

In the Privy Council.

No. 23 of 1904.

ON APPEAL FROM THE COURT OF APPEAL FOR  
ONTARIO.

BETWEEN

THE CORPORATION OF THE CITY OF  
TORONTO . . . . . (*Plaintiffs*) *Appellants*,

AND

THE BELL TELEPHONE COMPANY OF  
CANADA . . . . . (*Defendants*) *Respondents*.

CASE OF THE RESPONDENTS.

1. This is an appeal by the Corporation of the City of Toronto (*Plaintiffs* below, hereinafter called the City) against the Bell Telephone Company of Canada (*Defendants* below, hereinafter called the Company) in two actions brought in the High Court of Justice for Ontario and a special case agreed on between the parties on which the judgment of the Court in the actions was to proceed. Record,  
p. 1, *et seq.*  
p. 4, l. 18.  
p. 4, l. 26.

2. The special case was heard in the first instance by Street J., who decided in favour of the City; but on the Company's appeal to the Court of Appeal for Ontario that decision was reversed in favour of the Company. Hence p. 12, l. 1.  
p. 30, l. 40.  
10 this appeal.

3. The claim in the first action is for a declaration that the Company is not entitled to break up or obstruct any public highway, street or place in the City for the purpose of laying down lines of telephone, or constructing conduits along such highway, street or place, or to carry any poles or wires along any such highway, street or place, without obtaining in each case the consent of the City Council; and consequentially for an injunction, and a mandatory order. p. 3, l. 24.

4. The claim in the second action is for an injunction restraining the p. 4, l. 19.

RESPONDENT'S CASE.

Company from erecting poles on a street in the City, or on any other street, lane, avenue or place therein, without the consent of the City Council; and for a declaration that the Company have no right so to do without such leave first obtained.

Record,  
p. 4, l. 28,  
et seq.

5. The special case refers to the writs and pleadings on the questions at issue; and states agreed facts and the contentions of the parties, on which a declaration of their rights is prayed.

6. Certain facts as to the operation and business of the Company are thus stated in the special case.

p. 5, l. 6.

"4. The Company carries on a long distance telephone business and a 10 local telephone business in various places in the Dominion, including the City of Toronto, operated by means of lines of telephone as hereinafter defined. The local business consists of furnishing communication between persons using telephones in a City, Town or other place where a central exchange exists. There are Central Exchanges to which run both the local and long distance lines. Any person in Toronto may use the long distance lines for the purpose of speaking to a person outside of Toronto by going to a Central Exchange and paying the usual charge therefor, and any telephone subscriber in Toronto desiring to speak to a person outside of Toronto may use the long distance lines for the purpose by having 20 connection made with them through the Central Exchange and paying such usual charge. In doing this he would use his own instrument and line to the Central Exchange and the long distance line from there. The long distance lines are not used in the local business.

"A line or lines of telephone consist of poles with wires affixed thereto or of conduits with wires carried through the same." *and something more to the effect*

7. It being, as it is, conceded that the Company was effectually incorporated by Act, the objects and powers of the Company must, it is submitted, be ascertained by reference to the incorporating Act; and it is to be borne in mind, as common knowledge, that the operation of a Telephone Company necessarily 30 comprises, not merely long distance Telephone lines extending beyond the limits of a Province, but also telephone lines through and in and between various urban centres so as to enable the users of the lines to communicate both locally and between points more or less distant. These objects require that among the corporate powers should be that of placing poles or conduits in, and by one or other of these means carrying wires over or under, streets in urban centres; and as will presently appear such powers are given.

p. 27, l. 12.

It is, as was stated by MacLennan J.A., on the Appeal, common knowledge that the long distance telephone business of the Company extends beyond the Province of Ontario. 40

p. 5, l. 22.

8. The Company's contention as stated in the Special Case was, in substance, that under and by virtue of the relevant Statutes, except as to any pole higher than forty feet above the surface of the street or any wire to be affixed less than twenty-two feet above the surface of the street, the Company has the right to construct and maintain telephone lines along or under any public highways, streets, bridges, or water courses in the City; that the consent of the City is not essential to the exercise of such right, and that if,

after notice in writing to the city of the intention to construct and maintain such lines, the Engineer or other officer appointed by the Council or the Council omits to give reasonable directions as to the location of the line or lines and the opening up of the streets for the erection of poles or for carrying the wires underground, and to supervise the work, the Company may lawfully proceed with the work or may procure an order of the Court to compel the Engineer or other officer or the Council to give such directions.

