PUBLIC UTILITIES CORPORATION OF ARKANSAS *v.* CORDELL.

Opinion delivered December 7, 1931.

1. EVIDENCE—RES GESTAE.—Where one fatally burned in an explosion of gas was asked a few minutes after the explosion how it happened, his explanation was admissible as *res gestae.*
2. EVIDENCE—RES GESTAE.—To be admissible as part of *res gestae,* a declaration must be so near in point of time as to grow out of and explain the character and quality of the main fact, and be so closely connected with it as to practically constitute but one entire transaction.
3. GAS—EXPLOSION—EVIDENCE.—In an action for damages from a gas explosion, testimony regarding a reduction of gas pressure in another pressure district in the same city was competent as tending to show a reduced pressure throughout the city.
4. GAS—EXPLOSION—SUFFICIENCY OF EVIDENCE.—Evidence that a reduced pressure put a fire out and an increase of pressure without notification caused an escape of gas into the room and an explosion on lighting of a match *held* to sustain a verdict for property damages.

Appeal from Union Circuit Court, Second Division; *W. A. Speer,* Judge; affirmed.

STATEMENT OF FACTS

Alice Cordell sued the Public Utilities Corporation of Arkansas to recover damages for injuries to her building by reason of the defendant's negligence in permitting gas to escape in said building and explode. The defendant denied negligence on its part, and alleged that the explosion was caused by a defective connection in a stove in the house of plaintiff, which was due to the negligence of the plaintiff.

The witnesses were examined and cross-examined at great length, thereby making a large record; and we shall only attempt to state the material facts necessary to determine the issues raised by the appeal.

The plaintiff owned a residence at 524 West Cedar Street in the city of El Dorado, Arkansas, which was occupied by her tenants on the 20th day of December, 1929. About noon on that day, an explosion of gas occurred in the bathroom, which greatly damaged the building.

The defendant was granted a franchise by the city of El Dorado to furnish gas to the inhabitants of said city. It purchased the gas which it used in supplying its customers from other companies which made deliveries through pipe lines to the defendant outside of the city limits. The gas was piped from two oil fields in Louisiana and one field in Union County, Arkansas. At the time the explosion occurred, gas was being furnished by the Louisiana lines, and the pressure was from 100 to 150 pounds. The gas was metered, and the pressure was reduced to about twenty-five pounds, and the gas with the pressure reduced was conveyed by pipes known as "intermediate lines" to various points throughout the city. It was again passed through a regulator into two systems whereby gas was delivered to the consumer. The two systems were known as "low pressure" or "fire district" and "medium-pressure district." The former supplied the business section of the city, and the latter the residential section. Gas was discharged from the intermediate lines through regulators into the low-pressure system which regulated the pressure to about eight ounces. Gas was discharged from the intermediate lines into the medium-pressure district through regulators which reduced the pressure to about four pounds. In the medium-pressure district, the pressure was again reduced by the regulator on the premises of the consumer to from four to six ounces.

Alice Cordell was a witness for herself and testified as to the character and extent of the damages to her building caused by the explosion. According to her testimony and that of other witnesses, her building was damaged to an amount greater than the verdict of the jury. Because it is not contended that the verdict was excessive, it will not be necessary to abstract the testimony on this point.

Mrs. Annie Lang, a woman about seventy-five years of age, was a witness for the plaintiff. According to her testimony, she had been living with her son, Albert Lang, in the house where the explosion occurred, for about six months. Her son was working at night at the time, and

on the 19th day of December, 1929, he returned from his work in the night and went to bed. About half past ten o'clock on the next day she lit the stove in the bathroom and left it burning with a flame about one or one and a half inch high. Gas was burning in stoves in other rooms in the house which were not turned down. She did not return to the bathroom before the explosion. She did not have any knowledge that the gas pressure had been reduced and again substantially increased.

Sammy Ponder was also a witness for the plaintiff. He was a roomer in the house where the explosion occurred and worked at night. He was in bed asleep when the explosion occurred. It threw him off the bed against a chair. The explosion occurred between eleven thirty and twelve o'clock noon. He and Albert Lang tested the pipes and fixtures in the bathroom with a match when they had been set up in the fall. They were in good condition. Mrs. Annie Lang usually lit the fire in the bathroom before they got up.

Mrs. Arthur Lang, a sister-in-law of Albert Lang, was also a witness for the plaintiff. According to her testimony, the explosion occurred about twelve o'clock noon. She had been to town and heard the explosion just as she came in front of her own place, which was four or five doors up the street from where the explosion occurred. She rushed over there and saw Albert Lang lying in the yard. He was very badly burned about his hands and face, and died as a result of his burns. In three or four minutes after the explosion occurred, she was there, and said that they would take Albert to the hospital. The ambulance came in a few minutes, and when they got in it she said to Albert, "What in the name of God happened?" He said that he went into the bathroom and struck a match and the explosion occurred. She was asked how long after the explosion before they got into the ambulance, and stated that it was not five minutes, she was sure.

