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.*

RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

In the Privy Council.

Nos. 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*.

RECORD OF PROCEEDINGS.

RECORD.

In the High Court of Justice, Ontario.

No. 1.
Endorsement on Writ of Summons (Action No. 477).

No. 1.
Action No. 477.
Endorsement on Writ of Summons.

The Plaintiffs' claim is for an injunction restraining the Defendants, their servants, agents or workmen from opening up and excavating in Bloor Street in the municipality of the City of Toronto, from a lane east of Yonge Street to Huntley Street for the purpose of placing therein underground conduits and cables.

And for a declaration that the Defendants are not entitled to do such opening up and excavation of a highway, street or other public place in the said municipality or otherwise obstruct or interfere with such highway, street or public place, without the consent of the Municipal Council of the Plaintiffs.

And for a mandatory order compelling the Defendants to restore the said portion of Bloor Street to the original condition in which it was before the Defendants commenced work thereon.

And for damages.

RECORD.

In the High Court of Justice, Ontario.

No. 2. Statement of Claim, 29th June, 1901, Amended 5th July, 1901.

No. 2.

Statement of Claim.

1. The Plaintiffs are a Municipal Corporation, and the Defendants are an incorporated Company carrying on the business of a Telephone Company in the City of Toronto.

2. For some time prior to the 8th day of March, 1901, the said Company, acting under its alleged powers, had constructed lines of telephone, consisting of poles and wires, along certain streets and conduits containing wires along certain other streets of the said city, without having obtained the consent of the Municipal Council of the said city.

3. On or about the 8th day of March, 1901, the Plaintiffs notified the Defendants that they must not thereafter erect any poles or carry any line of poles and wires upon, under or along any of the streets, lanes, highways or other public places of the said city without the express consent of the Council of the said Corporation.

4. On or about the 5th day of June, 1901, the Plaintiffs received from the Defendants the following letter:

"W. A. Littlejohn, Esq.,
City Clerk,
Toronto:

Toronto, 5th June, 1901.

Dear Sir,

Referring to my communication addressed to you under date of March 21st, 1901, I beg to notify you that the Company intends to commence on Friday, 7th inst., the work of opening Bloor Street East from the lane east of Yonge Street to Huntley Street for the purpose of placing therein underground conduit and cables. The work will be commenced at 9 o'clock on Friday morning at Yonge Street end, at which time and place you will please direct the city engineer or some other officer if any has been appointed by the Council to attend in order to give such directions as may be necessary. In case the engineer or other officer failing to attend, the work will be commenced and carried on in his absence.

Yours truly,
(Sd.) K. J. DUNSTAN,
Local Manager."

5. The Plaintiffs thereafter on the sixth day of June, 1901, caused the following notice to be sent to the local manager of the Defendants:—

"K. J. Dunstan Esq., June 6th, 1901.
Local Manager, The Bell Telephone Co. of Canada,
Toronto:

Dear Sir,

I am instructed by the Board of Control to reply to your communication of the 5th instant addressed to the City Clerk, of which you were kind enough to send me a copy, and to say that the City of Toronto objects to your doing the work specified in your letter on Bloor Street East 'from a lane east of Yonge

Street to Huntley Street for the purpose of placing therein underground conduit and cables' or any other work upon the streets of Toronto without the permission of the City Council, on the ground that you are not entitled by your Charter or otherwise to interfere with the streets of a Municipality without Municipal consent.

I am also instructed to say that this is not done for the purpose of interfering with your business, but to assert our right, and that if your Company admit our right to control our streets and submit any proposition to the City Council, it will receive the Council's immediate and careful attention.

Yours truly,
(Sd.) C. H. RUST,
City Engineer."

6. Notwithstanding the said notices, the said Defendants on or about the sixth day of June, 1901, wrongfully and illegally tore up and obstructed a portion of Bloor Street (one of the public highways in the said City of Toronto) from a lane east of Yonge Street to Huntley Street, for the purpose of constructing a conduit for and laying their wires along the said street, without having obtained the consent of the Plaintiffs' Council, and have ever since continued and maintained such obstruction, and the Defendants threaten and intend to tear up and obstruct other streets for a like purpose, and to erect poles and wires or construct conduits on other streets of the city and will do so unless restrained by the order and injunction of this Honourable Court.

7. The Plaintiffs claim :—

(1) A declaration that the Defendants are not entitled to break up or obstruct any public highway, street or place in the said City of Toronto 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 Municipal Council of the Plaintiffs.

(2) An injunction to restrain the Defendants from further interference with or obstruction of Bloor Street or other highways, streets, or places in the said city without such consent.

(3) A mandatory order that the Defendants take up and remove such conduits and wires as they have laid down on Bloor Street aforesaid, and restore the said street to its original plight and condition.

(4) Damages for the injuries complained of.

The Plaintiffs propose that this action should be tried at the City of Toronto.

Delivered this 29th day of June, 1901, by Thomas Caswell of the City Hall, Queen Street West, solicitor for the Plaintiffs.

Amended this fifth day of July, 1901, according to consent filed and dated the fourth of July, 1901.

M. J. MACNAMARA,
Clerk of Records and Writs.

RECORD.

In the High Court of Justice, Ontario.

No. 3. Statement of Defence, 3rd Sept., 1901.

No. 3.

Statement of Defence.

1. The Defendants are a Corporation duly incorporated under the laws of the Dominion of Canada, namely: statute 43 Victoria, chapter 67 and amendments thereto.

2. The statute chapter 71 for the year 1882 was passed by the Legislature of Ontario relating to the Defendants.

3. The construction and work mentioned or referred to in the 2nd and 6th paragraphs of the Plaintiffs' statement of claim were lawfully done under and in accordance with the powers conferred by statute upon the Defendants. 10

4. The Defendants submit that they were not and are not required by law to obtain the consent of the Plaintiffs to the said construction and work complained of in the statement of claim.

Delivered this third day of September, 1901, by S. G. Wood, 18 King Street West, Toronto, solicitor for the Defendants.

No. 4. Endorsement on Writ of Summons (Action No. 685).

No. 4.

Action No. 685.

Endorsement on Writ of Summons.

The Plaintiffs' claim is for an injunction restraining the Defendants, their servants, workmen and agents, from erecting poles upon Madison Avenue in the 20 City of Toronto, or upon any other street, lane, avenue or place therein, without the consent of the Council of the Plaintiffs; and to have it declared that the Company have no right to erect any poles upon the streets, lanes, avenues or other public places in the City of Toronto without the leave of the Council of the said Corporation first had and obtained.

No. 5. Special Case.

No. 5.

Special Case.

The endorsement on the writ of summons and the pleadings in the action No. 477 firstly above-mentioned and the endorsement on the writ in the action secondly above-mentioned No. 685, and hereinbefore set out, may be referred 30 to as showing the questions in issue; and the parties to these actions have agreed upon the following facts, which are stated in the form of a special case on which the judgment of the Court is to proceed.

1. On the 29th day of April, 1880, a statute, 43 Victoria, chapter 67, intituled, "An Act to incorporate the Bell Telephone Company of Canada," was enacted by the Parliament of Canada.

2. On the 10th day of March, 1882, a statute, 45 Victoria, chapter 71,

intituled "An Act to confer certain powers upon the Bell Telephone Company of Canada" was enacted by the legislature of the Province of Ontaria.

3. On the 17th day of May, 1882, a statute, 45 Victoria, chapter 95, intituled "An Act to amend the Act incorporating the Bell Telephone Company of Canada" was enacted by the Parliament of Canada.

4. The Company carries on a long distance telephone business and a 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 distant 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 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.