9. The City's contentions as stated in the special case were, in substance, that the Company has no right to construct or maintain its telephone lines along or under any public highways, streets, bridges or watercourses in the City without first obtaining the consent of the Municipal Council, which consent the Council may withhold; the contention of the City being that, if it fails to consent, the Company cannot exercise such powers; that in any event the Company has no right to construct or maintain telephone lines along or under any public highways, streets, bridges or watercourses in the City to carry on a local telephone business therein without first obtaining such consent; that the relevant Statutes do not purport to confer upon the Company the powers claimed by it; but if they do purport to confer such powers they are to that extent *ultra vires* of the Parliament of Canada; that in any event, the telephone lines can only be carried along or under such public highways, streets, bridges, or watercourses as the City Engineer or other officer appointed by the Council may locate or direct, and subject to the control of such highways, streets, bridges or watercourses by the City, and subject to provisions for the protection of the public thereon, and in conformity with such terms, conditions and regulations as the City may prescribe.

Record,  
p. 5, l. 36,  
*et seq.*

10. The Company was incorporated by Act of Canada of 29th April 1880 Chapter 67; and by the first section it is provided that the head office shall be at the City of Toronto, or at such other place in Canada as may be hereafter determined upon by the Directors.

43 V. c. 67.  
Appendix,  
pp. 1-4.

30 The second, third, fourth, fifth and twenty-fourth sections provide, in substance, that:—

The Company shall have power to manufacture telephones and other apparatus connected with the business of a telephone company, and to purchase, sell or lease the same, and to build, purchase, acquire or lease, and operate, sell or let any lines for the transmission of telephone messages in Canada or elsewhere, and to make connection, for the purposes of telephone business, with the lines of any telegraph or telephone company in Canada or elsewhere;

Sec. 2.  
Appendix,  
p. 2, l. 1.

40 The Company may construct and maintain its telephone lines along, across or under any public highways, streets &c. &c. or across or under any navigable waters, either wholly in Canada or dividing Canada from any other country, provided that it shall not interfere with the public right of using the same and that in cities, &c. the Company shall not erect any pole higher than forty feet, nor affix any wire less than twenty-two feet, above the surface of the street, nor carry more than one line of poles along any street without the consent of the Municipal Council having jurisdiction, and that the poles shall be as nearly as possible straight and perpendicular,

Sec. 3.  
Appendix,  
p. 2, l. 21.

*Case Law 1882*

\* Amend-  
ment of  
1882, see  
para. 11 of  
this Case.  
Appendix,  
p. 6, l. 8.

and shall, in cities, be painted if so required by any by-law of the Council ; and provided further, that where lines of telegraph are already constructed, no poles shall be erected by the Company in any city, town or incorporated village along the same side of the street where such poles are already erected, unless with the consent of the Council having jurisdiction ; provided also, that the Company shall not cut down or mutilate any tree. And provided that in cities, towns and incorporated villages [*\*the location of the line or lines and*] the opening up of the street for the erection of poles or for carrying the wires under ground shall be done under the direction and supervision of the engineer or such other officer as the Council may appoint, 10 and in such manner as the Council may direct, and that the surface of the street shall, in all cases, be restored to its former condition by and at the expense of the Company : Provided also, that no Act requiring the Company (in case efficient means are devised for carrying telephone wires under ground) to adopt such means, and abrogating the right given by this section, to continue carrying lines on poles through cities, &c., shall be deemed an infringement of the privileges granted ;

Sec. 4.  
Appendix,  
p. 3, l. 22.

The Company shall have power to purchase or lease any telephone line established or to be established, either in Canada or elsewhere, connecting or hereafter to be connected with its authorised lines, or to purchase or 20 lease the right of any company to construct any such telephone line ; and also to amalgamate with or to lease their line, or any parts thereof, to any company or person owning any line of telegraphic or telephonic communication connecting or to be connected with the Company's line in Canada ; and also to enter into any arrangements with any person or company owning any line of telegraphic or telephonic communication, or any power to communicate by means of the telephone, or to become a shareholder in any such corporation.