J. A. Chinn, a gas engineer of over twenty-one years' experience, was a witness for the plaintiff. According to his testimony, he was employed by the defendant at

the time of the explosion and was in charge of all the meters and pipe lines and everything outside of the office. The Alice Cordell place, 524 Cedar Street, had a service line of one-half inch, and the smaller the line, the greater the pressure it requires. There was a regulator at the meter operated by the gas company to regulate the pressure of the gas in the street main going into the house line which was furnished by the gas company at the Cordell house. On the morning of the 20th of December, 1929, witness was at the office of the gas company and had complaints from several persons about the low pressure of the gas. Some of these calls came from lines that had the same supply that the Cedar Street line had. They had low and intermediate pressure in El Dorado. The low pressure was in the fire zone and received its gas from the intermediate pressure. The intermediate pressure district received its supply from the main line. A decrease in the gas pressure in the low-pressure district would indicate a decrease in the pressure in the medium-pressure district unless there was something wrong with the regulator in the low-pressure zone. The witness looked at the charts on the wall in his office and then went to the south-end regulator and raised the pressure ten pounds from the main line. When he got back to the office, the chart showed an increase in the pressure. He then sent the office boy back to turn the pressure down from where he had raised it. No one at the Lang or Cordell house was notified that he was going to turn on the increased pressure at the limits southeast of the city. Witness stated that if a heater, such as the one that was in the bathroom in the Cordell house was turned down so that it would not burn more than an inch or one and a half inch flame, the effect of decreasing the pressure of the gas would be, and the pressure got low enough, the flame would go out while the gas that was burning higher, even in the same house, would continue to burn.

Everett C. Elliott was also a witness for the plaintiff. He was in the employ of the defendant at the time the explosion occurred, and had been in the gas business

for about thirteen years. The low-pressure district, as well as the residential section, got their supply of gas from the same source. On the morning of the explosion, the witness was working for the company on West Cedar Street and cut a pipe line about nine-thirty or ten o'clock. He noticed the gas pressure was low on the two-inch pipe line at that time, and later observed that the pressure was still lower. He got in his car and went out to one of the stations and found an employee changing the plate there. The gas had been completely cut off. Witness instructed the employee to turn the gas on, and not to cut it off any more without notifying him.

Mrs. A. D. Cathey testified that she was living about one block from the house where the explosion occurred. On that morning her gas was low all over the house, beginning about twelve o'clock. She turned out all of her fires in order to have a fire in the kitchen.

Murl Escoubas, engaged in the dry cleaning business in the city of El Dorado, was also a witness for the plaintiff. According to his testimony, his business was located in the fire district, and the gas pressure got low on the morning of the explosion. He called the gas office and reported the lack of it, and in about fifteen minutes or more he had an additional supply of gas.

According to the evidence in favor of the defendant, the gas pressure was normal on West Cedar Street on the morning of the explosion, and gas accumulated in the bathroom because of a weak and defective connection in that room. The pipe lines and fixtures, with the exception of a meter and regulator from the yard to the house, belonged to the plaintiff, and defendant was under no duty to inspect or keep same in repair. The connection that leaked was very loose and was wrapped with tape sometime prior to the explosion. Other consumers of the defendant company, who resided on West Cedar Street, testified that the gas pressure was normal and was not reduced on the day the explosion occurred. Inasmuch as the verdict in favor of the plaintiff must be tested by the evidence in her favor, when considered

in its most favorable light to her, it is not necessary to abstract the evidence in favor of the defendant at any length. It is sufficient to say that, if believed by the jury, it would have warranted a verdict in favor of the defendant.

There was a verdict and judgment for the plaintiff in the sum of $1,650, and the case is here on appeal.

Mahony & Yocum, for appellant.

McNalley & Sellers, for appellee.

HART, C. J., (after stating the facts). It is earnestly insisted that the court erred in admitting as a part of *res gestae* the testimony of Mrs. Arthur Lang to the effect that she got to the home of Albert Lang and asked him how the accident occurred, and he replied that he struck a match to light a cigarette in the bathroom and this caused the explosion. The record shows that Albert Lang was very severely burned. One witness testified that his hair and eyelids, his face, his arms, and his hands were burned. He was in severe pain and died as a result of his injuries. The skin was blown off of his hands, and he was mangled and burned all over. Under these circumstances, we think the testimony of the witness was admissible as part of *res gestae.*

No hard and fast rule on the subject can be laid down, and each case, in the very nature of things, must depend upon the accompanying facts. Various elements for consideration must be looked into. The declaration need not be strictly coincident with the act which caused the injury, but it must stand in immediate casual relation to that act and be a part of it. The declaration must be so near in point of time as to grow out of and explain the character and quality of the main fact, and must be so closely connected with it as to practically constitute but one entire transaction. The evidence offered as part of *res gestae* must not have the earmarks of a device, or an afterthought, or be merely a narrative of a past transaction. *Clinton* v. *Estes,* 20 Ark. 225; *Carr* v. *State,* 43 Ark. 104; *Little Rock, Mississippi River & Texas Ry. Co.* v. *Leverett,* 48 Ark. 333, 13 S. W. 50, 3 Am. St. Rep.