5. The Bell Telephone Company of Canada contends that under and by virtue of these 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, it has the right to construct, erect and maintain its line or lines of telephone along the sides of or under any public highways streets, bridges or watercourses in the City of Toronto; 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, erect 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 of 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 a mandamus or order of the court to compel the said engineer or other officer or the Council to give such directions.

6. The Corporation of the City of Toronto, on the other hand, contends that the Bell Telephone Company of Canada has no right whatever to construct, erect and maintain its line or lines of telephone along the sides of or under any public highways, streets, bridges or watercourses in the City of Toronto, without first obtaining the consent of the Municipal Council thereof; which consent the Council may withhold; the contention of the city being that if it fails to consent, the Telephone Company cannot exercise such powers within the City of Toronto.

7. The Corporation of the City of Toronto further contends that in any event the Company has no right to construct erect and maintain a line or lines of telephone along the sides of or under any public highways, streets, bridges or watercourses in the City of Toronto to carry on a local telephone business in

RECORD.

In the High Court of Justice, Ontario.

No. 5. Special Case —*continued.*

the said city without first obtaining the consent of the Municipal Council thereof.

8. The Corporation of the City of Toronto further contends that the statutes of the Parliament of Canada above referred to do not confer upon the Bell Telephone Company the powers herein contended for the Company; but if the said statutes purport to confer such powers upon the Bell Telephone Company, the said statutes to that extent are *ultra vires* of the Parliament of Canada.

9. The Corporation of the City of Toronto further contends that in any event, the said line or lines of telephone can only be carried along the sides of or under such public highways, streets, bridges or watercourses in the City of Toronto 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 Corporation and subject to provisions for the protection of the public thereon and in conformity with such terms, conditions and regulations as the municipality may from time to time enact or prescribe.

10. On the facts stated the Court is asked to declare the rights of the Bell Telephone Company and the City of Toronto in regard to the various contentions above put forward—it being agreed that judgment shall be entered declaring the rights of the parties in respect to the several contentions with such proper directions as to the dismissal of the actions or portions thereof, or the granting of judgment in the said actions for the Plaintiffs or Defendants, as the Court may deem right.

11. Costs of the actions are to be in the discretion of the Court.

No. 6. Reference to Report of Judgment.

No. 6.

Reference to Report of Judgment.

The above case was heard on the 26th February, 1902, by the Hon. Mr. Justice Street,

The judgment delivered by his Lordship is reported in full in Ontario Law Reports, vol. iii, pp. 465-470.

No. 7. Judgment of Street, J., 10th March, 1902.

No. 7.

Judgment of Street J. delivered 10th March 1902.

As I understand and interpret the provisions of the British North America Act and the decisions upon it, the power of the Canadian Parliament extends to the granting of charters of incorporation to companies with Canadian, as distinguished from provincial, objects, and to declaring the objects of their incorporation; but, except in the case of companies incorporated for carrying into effect some of the heads mentioned in sec. 91 the mere fact of a Canadian incorporation does not carry with it the right of interfering with property and civil rights in the different provinces, in any way, no matter how strongly the objects of incorporation may seem to require such interference. In order that such companies

may entitle themselves to do so, it is necessary that they obtain the authority of provincial legislation.

Certain classes of works and undertakings mentioned in the 10th sub-section of sec. 92 of the British North America Act, are, however, taken away from the provincial jurisdiction and brought within the exclusive jurisdiction of the Canadian Parliament; either, 1st, when they connect one province with another or extend beyond the limits of one province; or, 2nd, when they are declared to be for the general benefit of Canada or of two or more of its provinces. In the construction of this 10th sub-section there is room for some divergence of opinion. Is the Provincial Legislature ousted of its jurisdiction by the mere passing of an Act by the Dominion Parliament authorising the construction of a work which when completed will connect the provinces? Or must the connection by means of the works authorised actually take place in order that the Dominion Parliament may obtain exclusive legislative control? If it should be necessary to determine this question for the purposes of the present case, I should be prepared to hold that the proper construction of the Act requires the adoption of the latter of these two views. It appears to me that the connection between the two provinces required by clause (A) of sub-section 10 is a real and physical one, and not a mere paper one created by a charter, the works under which may never extend to the limits of the single province in which they are begun, or which may never be begun at all. The word "undertakings" would be satisfied by the actual operation of a line of steamships, leaving the word "works" to apply to the other objects mentioned or referred to in the section. And it is to be borne in mind that any inconveniences which might otherwise arise under this construction could always be avoided by a declaration in a Dominion charter that the works contemplated by it were for the general benefit of Canada; Regina *v.* Mohr. 7 Q.L.R. 183; Citizens Ins. Co., *v.* Parsons (1881) 7 App. Cas. 96; Colonial Building and Investment Assn. *v.* Attorney-General of Quebec (1883) 9 App. Cas. 157; Tennant *v.* Union Bank, (1894) A.C. at p. 45.

In the present case it does not appear, perhaps, necessary to insist upon this view of the effect of the British North America Act to its full extent, because the Act of Incorporation of the Defendant Company, while authorising them to carry on the business of a telephone company anywhere in Canada, does not in express terms require, although it certainly authorises a connection by means of their lines of two or more provinces; the objects of their incorporation as expressed in the Act might have been served without such connection.

It appears to me to be necessary thus to consider and determine the status of the Defendants upon their incorporation by their Dominion Act 43 Vict. ch. 67 in order to decide whether the Ontario Legislature had the power to alter the Defendants' powers under it as far as its operations were carried on in this province. They would clearly not have that power if the Dominion Legislature had in the first place declared their work to be for the general benefit of Canada, for I am of opinion that the objects of the Charter are within the classes referred to in paragraph (A) of sub-sec. 10 of section 92. Nor would they have that power if it were to be held that a mere charter connection were sufficient without an actual physical connection, to exclude the jurisdiction of the Provin-

RECORD.

In the High Court of Justice, Ontario.

No. 7.
Judgment of Street, J., 10th March, 1902
—*continued.*

cial Legislature, and that such a charter connection had been created by the terms of the Defendants' Act of Incorporation.

It follows necessarily from the views I have expressed as to the true construction of the sections of the British North America Act to which I have referred, and from my view of the interpretation of the language used in declaring the objects of the Defendant Company in their Act of Incorporation, that, while the Defendants were duly and properly incorporated under their special Act, being the statute of the Dominion Parliament 43 Vict. ch. 67, they did not by that Act obtain the power of interfering in any province with the property or rights of persons or corporations until authorised to do so by an Act of the Local Legislature.

Accordingly, being desirous of exercising their powers within the Province of Ontario, they petitioned the Legislature of that province to confirm the powers which their Dominion Act of Incorporation purported to confer upon them, and especially the power of carrying their poles and wires along, across and under the streets and highways in the province. Thereupon, on the 10th March 1882, the Legislature of Ontario passed an Act 45 Vict. ch. 71, authorising them to exercise within the province the powers in the Act mentioned.

It is to be observed that neither in the recital to this Act, nor in the special case submitted in the present action, is it alleged that the works of the Defendants connected the Province of Ontario with any other province of the Dominion, or extended beyond the limits of this province, at the time the Act was passed.

On the 17th May 1882, being a little more than two months later, the Dominion Parliament, upon the Defendants' petition, passed the Act 45 Vict. ch. 95, amending their Act of Incorporation in certain respects, and declaring that the " Act of Incorporation as hereby amended and the works thereunder authorised are hereby declared to be for the general advantage of Canada."

