgment for the plaintiff in the sum of $3,850,000.00 with interest thereon at the rate of 6% from 12th May 1999 to 7th February 2003. Cost to the plaintiff to be agreed or taxed.