230; *Little Rock Traction & Electric Co.* v. *Nelson,* 66 Ark. 494, 52 S. W. 7; *Itzkowitz* v. *P. H. Ruebel & Co.,* 158 Ark. 454, 250 S. W. 535, and *Kansas City So. Ry. Co.* v. *Morris,* 80 Ark. 528, 98 S. W. 363.

Many other cases on the subject from this court might be cited, but the rule is so well settled that the only difficulty is in the correctness of its application to a given state of facts. A good statement of the rule may be found in the case of *Kansas City Sou. Ry. Co.* v. *Morris,* 80 Ark. 528, 98 S. W. 363, 10 Ann. Cas. 618, in the following language:

"Was the statement made by the deceased to Daniels admissible? It was made within a few feet of where he had been mortally injured, and four or five minutes after the accident occurred, and while the excitement caused by the injury was unabated and in all probability controlled and dominated his mind. The injury was overwhelming and appalling, and sufficient at the time to drive from his mind all hope of surviving many hours —to bring him in the presence of immediate dissolution —and to drive from his mind any intention or desire to manufacture evidence for his benefit, and to force him to speak the truth, and to make his statement an emanation of the accident, 'so connected with the cause of his injuries as to preclude any idea that it was the product of calculated policy'."

As we have just seen, Albert Lang was badly burned, and shortly afterwards died as a result of his injuries. His first conscious act after the unfortunate accident was his remark to his sister-in-law, within five minutes after the explosion occurred. When we consider the severity of his burns and the condition under which he answered the question, it is practically certain that there was no time or thought of manufacturing evidence, nor was there any element of a device or afterthought. His sister-in-law ran to the scene of the accident when she heard the explosion and immediately called an ambulance. In an excited manner, she asked him how the accident occurred, and it is reasonably certain that his answer

was made with the excited feeling which had lasted from the moment of the accident until the question was asked him. Therefore, we do not consider this assignment of error to be well taken.

It is next urged that the court erred in admitting the testimony of the witness, Escoubas, to the effect that there was a reduction of the gas pressure on the morning of the accident at his place of business because his place of business was situated in the fire zone or low-pressure district, and the house was situated in the residential district, which had a different degree of pressure. According to the evidence of the manager of the defendant company, who was a witness for the plaintiff, there might have been some relation between the pressure in the two districts because both came from the intermediate lines. At any rate, the testimony was competent for what the jury might think it to be worth as tending to show that there was a reduced pressure of the gas throughout the city on the morning of the accident.

It is also earnestly insisted by counsel for the defendant that the evidence is not legally sufficient to support the verdict; but, while this may be regarded as a close question of fact, we think the evidence for the plaintiff, when considered in its most favorable light, was sufficient to show negligence on the part of the defendant. In the first place, it can make no difference in the defendant's liability for negligence that it purchased the gas from another company. The reason is that it must answer for its own negligence in the distribution of the gas to the same extent as though it had produced the gas from its own fields. *Martin* v. *Camden Gas Co.*, 179 Ark. 481, 17 S. W. (2d) 309. In the same case, following our earlier decisions on the question, it was held that a gas company must use a degree of care commensurate with the danger which it is its duty to avoid, and, if it fails to exercise such degree of care and injuries result from such negligence, it is liable. To the same effect see *Little Rock Gas & Fuel Co.* v. *Coppedge,* 116 Ark. 334, 172 S. W. 885.

According to the evidence adduced by the plaintiff, the jury might have found a state of facts as follows:

The morning of the 20th of December, 1929, was the coldest in the year and caused a reduction in the pressure of gas throughout the city of El Dorado because more gas was required to meet the demands of the consumer. Mrs. Lang as usual got up on the morning in question and lit the fire in the bathroom and turned it down so that the room would be ready for her son and a roomer, who both worked at night and were accustomed to get up along about noon. She went along about her business and heard nothing further until the explosion. It seems from the statement of Albert Lang that he went to the bathroom and struck a match to light a cigarette and this caused the explosion. The jury might have inferred that, because of the low pressure of the gas, about which the occupants of the house were not notified, the fire in the bathroom went out; and, when the gas pressure was increased without notifying the occupants, it escaped into the room and filled it so that when the lighted match came in contact with the gas, the explosion occurred. It is suggested that the remaining stoves in the house continued to burn, but this was explained by one of the witnesses for the plaintiff, who said that they would continue to do so because the flame had not been turned down in them. It is true that, according to the evidence for the defendant, the escaping gas was caused by a loose or defective connection in the stove, for which the plaintiff was responsible. But it is fairly inferable from the evidence for the plaintiff that the flame went out in the bathroom because of the reduced pressure of the gas, and that it was afterwards turned on by the gas company without notifying the occupants of the house so that, when Albert Lang went into the bathroom and lit a match the explosion naturally resulted.

Therefore the judgment will be affirmed.