There is no doubt that from this time forward the Defendants became subject to the exclusive jurisdiction of the Parliament of the Dominion, but, in view of the somewhat different powers with regard to interference with streets and highways conferred upon them by the Ontario Act and by their Dominion Act of Incorporation, it is necessary, for the purposes of the present case, to determine the effect, if any, upon the Ontario Act above referred to of the Dominion Act which brought them under the exclusive legislative authority of the Dominion. It is to be observed that the British North America Act, sec. 92, sub-sec. 10 (c) provides for the declaration that certain works are for the general advantage of Canada, and gives to that declaration the effect of withdrawing such works from the legislative jurisdiction of the province ; but it gives no effect or meaning to a declaration that any particular Act of a legislature or of the Dominion is for the general advantage of Canada. There is, therefore, no special effect to be given to that part of the clause above quoted which declares the Defendants' Act of Incorporation to be for the general advantage of Canada.

The position of the Defendants immediately before the passing of the Act which brought them under the jurisdiction of the Parliament of Canada was this : They had a corporate existence by virtue of the Dominion Act 43 Vict.

ch. 67, which also declared the purposes for which they were incorporated, and conferred upon them certain powers which they were unable to exercise without the authority of Provincial Legislation; that authority they had lately obtained by the Provincial Act of Ontario 45 Vict. ch. 71 which in some respects conferred upon them powers they did not possess under the terms of their Dominion Act (the power for instance of proceeding to open up streets without the direction of the municipal engineer in case such direction should be withheld for a week after notice) and in some respects was less favourable to them than the terms of their Dominion Act.

Where a company has been carrying on works in a province under a provincial Act of Incorporation, if the Dominion Parliament simply declares its works to be for the general advantage of Canada without more, the result is, that the Company continues to work under the provincial Acts until they are altered or amended by Dominion legislation; the provincial Acts are not repealed by the mere fact that the Company has come under the jurisdiction of the Dominion Parliament.

I think the Dominion Act 45 Vict. ch. 95 must be treated as a legislative recognition of the Defendants' original Act of Incorporation, and therefore, in effect, as a practical re-enactment of it. At all events they are there treated as a corporation, and the 3rd section of their Act, which is the section material to the present case, is amended, and therefore re-enacted with the amendment. But, although it was easily within the power of the Dominion Parliament, upon assuming legislative jurisdiction over the Defendants, to have declared the provisions of the Ontario Act no longer binding upon them, they certainly have not in express terms done so; the Defendants must, therefore, still be held entitled to all the rights and subject to all the restrictions contained in it which are not found to be abrogated by absolutely inconsistent provisions in the Act of Incorporation.

This brings me down to the simple question which the parties desire to have determined upon the present case, which is, whether the Defendants are entitled, without the consent of the Municipal Council of the City of Toronto, to erect their poles and carry their wires along, under and across the streets of the city, as they claim to be entitled to do, or whether the consent of the Council must first be obtained, as the Plaintiffs insist.

The effect of the Defendants' Dominion Act is as follows: They are authorised to erect and maintain their telephone lines along, across or under any streets or highways, provided as follows:

1st. That they do not interfere with the public right of travel and user.

2nd. That in cities, towns and incorporated villages they shall not erect any poles higher than 40 feet above the surface of the street, nor affix any wire lower than 22 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.*

3rd. That where lines of telegraph are already constructed, they shall not in any city, town or village erect any poles along the same side of the street where such telegraph has been constructed *without the consent of the Municipal Council.*

RECORD.

In the High Court of Justice, Ontario.

No. 7.
Judgment of Street, J., 10th March, 1902
—*continued.*

4th. That in cities, towns and villages the location of the line or lines and the opening up of the streets for the purpose of erecting poles or carrying wires under ground shall be done under the direction and supervision of the engineer or other officer whom the Council may appoint *in such manner as the Council may direct.*

In this legislation we find a general power given to the Company to erect and maintain its lines upon, under and across all streets and highways, qualified by the condition that the location of the lines and the opening up of the streets is to be done under the direction of an officer appointed by the Council, and in such manner as the Council may direct; and further qualified in certain specified cases by the condition that the consent of the Council must first be obtained.

There is in these powers the obvious defect that the Company might find itself seriously hampered in case the Council should delay or withhold their direction as to the manner in which the streets might be opened up etc.

When the Defendants went to the Ontario Legislature for assistance, this defect had evidently been considered. The powers conferred by the Act there obtained by the Defendants followed those granted by the Canadian Act except in two particulars. The stipulation that the opening up of the streets should be done under the direction of the engineer or officer and in such manner as the Council should direct was qualified by the words " unless such engineer, officer or Council, after one week's notice in writing, shall have omitted to make such direction." The other variation introduced by the Ontario Act introduces a still more direct and important qualification of the rights which the Canadian Act had purported to give them, and it is necessary to set forth in full the first portion of the 2nd section of the Act, in order that its effect may be seen.

" The Bell Telephone Company of Canada may construct erect, and maintain its line or lines of telephone along the sides of, and across or under any public highways, streets . . . . Provided the said Company shall not interfere with the public right of travelling on or using such highways, streets . . . . and provided that in cities, towns and incorporated villages, the Company shall not erect any pole higher than 40 feet above the surface of the street, nor affix any wire less than 22 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 over the streets of the said city, town or incorporated village . . . 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 street where such poles are already erected, unless with the consent of the Council having jurisdiction over the streets of such city, town or incorporated village . . . "

The other provisions of this Act follow those of the Dominion Act of Incorporation of the Company.

The words " Nor carry any such poles or wires along any street " above underlined, in the Ontario Act, take the place of the words " nor carry more than one line of poles along any street " in the Dominion Act.

It was argued for the Defendants that the words " such poles or wires "

must be construed as referring only to poles higher than 40 feet and wires affixed less than 22 feet above the surface of the street,and not as a general prohibition against carrying any poles or wires along any street without the consent of the Council and the subsequent provision with regard to streets along which telegraph poles had already been erected was pointed to as sustaining the contention.

In my opinion, the clear intention of the Ontario Act is to forbid the Defendants from carrying any poles or wires at all, along any street, without the consent of the Council. Had the language in which this prohibition is contained been more ambiguous, the subsequent provision as to streets along which telegraph poles had been erected would not have been without weight, perhaps, in construing it; but I cannot find sufficient ambiguity in the earlier language to justify me in holding it to be controlled by the later.

The next question is, whether the Ontario Act, in so far as it is not consistent with the Dominion Act, must be taken to be repealed by the latter. In my opinion, I ought not so to hold. I think the proper construction of these Acts is to treat the Ontario Act as conferring special rights upon the Defendants in regard to their works in that province, and at the same time subjecting them to the necessity of obtaining the consent of the local municipalities to the use of the streets, while leaving to their Act of Incorporation its full operation in other provinces. Should this state of things be found unsatisfactory or unworkable, the Canadian Parliament, having declared the Defendants' works and objects to be for the general benefit of the whole of Canada, has full power to amend their powers in Ontario, as well as elsewhere.

I need not discuss the subsidiary question, which was argued, as to the possible difference between the rights of the Defendants in regard to their local and their " through " lines.

Upon the facts stated, therefore, it should be declared that the Defendants have no right to carry any poles or any wires (whether such wires be above or under ground) along any street in the City of Toronto, without first obtaining the consent of the Municipal Council; but, inasmuch, as the Ontario Act does not make their power to carry their wires across streets dependent upon the previous consent of the Council, they may carry them across the streets either above or under ground, subject in the latter case to the direction of the Council and its engineer or other officer as to the location of the line and the manner in which the work is to be done, unless such direction shall not be given within one week after notice in writing, and subject to the other provisions of the Act of Incorporation.

I think the Defendants must pay the costs, as the Plaintiffs have succeeded upon the main questions raised by the case stated.

RECORD.

In the High Court of Justice. Ontario.

No. 8.
Formal Judgment, 10th March, 1902.

No. 8.

In the High Court of Justice.

Before the Honourable Mr. Justice Street.

Monday, the tenth day of March, A.D., 1902.