Sec. 24.  
Appendix,  
p. 4, l. 1.

The Company shall, at all times, have an office in the city or town in which their chief place of business shall be, which shall be the 30 legal domicile of the Company in Canada ; and they may establish such other offices and agencies elsewhere in Canada as they may deem expedient.

45 V. c., 95.  
Appendix,  
pp. 5-6.  
Sec. 2.  
Appendix,  
p. 6, l. 8.  
Sec. 3.  
Appendix,  
p. 6, l. 11.  
Sec. 4.  
Appendix,  
p. 6, l. 15.

11. By amending Act of Canada, passed on 17th May 1882, Chapter 95, the third section of the original Act was, as indicated in paragraph 10, amended by inserting the words "the location of the line or lines and" between the words "villages" and "the opening up." And it was further enacted that the Company should have power, subject to existing rights, to extend its telephone lines from any one to any other of the several Provinces in the Dominion of Canada, and from any point in Canada to 40 any point in the United States of America ; and the Act of incorporation as amended and the works thereunder authorised, were declared to be for the general advantage of Canada.

45 V., c. 71.  
Appendix,  
pp. 7-9.  
p. 7, l. 7.

12. By Act of the Legislature of Ontario passed 10th March 1882, Chapter 71, it was recited in the preamble that the Company had represented that it was incorporated by the original Act of Canada, and that certain powers were con-

ferred on it thereby; that thereunder it had acquired the rights, business and good-will of divers local telephone companies in Ontario, and had constructed and was then working telephone lines, and carrying on telephone operations in divers places in Ontario; that doubts had arisen as to its powers in regard to those portions of its work and undertaking which were local and did not extend beyond the limits of Ontario; that the Company had prayed that the necessary powers be conferred on it by the Legislature of Ontario; and that it was expedient to grant the prayer.

And by the 1st and 2nd sections it was enacted, in substance,

10           It should be lawful for the company so incorporated to exercise within the Province of Ontario the powers following;

Sec. 1.  
Appendix,  
p. 7, l. 24.

The Company may construct and maintain its telephone lines along the sides of, and across or under, any public highways, streets, &c., subject to the following provisos; that the company shall not interfere with the public right of using such highways, streets, &c.; and that in cities, &c., it shall not erect any pole higher than forty feet, nor affix any wire less than twenty-two feet, above the surface of the street, nor carry any ~~such~~ poles or wires along any street without the consent of the municipal council having jurisdiction; and that in any city, &c., the poles shall be as nearly as possible straight and perpendicular, and shall in cities be painted if so required by any by-laws of the council; and that where lines of telegraph are already constructed, ~~no poles shall be erected by it in any city, &c., along the street where such poles are already erected, unless with the consent of the council having jurisdiction;~~ and that in so doing it shall not cut down or mutilate any tree; and that in cities, &c., the opening up of the street for the erection of poles, or for carrying the wires under ground shall be done under the direction and supervision of the engineer or such other officer as the council may appoint, and in such manner as the council may direct, unless such engineer, officer or council, after one week's notice in writing, shall have omitted to make such direction; and that the surface of the street shall, in all cases, be restored to its former condition by and at the expense of the company.

Sec. 2.  
Appendix,  
p. 8, l. 1.

13. The relevant provisions of the British North America Act, 1867, are as follows:

Section 91, dealing with the powers of the Parliament of Canada, provides that:

40           " It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order, and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters

coming within the classes of subjects next hereinafter enumerated; that is to say:—

\* \* \* \* \*  
“29. Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.

“And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.”

Section 92, dealing with the exclusive powers of the Provincial Legislatures, provides that :

“In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say:—

\* \* \* \* \*  
“10. Local works and undertakings other than such as are of the following classes:—

a. Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province :

b. Lines of steam ships between the Province and any British or foreign country :

c. Such works as, although wholly situate within the Province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the Provinces.

“11. The incorporation of Companies with Provincial Objects.” 30

14. The special case was heard by Street J., who delivered judgment on 10th March 1902.

Record,  
p. 12, l. 16.