Between

The Corporation of the City of Toronto . . *Plaintiffs.*

and

The Bell Telephone Company of Canada . *Defendants.*

1. This action coming on to be heard before this Court on the 26th day of February, A.D., 1902 upon a special case agreed to by the parties hereto and filed by the Plaintiffs, upon opening of the matter, upon hearing read the special case and the writ of summons, thereto annexed, and upon hearing what was alleged by counsel for both parties, this Court doth order that this action should stand over for judgment, and the same coming on this day for judgment:

2. This Court doth declare that the Defendants have no right to carry any poles or any wires (whether such wires be above or under ground) along any street in the City of Toronto without first obtaining the consent of the Municipal Council of the Plaintiffs, 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 Plaintiffs' 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 Defendants' Act of Incorporation, and doth order and adjudge the same accordingly.

3. And this Court doth further order and adjudge that the Defendants do pay to the Plaintiffs the costs of this action forthwith after taxation thereof.

A. F. MACLEAN,
Clerk of Weekly Court.

Judgment signed the 30th day of May, 1902.

M. B. JACKSON,
Clerk of C. & P.

Entered May 31st, 1902.

J. B. 6, p. 159

R. F. KILLALY.

In the Court of Appeal for Ontario.

No. 9.
Defendants' Notice of Appeal (in each Action), 19th March, 1902.

No. 9.

Defendants' Notice of Appeal (in each Action).

Take notice that the Bell Telephone Company of Canada the above-named Appellants intend to appeal and hereby appeal from the judgment pronounced in this action by the Honourable Mr. Justice Street on the tenth day of March,

1902, whereby he held that the Appellant Company have not the right to carry any poles or wires (whether such wires be above or under ground) along any street in the City of Toronto without first obtaining the consent of the Municipal Council of the said city.

Dated this 19th day of March, 1902.

S. G. Wood,
Solicitor for the Bell Telephone Company of Canada.

No. 10.

No. 10. Reasons for Appeal.

Reasons for Appeal.

1. The Appellants submit that the judgment of the learned Trial Judge who heard this case should be reversed and judgment entered in favour of these Appellants for the following among other reasons :-

2. The Bell Telephone Company of Canada was incorporated by Act of the Dominion Parliament, assented to on the 29th of April, 1880, being chapter 67, 43 Victoria.

3. By the said Act of Incorporation, section 2, there was power conferred upon the Company to manufacture telephones and other apparatus used in connection with the business of a telegraph or a telephone company and they were authorised to build, establish, construct, purchase, acquire or lease, and maintain and operate or sell or let any line or lines for the transmission of messages by telephone in Canada or elsewhere, and to make connection for the purposes of telephone business with the line or lines of any telegraph or telephone company in Canada or elsewhere.

4. By the 4th section of the said statute, the Company were empowered and authorised to purchase or lease for any term of years any telephone line established or to be established either in Canada or elsewhere connecting or hereafter to be connected with the lines which the Company is authorised to construct :

5. A statute of the Dominion assented to on the 17th of May, 1882, being chapter 95, 45 Victoria, was enacted amending the previous statute, chapter 67, 43 Victoria. By this statute, among other amendments not of importance, section 3 of chapter 67 was amended by inserting the words " the location of the line or lines and," in the twenty-eighth line after the word " villages."

The fourth section of the amending Act provided—" the said Act of Incorporation as hereby amended, and the works thereunder authorised are hereby declared to be for the general advantage of Canada " :

6. In the same year, 1882, a statute was passed by the Province of Ontario, assented to on the 10th of March, 1882, being chapter 71 of 45 Victoria. The preamble of this statute recites—" That whereas the Bell Telephone Company of " Canada has by its petition represented that it was incorporated by Act of the " Parliament of Canada, 43 Victoria, chapter 67," and certain powers were

conferred on the said Corporation by the said Act, " and that doubts have " arisen as to the powers of the said Company under the said Act in regard " to those portions of its work and undertaking which are local and do not " extend beyond the limits of this province and the Company has prayed that " the necessary powers be conferred on it by the legislature of the " province : "

7. This statute, as the Appellants contend, was passed as a confirmatory statute. The object was to prevent any doubts as to the powers conferred upon them by the Dominion charter, but in no sense to curtail the powers or to interfere with the rights conferred upon them by their Act of Incorporation :

8. The learned Trial Judge determines that the objects of the Appellants' charter are within the classes referred to in paragraph (A) of sub-section 10 of section 92 of the British North America Act. No other conclusion could be arrived at, having regard to the objects and purport of the incorporation and the statute quoted above :

9. It being conceded that the Company is properly incorporated by the Dominion statute, chapter 67, 43 Victoria, the powers of the Company must be ascertained from a consideration of that statute, and it must be borne in mind that the operation of a telephone company necessarily comprises not merely long distant telephones, extending from one part of the Dominion to the other, but also the construction of telephone lines through the various cities, towns or villages, so as to enable the users of the telephone lines to carry on both local and long distance business. These objects necessarily require, that, as a part of incorporation, the right to place poles on streets, or wires under streets, in such cities, towns or villages as they pass through should be conferred. By reference to the statute, chapter 67, 43 Victoria it will be seen that such power is so conferred :

10. The third section of this statute provides that the Company may construct, erect and maintain its line or lines of telephone along the sides of and across or under any public highways, streets, bridges, watercourses, or other such places, or across or under any navigable waters either wholly in Canada or dividing Canada from any other country, provided the said Company shall not interfere with the public right of travelling on or using such highways, streets, etc., and provided that in cities, towns and incorporated villages the Company shall not erect any pole higher than forty feet above the surface of the street, 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 over the said streets.

The same section provides, as amended by 45 Victoria, chapter 95, as follows :—

" And provided that in cities, towns and incorporated villages the location " of the line and the opening up of the street for the erection of poles or for " carrying the wires underground shall be done under the direction and super- " vision of the engineer or such other officer as the Council may appoint, 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."

11. It is confidently submitted that no authority is needed for the contention that the power is absolutely conferred upon the Bell Telephone Company to erect their poles or underground wires—the only restriction being that no pole higher than forty feet above the surface of the street, nor any wire less than twenty-two feet above the surface of the street is to be erected without the consent of the Municipal Council. The subsequent provision does not in any way detract from the powers of the Company; it is a provision conferring a directory power upon the engineer of the Corporation as to the location on the street of the pole, but in no sense does it confer the right to prevent the carrying of the lines along any particular street either by poles or by underground wires.

12. The learned Trial Judge does not controvert this position and, if authority were needed, the decision of the Privy Council in the case of the City of Montreal *v.* The Standard Light and Power Company, reported in Law Reports, Appeal Cases (1897) at page 527, shows that such power is conferred.

13. The learned Trial Judge places a construction upon the British North America Act, section 91, sub-section 29, and section 92, sub-section 10, not heretofore placed upon it, and which construction, these Appellants submit, is an erroneous one. His Lordship is of opinion that in order to give to the Parliament of Canada exclusive jurisdiction it was necessary that " connection by means of the work authorised actually take place." He states " It appears to me that the connection between the two provinces required by clause (A) of sub-section 10 is a real and physical one and not a mere paper one created by a charter." The learned Judge proceeds to state that in the present case it may not be necessary to insist upon this view, but it is obvious from an analysis of his judgment that this conclusion underlies the judgment.

14. It must necessarily follow from any such construction that the original Act of Incorporation, chapter 67, 43 Victoria, would be void as being *ultra vires* of the Dominion Parliament. If, in fact, the Dominion Parliament has only jurisdiction over companies which are physically connected with one or more of the provinces, or an outside country, then it must follow that before the Dominion Parliament obtains jurisdiction to enact, the work must be executed and in operation.

15. Under what legislative authority is the work to be executed, so as to place the Corporation in a position to apply to the Dominion for incorporation? What is required is corporate constitution and power to construct; otherwise a series of separate corporations would require to be incorporated by the various provinces, each to construct or build a local line, none of which would have power to connect outside of its own province.

16. It is submitted that any such construction of the Confederation Act is untenable.

17. Consider clause (A) of sub-section 10, of section 92, referring to lines of steam or other ships. How would the real and physical connection between the two provinces be established?

18. It is submitted that the Dominion Parliament had power to incorporate

RECORD.

In the Court of Appeal for Ontario.

No. 10
Reasons for Appeal
—*continued.*

for Dominion objects ; that the statute of incorporation shows that the Telephone Company was properly incorporated by the Dominion, and it would follow that, such being the case, the powers conferred by their statute are valid.

In Colonial Building and Investment Association *v.* the Attorney-General for Quebec, reported Law Reports, 9 Appeal Cases, 157, this contention is supported : At page 167 of the report in that case, it appears that the Respondents' petition averred that the operations of the Appellants were confined to Quebec, and being of a merely local nature affecting property and civil rights in the province, could not lawfully be incorporated, except by the authority of the legislature of the province. Their Lordships rejected this proposition saying, at page 165, that the jurisdiction to constitute the Corporation must be the test, and not the operations of the Company. This being so, it is submitted that this case should have been decided in favour of these Appellants.

19. Referring to chapter 71, 45 Victoria, a statute passed by the province, it is submitted that if this statute bears a construction taking away from, or curtailing the powers conferred by the Dominion Act, then the statute would be void and *ultra vires* of the Parliament of the Province of Ontario. The distinction between a case where a provincial Parliament may interfere with a Dominion Corporation is shown in two cases : Madden *v.* Nelson and Fort Sheppard Railway, reported Law Reports Appeal Cases (1899), at page 628, where it was held that an Act of the Parliament of British Columbia requiring a Dominion railway to erect fences was void as an interference with the corporate powers conferred by the Dominion statute.

In a case of C.P.R. *vs.* Corporation Notre Dame de Bonsecours, Appeal Cases (1899) at page 367, the provincial statute was upheld. That was a statute which conferred powers to pass by-laws to clean out ditches. Their Lordships held that there being no structural alteration required and no interference with the powers but merely a municipal regulation in aid of health and cleanliness it was operative.

20. While it is submitted that any construction such as placed upon the Ontario statute by the learned trial judge would necessarily require a decision to the effect that the statute was *ultra vires* of the Provincial Parliament, it is submitted that the construction placed upon this statute is an erroneous one and that the true construction of the statute harmonises with the Act of Incorporation of the Telephone Company. It has to be borne in mind that the object of this statute was to confirm, and not to curtail, the powers.

21. The second section of the Ontario statute provides that " The Bell " Telephone Company of Canada may construct, erect, and maintain its line or " lines of telephone along the sides of and across or under any public highways, " streets, bridges," &c., " provided the said Company shall not interfere with the " public right of travelling on or using such highways, streets bridges," &c., " and provided that in cities, towns and incorporated villages the Company shall " not erect any pole higher than forty feet above the surface of the street 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 over the streets of the said city," &c.

It is submitted that the reference to such poles refers to poles "higher

than forty feet" and to wires "less than twenty-two feet above the surface." This construction would be the grammatical construction and would harmonize the Ontario statute with the Dominion statute. Referring to the case of Grand Trunk Railway *vs.* Washington, reported Law Reports, Appeal Cases (1899) p. 278, at page 279, their Lordships place a construction upon the words "such filling," and it is submitted that the same construction should be placed upon the words "such poles" referred to in the second section of the Ontario Act. This is emphasised by a reference to the same section (2) of the Ontario statute, which reads as follows :—

"And provided further that where lines of telegraph are already con-
" structed no poles shall be erected by the Company in any city, town or
" incorporated village, along the streets where such poles are already erected,
" unless with the consent of the Council having jurisdiction over the streets of
" such city."

If the consent of the municipality was a pre-requisite to the right to erect poles along the street, it is obvious that this proviso preventing poles being erected where poles had been already erected, without the consent of the municipality, is superfluous.

22. It is submitted that as a matter of construction, the contention of these Appellants is the correct one. If, however, a different construction be placed upon the statute, then it is submitted the statute would be beyond the powers of the legislature of the province.

23. These Appellants submit that the judgment should be reversed and judgment entered for these Appellants.

WALTER CASSELS,
GEO. LYNCH STAUNTON.

No. 11.

No. 11. Reasons against Appeal.

Reasons against Appeal :

1. The Respondents submit that the judgment of the Trial Judge should be affirmed for the following, among other reasons :

2. The Appellants claim to be incorporated under the provisions of the British North America Act, section 92, sub-section (10) (A). It is submitted they were not so incorporated and that the Dominion neither did nor could confer upon them the right to interfere with or occupy the streets of the City of Toronto.

3. The Appellants do not claim that at the time of the passing of any of the Acts, to wit, 43 Vict., chap. 67 (D), 45 Vict. chap. 71 (O) or 45 Vict. chap. 95 (D) they had connected any of the provinces by a system of telephony or had extended their works beyond the limits of a province, nor indeed was long distance telephony at that time known, and it is submitted the effect of the said Dominion Act 43, Vict., chap. 67 was, if anything, the incorporation of the Company which in its operation and work would be subject to provincial legislation.

RECORD.

In the Court of Appeal for Ontario.

No. 11.
Reasons against Appeal —*continued.*

In Regina *v.* Mohr (1881) 7 Q.L.R., page 183, at page 194 Cross J., says :

" It is obvious from the proof stated in the reserved case that the establish-
" ment of the undertaking of the Bell Telephone Company in the district of
" Quebec is one purely of a local character intended to serve local purposes
" chiefly for the convenience of the city ; it extends beyond the limits but not
" even out of the district, and has no pretension to connect provinces or even
" to cross navigable waters."

See Colonial Building and Investment Association *v.* Attorney-General for Quebec (1883) 9 App. Cases, 157.

4. The Appellants therefore sought for and obtained the Ontario Act to enable them to carry on essentially a local work, and in passing such Act, important legislative changes from the Dominion Charter were enacted, and the Act, it is submitted, was intended to be and is far more than a merely " confirmatory Act."

5. If the Dominion Act, 43 Vict., chap. 67, operated, as contended, under the British North America Act, section 92, s.s. 10 (A) then there would be no necessity for subsequently declaring the acts of the Appellants to be for the " general advantage of Canada."

6. Telegraphs and telephones are not intended to be *ejusdem generis* in the Dominion of Canada, R.S.C., chap. 132, section 10.

7. The Dominion Act, 43 Vict., chap. 67, incorporating the said Bell Telephone Company, therefore, conferred upon them (if anything) only power to transact business in the Province of Ontario, subject to the legislation of that province.

Colonial Building and Investment Association *v.* Attorney-General for Quebec (1883) 9 App. Cas. 157.

8. When the Dominion Act, 45 Vict chap., 95 was passed, the Ontario Act was in force and binding upon the Appellants and so remains, unless and until, in addition to the declaration that the works of the Appellants are for the " general advantage of Canada," legislation has been passed which overrides the provisions of the Ontario legislation.

9. The Respondents further contend that the declaration that the works of the Appellants are for the " general advantage of Canada " was not intended to and does not apply to their works other than works for long distance telephony.

10. It is submitted that under the Dominion Act as amended " the location of the lines " is placed in the control of the Respondents, and the Appellants can locate their lines only upon such streets as the Respondents may designate. The Appellants' contention that this merely enables the Respondents to locate the poles upon such streets as the Appellants choose to select is narrow and unreasonable.