The formal judgment declares and adjudges that the Company have no right to carry any poles or any wires (whether such wires be above or under ground) along any street in the City without first obtaining the consent of the Municipal Council, but they may carry their wires across the streets either above or underground subject, as to the location of the line and the manner in which the work is to be done, to the direction and supervision of the Engineer or such other Officer as the Council may appoint, unless such engineer, officer or council after one week's notice in writing shall have omitted to make such direction and subject to the other provisions of the Company's Act of Incorporation.

p. 6, l. 30,  
et seq.

15. The reasons of Street J., are reported in III O.L.R., 1902, p. 470.

He thought that the mere passing of an Act authorising the construction of a work which when completed would connect two Provinces did not bring into

operation the exception in article 10 of Section 92; which result could flow only from the creation of a real and physical connection. He held that the incorporating Act, though it authorised, did not in express terms require such a connection. His view indeed was that the objects of the charter were within the classes referred to in paragraph (a) of Sub-section 10 of Section 92; and that the Legislature of Ontario would not have had jurisdiction to alter the Company's powers within the Province, had the Canadian Act of incorporation declared the work to be for the general advantage of Canada; or in case it should be held (1) that a mere charter connection without an actual  
 10 physical connection suffices to exclude the jurisdiction of the Provincial Legislature, and (2) that such a charter connection had in fact been created by the incorporating Act. But, on his stated view of the meaning of the B.N.A. Act and of the interpretation of the incorporating Act, he held that while the Act duly incorporated the Company, it did not thereby obtain the power of interfering in any Province with property or rights of persons until so authorised by the Provincial Legislature. He held that the Company was thus, at the time of the passing of the Ontario Act, unable without further legislation to exercise certain powers assumed to be conferred by the incorporating Act, and that the Ontario Legislature had at  
 20 that date jurisdiction to legislate as they did. And he held that on the true construction of the Ontario Act the Company had no power to carry any poles or wires whatever along any street without first obtaining the consent of the City Council. He went on to hold that the declaration in the amending Canadian Act, to the effect that the original Act and the works thereby authorised were for the general advantage of Canada, gave the Canadian Parliament full power to amend the provisions as to the powers of the Company in Ontario as well as elsewhere; but that it had not the effect of repealing those provisions of the Ontario Act which, as he held, were inconsistent with the Canadian Act. And he made the declaration contained in the formal  
 30 judgment.

15. The Appeal of the Company to the Court of Appeal was heard on Record, 17th November 1902, and on 14th September 1903, judgment was given by p. 30, l. 40. the Court.

By the formal judgment it was ordered that the judgment below should be p. 31, l. 7. amended by striking out the second and third paragraphs and substituting declarations that the incorporating Act and the amending Act, are within clause 10 (a) of section 92 of the B.N.A. Act, and within the exclusive legislative authority of the Parliament of Canada; and that the powers conferred by the Act as amended are not curtailed by the provisions of the Ontario  
 40 Act as regards the right to construct and maintain telephone lines along the sides of and across or under any highway or street of the City for the purposes of either their local or long distance business subject however to the provisions in section 3 of the incorporating Act as amended.

16. The Appeal is reported in VI. Ont. L.R. 1903 p. 335. Moss C.J.O. p. 20, l. 5, (p. 337) held that the objects and purposes for which incorporation was sought et seq. and granted involve action and operation beyond the boundaries of a single Province, that the work or undertaking authorised falls within the exception in

10 (a) of Section 92 of the B.N.A. Act; and that the legislative jurisdiction must depend on the terms of the incorporating enactment, not on the subsequent action or inaction of the Company; whence it follows that the Company was *ab initio* within the exclusive legislative authority of Canada. He next dealt with the argument that, granting the Legislative authority to be in Canada and not in Ontario, the Company, having applied for and obtained a Provincial Act, must be held to have consented that in any conflict between the enactments those of the Legislature should prevail. He doubted whether there was any occasion for the Provincial Act; but its purpose appeared to be to allay doubts in regard to those parts of the Company's undertaking which were local within the Province; and it was sought as a precautionary measure, without the intention of giving up any existing rights. No such bargain appears, nor is there anything to prevent insistence on the rights effectually given to the Company by Parliament, among which were those of constructing and maintaining their lines along the sides of and across or under any public highway. These rights so given could not be impaired by the Provincial Legislature; and the Company is, notwithstanding the Ontario Act, entitled to the full benefit of their incorporating Act as amended.