The City of Montreal *v.* The Standard Light and Power Company L.R. App. Cas. (1897), page 527, is based upon a different and more comprehensive statutory provision.

11. In the Ontario Statute 45 Vict., chap. 71, the enactment that " the Company shall not erect any pole higher than " 40 feet above the surface of the

" street, nor affix any wire less than 22 feet above the surface of the street " is complete in itself and either absolutely forbids such erection, or forbids the erection " without the consent of the Municipal Council having jurisdiction over the streets of such city, town or incorporated village." Then, if the Company cannot erect one such pole or affix one such wire, it is superfluous to add for the purpose of prohibiting poles higher than 40 feet above the surface of the street, or less than 22 feet above the surface of the street, the words " nor carry any such poles or wires along any street," because if one pole and one wire are prohibited, all are prohibited. It is submitted, therefore, that the words " nor carry any poles or wires along any street without the consent of the Municipal Council having jurisdiction over the streets of the said city, town or incorporated village " must refer to other poles than poles over 40 feet above the surface of the street, or wires affixed not less than 22 feet above the surface of the street, that is, to poles and wires generally.

12. The subsequent provisions quoted by the draftsman of the said Ontario Act from the Dominion Act, 43 Victoria, chapter 67 namely: " 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 streets where such poles are already erected unless with the consent of " the Municipal Council having jurisdiction over the streets of such city, town " or incorporated village " may easily have been inserted as a matter of greater precaution but should not override the previous plain provision of the statute.

13. The powers conferred upon municipalities to regulate and govern their streets and to prevent all interference therewith should not be held to be overridden except by direct and plain statutory enactment.

14. The Respondents rely upon the reasoning in the judgment of the learned Trial Judge.

C. ROBINSON,
J. S. FULLERTON.

No. 12.
Statement of Case.

No. 12.

In the Court of Appeal for Ontario.

Between

The Corporation of the City of Toronto . (*Respondents*) *Plaintiffs*

and

The Bell Telephone Company of Canada . (*Appellants*) *Defendants.*

Two Actions: No. 447, A.D., 1901, and
No. 685, A.D., 1901.

Statement of Case.

This is an appeal by the Defendants from the judgment of the Honourable Mr. Justice Street, pronounced on the 10th day of March 1902, upon the special case herein set forth in the two actions above mentioned, whereby it was held that the Appellants have not the right to carry any poles or wires (whether

RECORD.

In the Court of Appeal for Ontario.

such wires be above or under ground) along any street in the City of Toronto without first obtaining the consent of the Municipal Council of the said city.

J. A. McANDREW.

No. 13.
Judgments.
Moss, C.J.O.

No. 13.

Judgments delivered 14th September 1903.

Moss C.J.O. Upon the case stated by the parties two questions arise for decision.

The first is whether the work or undertaking for the prosecution of which the Defendants were incorporated by the Act 43 Vict. cap 67 (Dom.) is one falling within the description of a work or undertaking connecting the province with any other of the provinces or extending beyond the limits of the province within the meaning of clause 10 (A) of sec. 92 of the British North America Act.

If this question is answered in the affirmative then the work or undertaking falls within the exclusive legislative authority of the Parliament of Canada under clause 29 of sec. 91 of the Act and thereupon arises the second question viz.: What, if any, effect has the Act 45 Vict. cap. 71 (Ont.) passed by the Legislature of Ontario at the instance of the Defendants, upon the rights conferred upon them by their Act of Incorporation as amended by the Act 45 Vict. cap. 95 (Dom.)?

Are these rights in any way curtailed or qualified by the provisions of the Ontario Act?

Dealing with the first question it is important to note the objects and purposes for which incorporation was sought and granted. These are set forth in sec. 3 of the Act 43 Vic. cap. 67 (Dom.) as amended by the 45 Vic. cap. 95. Those enumerated in the beginning of the section, viz., the manufacture of telephones and other apparatus connected therewith and their appurtenances and other instruments used in connection with the business of a telegraph or a telephone company and such other electrical instruments or plant as the company may deem advisable and the purchasing, selling or leasing of the same and rights relating thereto, are not to be considered as other than local. And if the Defendants' purposes and objects were confined to operations of the kind mentioned there would be no difficulty in saying that incorporation for such purposes might and should properly be sought from the provincial authority.

But the difficulty is in respect of the other objects and purposes set forth in sec. 3. They are far wider and more extensive in their scope. Power is given to build, establish, construct, purchase, acquire or lease and maintain and operate or sell or let any line or lines for the transmission of messages by telephone in Canada or elsewhere and to make connection for the purposes of telephone business with the line or lines of any telegraph or telephone company in Canada or elsewhere and to aid or advance money to build or work any such line to be used for telephone purposes with power to borrow money upon the

Company's bonds for carrying out any of the objects or purposes of the Act. Reading this language of the section it is difficult to resist the conclusion that it was contemplated and intended that the Defendants would extend their operations into more than one province of the Dominion and probably beyond the Dominion. It is true that they are placed under no compulsion to do so but it is not unlikely that it was considered that the *fames auri* would be a sufficient incentive to them to avail themselves to the full extent of their powers. Doing so involves the construction or acquisition and operating of telephone lines extending across the boundaries of one province into another or the uniting with telegraph lines, the wires of which cross the boundaries between provinces. If as seems to be the case with telegraphs the wire is a sufficient link of connection between two provinces or at all events the carrying of a telegraph wire from one province into another is an extension of the work or undertaking beyond the limits of one province it is difficult to deny the same effect to a telephone wire.

And the conclusion must be that the work or undertaking authorised by sec. 3 of the Defendants' Act of Incorporation is one falling within clause 10 (A) of sec. 92 of the British North America Act. The question of the legislative jurisdiction must be judged of by the terms of the enactment and not by what may or may not be thereafter done under it. The failure or neglect to put into effect all the powers given by the legislative authority affords no ground for questioning the original jurisdiction. Nor does it affect the validity of an incorporation or the status of the incorporated body as a corporation. As said by the judicial committee in Colonial Building and Investment Association *v.* Attorney-General for Quebec, 9 A.C. at p. 165 " Surely the fact that the Association has hitherto thought fit to confine the exercise of its powers to one province cannot affect its status or capacity as a corporation if the Act incorporating the association was originally within the legislative power of the Dominion Parliament. The Company was incorporated with power to carry on its business consisting of various kinds throughout the Dominion. The Parliament of Canada could alone constitute a corporation with these powers ; and the fact that the exercise of them has not been co-extensive with the grant cannot operate to repeal the Act of Incorporation."

The first question must therefore be answered in the affirmative.

It remains to consider the second question. The argument for the Respondents is that granting the legislative authority to be in the Parliament and not in the legislature the Defendants having applied for and obtained legislation from the legislature must be held to have consented that in any conflict of the enactments those passed by the legislature should prevail.

It may well be doubted whether there was any occasion for the Act (45. Vic. cap. 71 Ont.) The general objects and purposes for which the Defendants were incorporated being such as came within the legislative authority of Parliament it was proper that it should confer upon the Defendants such general powers as were necessary to enable the works or undertaking to be effectually proceeded with and this was the purpose of sec. 3 of the Act of Incorporation. The preamble of the Provincial Act however shews that its purpose apparently was to allay doubts in regard to those portions of the Defendants' work and undertaking which were local and did not extend beyond the limits of this province.

RECORD.

In the Court of Appeal for Ontario.