Record,  
p. 22, l. 29,  
*et seq.*

18. Garrow J.A. (p. 341) held that the question of the exclusive jurisdiction of Canada depends on the character of the projected works or undertakings, and that, once it appears that these when completed will extend beyond the limits of a province, they fall within that jurisdiction. He was of opinion that, applying this test, the undertaking in question is of that extensive nature; and so at once became subject to that exclusive jurisdiction. It followed in his view that the declaration of general advantage in the amending Act is unnecessary and adds nothing to a legislative authority already ample and exclusive; and he pointed out that the use of this declaration is proper only in the case of an undertaking not extending beyond the limits of a Province. He doubted whether the true construction of the Ontario Act conflicts with that of the Canadian Acts; and thought that the consent exacted by the Ontario Act should be read as a power not to prohibit but to regulate; and that there was, as to this, the main subject of contention, little difference between the Statutes, under both of which there must be a location of the line somewhere, in the fixing of which location each party must act reasonably, and the City could not refuse to act. While allowing the appeal he expressed the opinion that both parties were in some degree excessive in their claims; the City in asserting a power absolutely to withhold consent, and the Company in claiming an absolute power of choosing the streets and in seeking to confine the City's power of oversight to the site of the poles to be placed on the chosen streets.

p. 25, l. 27,  
*et seq.*

19. MacLennan J.A. (p. 345) held that the Parliament of Canada intended to and did in fact assert and exercise plenary jurisdiction in respect to every detail of the undertaking and powers of the company; and that the undertaking was within the exclusive legislative competence of that Parliament under the exception created by sub-section 10 (a) B.N.A. Act. He pointed out that the analogy between a telegraph line (specially mentioned in that class) and a



telephone line is complete ; and that the operation is both extra provincial and international ; and that it was common knowledge that the Company's long distance telephone business was in fact carried on beyond the Province of Ontario, as was authorised by the incorporating Act. And he held that authorisation serves the purpose ; and that neither absolute obligation to execute nor actual execution of the work can be essential in order to the coming into force of the powers granted by the Act. And his conclusion was that the Company is one to which Parliament could and did give, not merely corporate power, but also powers to interfere in certain respects with

10 "property and civil rights" in the Provinces. As to the amending Act he held that both the express powers of extension and the declaration of general advantage were immaterial, adding nothing to the jurisdiction of Parliament, or to the grant of power it had made. Therefore the only amendment in his view material was the second, whereby the location of the lines is put in the same position as the opening of a street in respect of supervision and direction by the City through its officer. Proceeding to consider the effect of the Ontario Act, he pointed out that, though Parliament can, yet it is not bound to, grant all the civil and property rights which a Company may require and is free to leave a Company to procure such rights from the Provinces. He stated that the

20 Company, in applying to the Provincial Legislature, acted on this idea, alleging in its petition for the Act doubts as to certain of the powers granted which were local. And he took the view that in the result the powers so obtained are more limited than those of the Canadian Act ; holding that, while under that Act the consent of the City is requisite in order to carry *more than one line of poles along any street*, under the Ontario Act such consent is requisite in order to carry *any poles or wires along any street* ; and that, while by the Canadian Act, where lines of telegraph are already constructed on any street, consent is requisite to the erection of poles *on the same side of such street*, by the Ontario Act *no poles whatever* shall in such case be erected without such consent. He went

30 on to consider, what he thought a more important question, the effect of this proceeding. He pointed out that the Provincial Act gave the Company no new rights or powers, its effect being solely to limit, restrict or abrogate existing powers. He thought it clear that the Legislature could not have affected the Company's rights by passing such an Act against its will or without its knowledge. But he held that the Company, which could have validly agreed with the City to construct its works under the limitations specified, had, by asking the Legislature to modify its powers as provided in the Act, become bound by its provisions, which were he thought binding on the municipalities, and he considered that the Company was estopped from denying the power of

40 the Legislature after the compliance of the latter with its request. He concluded that, the Company being so bound by provisions which he so construed, the judgment below was right ; and he dissented from the judgment of the Court of Appeal.

20. The Company submits that the judgment of the Court of Appeal is correct and should be affirmed and this appeal dismissed for the following among other

## REASONS.

1. Because the judgment appealed from is well founded, on the grounds stated in the opinion of Moss C.J.O., and in those parts of the opinions of Maclellan and Garrow, J.J.A., which deal with the validity and effect of the Incorporating Act.
2. Because under the operation of the B.N.A. Act the Company has been from the time of its incorporation within the exclusive legislative jurisdiction of the Parliament of Canada. 10
3. Because all the powers professedly conferred upon the Company by the Canadian Acts were effectually so conferred.
4. Because the creation and continued existence of such powers depend on the question whether they are embraced in the provisions of the Act; and not on the question whether the Company is bound to exercise, still less on the question whether the Company has in fact exercised, all or any of them.
5. Because among such powers is the absolute right to place 20 poles or conduits in any street &c., for the carriage of telephone wires subject only to the following provisoes :
  - (1) That the Company shall not interfere with the public right of travelling or user :
  - (2) That in Cities, Towns and incorporated villages the Company shall not, without the consent of the Council having jurisdiction,
    - (A) erect any pole higher than forty feet above the surface, or 30
    - (B) affix any wire lower than 22 feet above the surface, or
    - (C) itself erect more than one line of poles along any street, or
    - (D) where lines of telegraph are already constructed by others, itself erect any poles on the same side of the street where the telegraph has been so constructed.
  - (3) That the location of the line (in any chosen street), and the opening up of the street for the purpose, 40

shall be done under the direction and supervision of the Engineer or other appointed officer of the Council and in such manner as the Council may direct.

(4) That the surface of the street shall be restored to its former condition by the Company.

But such provisoes for supervision and direction embrace only the power of reasonable direction and supervision as to the location of the line and the opening up of the ground in any street which may have been chosen by the Company; and do not embrace the power of exclusion from the contemplated use of any street chosen by the Company.

6. Because, on the true construction of the Ontario Act, it does not purport to do more than give power to supervise the location on any street chosen by the Company, as is done by the Canadian amending Act; and the word "such" in the sentence alleged to be limitary refers only to poles more than 40 feet and to wires less than 22 feet above the street.

7. Because, whatever the construction, it is not within the legislative power of Ontario to diminish or curtail the powers conferred upon the Company by Canada; and any such attempt must be treated as void.

8. Because the suggestion that the Provincial Act is operative by estoppel is inadmissible.

MacLennan J.A. agrees that the Act gives no new power to the Company and only qualifies the Company's existing powers. Thus nothing is taken from the City or given to the Company; though something is taken from the Company and given to the City. But neither abstraction nor grant, both being attempted by an incompetent Legislature, have any operation. And to hold operative such interference by one Legislature with the exclusive domain of another would frustrate the objects of the constitution, and introduce inextricable confusion into its orderly system of distributed powers.

9. Because no such contract between the Municipalities and the Company as MacLennan J.A. suggests exists; nor is there any Court or process by which any such contract could be enforced. Any imaginable contract would be one to seek legislation; and the only place in which valid legislation can be found is the Parliament of Canada.

10. Because the provisions of this private Act, even should they impose mutual obligations, to apply the language of Lord Watson, differ from private stipulations in this essential respect, that they derive their existence and force, not from the agreement of the parties, but from the will of the Legislature. And here the enacting Legislature has no power to execute any such will.
11. Because the judgment appealed from is right.

EDWARD BLAKE.

WALTER CASSELS. 10



44278

In the Privy Council.

No. 23 of 1904.

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*On Appeal from the Court of Appeal  
for Ontario.*

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BETWEEN

THE CORPORATION OF THE CITY  
OF TORONTO . (*Plaintiffs*) *Appellants,*

AND

THE BELL TELEPHONE COMPANY  
OF CANADA . (*Defendants*) *Respondents.*

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CASE OF THE RESPONDENTS.

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BLAKE & REDDEN,  
17, Victoria Street,  
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