No. 13.
Judgments.
Moss, C.J.O.
—*continued.*

And the legislation was sought as a measure of precaution rather than with the purpose or intention of giving up any powers or rights the Defendants were entitled to under their Act of Incorporation. Nor is there anything on the face of the legislation to indicate that the Defendants had entered into or were making a bargain to that effect. There is nothing there to prevent them from now insisting upon such rights as were given them by the Parliament in respect of matters over which it had undoubted authority. Among these were the rights given by sec. 3 of the Act of Incorporation which enables them, subject to the provisoes and conditions therein and in the amending Act 45 Vic. cap. 95 (Dom) contained, to construct, erect and maintain their line or lines of telephone along the sides of and across or under any public highway or street. These having been granted in furtherance of objects or purposes properly authorised by the Parliament could not be impaired by the action of the Provincial Legislature.

Therefore the Defendants are entitled to the full benefit of the language of sec. 3 of their Act of Incorporation as amended notwithstanding the Act 45 Vic. cap 71. (Ont).

The result is that the appeal should be allowed, and that instead of the declaration made by Street J. it should be declared that the powers conferred by the Defendants' Act of Incorporation 43 Vic. cap. 67 (Dom) as amended by the Act 45 Vic. cap. 95 (Dom) are not curtailed by the provisions of the Act 45 Vic. cap. 71 (Ont) as regards the right to construct erect and maintain their line or lines of telephone along the sides of and across or under any highway or street of the city of Toronto subject however to the provisoes set forth and contained in sec. 3 of the Act of Incorporation as amended.

Under the circumstances there should be no costs of the litigation to either party.

Osler, J.A.

Osler J.A., concurred.

Garrow, J.A.

Garrow J. A. : This is an appeal by the Defendants from the judgment of Street J. reported in 3 O.L.R., 465

The Defendants were incorporated by 43 Vic. ch. 67 (D) amended by 45 Vic. ch. 95 (D).

By the Act of Incorporation the head office is to be at the City of Toronto or at such other place in Canada as the directors might thereafter determine.

The Company is thereby empowered to manufacture telephones, &c., and to purchase, sell, or lease the same, and to build establish, construct, purchase, acquire, or lease, and maintain and operate or sell or let, any line or lines for the transaction of messages by telephone in Canada or elsewhere &c. &c. The Company may also construct, erect and maintain its line or lines along the sides of and across or under any public highway, street, bridge, &c., or across or under any navigable waters, either wholly in Canada or dividing Canada from any other country. But in cities, towns, and incorporated villages, the Company shall not erect any pole higher than 40 feet above the surface of the street, nor affix any wire less than 22 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 over the streets of the said city, town or incorporated village; and 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 underground, 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. The Company is also given power to purchase and lease any telephone line established or to be established in Canada or elsewhere, and power to amalgamate with or lease their line to any other Company &c., with other powers which need not be referred to.

It is not disputed that incorporation was properly obtained from the Dominion Parliament, and not from the local legislature. The question in dispute is as to which is the proper legislative authority to authorise the construction of the proposed works, where such construction invades, or may invade provincial rights of property or civic control; otherwise under the exclusive jurisdiction of the local legislature.

This question is to be determined, in my opinion, by a consideration of the nature of the proposed work or undertaking. Is it a work or undertaking which falls under sec. 91 of the British North America Act; or is it one falling within sec. 92 of that statute?

If it falls within sec. 91 the judgment of the learned trial judge properly, in my opinion, concedes that the Dominion Parliament only would have exclusive jurisdiction, not only to incorporate but to grant the powers required for the construction and establishment of the proposed work, even if in granting such powers there was involved an apparent invasion of matters otherwise within exclusive local jurisdiction. This seems to be the necessary conclusion from the judgment of the Privy Council in Tennant *v.* Union Bank of Canada (1894) A.C. 31.

But the learned judge's difficulty apparently was in determining whether the proposed work did actually before construction, and when the interprovincial connection was necessarily, to use the learned judge's expression "on paper" only, fall within sec. 91, whether, in other words, the words "other works and undertakings connecting the province with any other or others of the provinces or extending beyond the limits of the province" rendered an actual physical connection necessary before the question of jurisdiction could be determined. With deference, I cannot share the learned judge's difficulty. It appears to me to be reasonably clear that what he called a paper connection is all that is necessary and that any other construction would result not only in a departure from the true intent and meaning of the statute, but might and very probably would create a state of intolerable confusion and conflict between the local and Dominion authorities. I am quite unable to see any difference between a telephone line proposed to be constructed from the City of Toronto in the province of Ontario to the City of Montreal in the province of Quebec, and a line of railway between the same two points. Both would be interprovincial, both would originate on paper in the shape of a Charter or Act of Incorporation, which no one doubts would be properly granted by the Dominion Parliament. The construction of the railway would be regulated by the general railway Act

of the Dominion; or by that Act and such special powers as the special Act conferred. No local legislature would have power to limit or control the railway's power of expropriating, or its other powers of construction granted by the Dominion Parliament, and yet the original interprovincial connection in the case of the railway would be found only in its Charter. The power of the Dominion Parliament to legislate concerning railways is derived under the same sections, viz.: sec. 92 sub-sec. 10 (A) and sec. 91 sub-sec. 29, as would authorise interference with or legislative control over "other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province," such as I think this is, the only difference being that railways, canals, telegraphs &c. are specifically mentioned. But the moment it appears in the application for a Charter or special Act that these other projected works or undertakings will, when constructed, extend beyond the provincial boundaries, they take their place beside railways, canals, ships, &c., having similar extra-provincial termini, and at once become subjects of exclusive Dominion jurisdiction.

If I am right in this view, it is clear that the Defendant Company was not only properly incorporated by the Dominion Parliament, but that the powers in question conferred for the purpose of making effective the proposed undertaking in the construction and establishment of a line of telephones to extend beyond the confines of one province, were within the exclusive competence of the Dominion Parliament, I think differing in this respect also from the learned trial judge, that nothing of authority was added by the use in the second Dominion statute, 45 Vic. ch. 95 of the words that the proposed work was for the advantage of Canada. These words were wholly unnecessary, in the view I take, to either confer or to increase a jurisdiction which was already, I think, ample and exclusive. The use of these words is, in my opinion, only applicable in the case of works situated or to be situated, when completed, wholly in one province, which was not the case with the proposed works in question.

The Defendants are not, I think, estopped by their application for the local Act 45 Vic. ch. 71. There is, in the first place, nothing that I can see to indicate that the local legislature intended to limit or curtail the Defendants' rights. The recital supports a different intention; namely, one of confirming existing rights if not of enlarging them; and at all events of removing doubts said to have been raised only as to the Defendants' powers to deal with purely local lines. Nor is there anything on the surface to suggest that the Defendants agreed or intended to agree, or that the local legislature stipulated for an agreement, that the Defendants should renounce any of their rights under Dominion legislation, in consideration of receiving the powers conferred by the local Act.

It must be assumed, I think that the powers conferred by the Dominion statutes were those which that Parliament thought it proper and in the public interest that such a Company should possess, and the Company could not, even by an express consent, surrender them to the local legislature; see Ayr Harbour Trustees *v.* Oswald, (1883) 8 App. Cas. p. 634; Dobie *v.* Temporalities Board (1881-2) 7 App. Cas. 136.

I have some doubt as to whether in fact the provisions of the Ontario

statute are in conflict with those of the Dominion. It is not necessary, in the view I have taken, to determine this, but there is certainly something to be said for this, that the control over the *location* of the line given to urban municipalities by the amending Dominion Statute, passed only two months after the Act of the Ontario Legislature, and both it is to be observed, upon the application of the Defendants themselves, is about, if not quite, the equivalent of the earlier limitation in the Ontario Statute, not to *erect &c.*, without the consent of the Council. This provision can never have been intended to enable the Council to absolutely prohibit the entry into the city of the Defendants' poles and lines, otherwise they could not have even reached their head office as fixed in their Act of Incorporation, without the Plaintiffs' consent. This required consent, must, I think, be read as a power to regulate, and not to prohibit, and in this way and as to this, the main subject of contention, there is, in my opinion, little if any substantial difference between the statutes of the Dominion and the one of Ontario. Under both, the consent of the Council is necessary to a *location* of the line, which must be located somewhere, and in the locating of which the parties must of course act reasonably; but the statutes require action, and not merely a refusal to act.

I think both parties are in some degree excessive in their claims; the Plaintiffs in claiming a power to withhold entirely their consent; and the Defendants in claiming that they are empowered to choose the streets, and in confining, or seeking to confine, the Plaintiffs' power of oversight simply to showing where the poles may be placed on a street so chosen.

With a declaration to give effect to this construction, I am of the opinion that the appeal should be allowed, but without costs; and that there should be no costs in the Court below.

Maclennan, J.A.

Maclennan J.A. This is an appeal by the Defendants from the judgment of Street J., reported in 3 Ont. L.R. 465, where the nature of the case is very fully stated.

The question raised is the power of the Bell Company to erect poles and to extend wires under or over the streets of the city, for the purpose of their business, without the consent of the City Council.

The judgment complained of declares that the Company may not 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 Council, but may carry wires across streets, either above or under ground 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 city might appoint; unless such manager, officer or council, after one week's notice in writing, should have omitted to make such direction, and subject to the other provisions of the Company's Act of Incorporation.

The Company contended that they are entitled to place and maintain their lines over or above the streets, without the city's consent, except as to poles more than forty feet or wires less than twenty-two feet high, and that in the absence, after notice, of directions by the city, they could proceed without them.

RECORD.

In the Court of Appeal for Ontario.

No. 13.
Judgments.
Maclennan, J A.
— continued.

The question depends on the legislation relating to the Company viz., two Acts of Parliament, 43 Vic. ch. 67 and 45 Vic. c. 95; and one Act of the Legislature of Ontario, 45 Vic., c. 71; and upon sections 91 and 92 of the British North America Act. The first of these Acts is the Company's Act of Incorporation and it is conceded, that, having regard to the powers sought and conferred, Parliament was the proper legislative body for that purpose, and that the province could not have passed that Act, such as it is. It is not a company with provincial objects within section 92 (11) British North America Act.

The powers conferred are (section 2) to construct, maintain and operate lines for the transmission of messages by telephone, in Canada or elsewhere, and to make connection for their business with the line or lines of any telegraph or telephone company, in Canada or elsewhere; and (sec. 3) to construct, erect and maintain its line or lines, along the sides of, and across or under any highways, streets, bridges, watercourses, or across or under any navigable waters, either wholly in Canada, or dividing Canada from any other country. And by section 4 power is given to purchase or lease any telephone line, established or to be established, either in Canada or elsewhere, connected or afterwards to be connected with its own lines; and to make arrangements with any person or Company possessing any line of telegraphic or telephone communication, and by sec. 26, power is given to purchase and lease all such real estate as may from time to time be necessary for its purposes.

Now Parliament might have contented itself with merely incorporating the Company; with giving it power to act as a corporation throughout Canada; and might have left it to apply to the several provinces to obtain the right to construct its lines on or over or under highways or private property, and thereby to interfere with property and civil rights; but it did not do so. It went farther and gave the Company the absolute right to occupy highways, without consent or compensation, subject only to certain restrictions and conditions. It was not to interfere with the public use of highways, watercourses or navigable rivers. The height of poles and wires was limited, and in cities, towns and villages, the opening up of the streets was to be done under the direction and supervision of the engineer or other officer appointed for the purpose by the Municipal Corporation. There are other restrictions also which it is unnecessary to enumerate.

It is evident from all this that Parliament regarded this Company and its work or undertaking as being one over which it had plenary jurisdiction; as a Company to which it could grant power to interfere with property and civil rights, in the respective provinces; that it was not like an Insurance Company, as was held in Citizens' Insurance Company *v.* Parsons, 7 A.C. 96; or a Building and Investment Co., as in Colonial Building and Investment Association *v.* Attorney-General of Quebec, 9 A.C. 157, to which it could only grant the power of acting as a corporation throughout the Dominion; but was like a Banking Company over which it had plenary jurisdiction by virtue of the British North America Act, sec. 91 (15) Tennant *v.* The Union Bank, 1894, A.C. 45; and like railways, canals and telegraphs, extending through two or more provinces, by virtue of the exception contained in sect. 92 (10 A.).

The question in this appeal appears to me to be whether the Bell Co., ought to be held to be within the exception of sub-section 10 (A). If it is, it is to be regarded exactly as if it had been named in section 91, as within the exclusive legislative authority of Parliament.

I think it is within sub-section 10 (A). In the first place it is a work or undertaking, its analogy to a telegraph line is perfect. A telegraph is a means of writing at a distance. A telephone is a means of speaking at a distance. The means used are identical, viz., poles, wires and electric power. If the one be a work or undertaking the other is equally so. In the next place its operation is both interprovincial and international. In the language of 10 (A) it connects the province with other provinces, and extends beyond the limits of the province. The special case paragraph 4 says the Company carries on a long distance telephone business, and although it does not say that it extends beyond the Province of Ontario, it is common knowledge that it does. The Act authorised that to be done, and the very first thing the Company might have done after incorporation might have been to connect Ottawa, in Ontario, with Hull, in the Province of Quebec, either by carrying their line across a bridge or by sinking it in the Ottawa River. My learned Brother Street in his judgment admits that the Act of Incorporation certainly authorises a connection by means of their lines of two or more provinces, but, he says, it does not in express terms require it; and that the object of their incorporation, as expressed in the Act, might have been served without such connection.

My learned brother thinks the connection with another province by the Company's works should have been expressly required or must have been essential to the objects of the incorporation or must actually have taken place in order that Parliament might obtain exclusive legislative control. I cannot think so. Suppose a railway Company incorporated by Parliament to construct a line between two points wholly within one province, with power to extend it into other provinces, can it be said that its powers of expropriation, construction and operation would be doubtful or invalid or in abeyance, unless and until they carried the line into another province? I think not. I think the jurisdiction of Parliament must be determined by the nature and extent of the work or undertaking *authorised*, as the same appears upon the face of the Act, and cannot depend upon what is done or left undone under it.

I therefore think that the Company as originally incorporated was one to which Parliament could and did give not merely corporate powers, but one to which it could, and did, give certain powers to interfere with property and civil rights in the several provinces of the Dominion.

It is necessary now to consider the second Act relating to the Company passed by the Dominion Parliament and how far it has any bearing on the questions which have been submitted in the special case. The only material sections are Nos. 2, 3 and 4. By sect. 2 the location of the Company's lines is put in the same position as the opening up of a street, as regards the supervision and direction of the Municipal Corporation through their engineer or other officer. By sec. 3, express power is given to extend the Company's lines from one province to another and, from Canada to the United

RECORD.

In the Court of Appeal for Ontario.

No. 13.
Judgments.
Maclennan, J.A.
—continued.

States. And by sec. 4, the Company's Act of Incorporation, and the works authorised thereby are declared to be for the general advantage of Canada. But the first of these amendments is the only one material to be considered, if, as I have endeavoured to show, the Company was originally one to which Parliament could, and did, give power to interfere with property and civil rights.

It remains to consider the effect of the Provincial Act passed on 10th March 1882, about two months before the passing of the second Act of the Dominion Parliament just referred to.

Before doing so, it may be pointed out that in the case of companies such as banks, railway companies, and other companies over which Parliament has plenary jurisdiction, and to which it might grant all the civil rights and rights and powers over property which such companies required for the convenient carrying out of their objects, Parliament might, nevertheless, leave such companies to procure such rights and powers from the provinces. For example, Parliament might incorporate a railway company to construct a line from the Atlantic to the Pacific, but might leave the company to apply to the several provinces for their powers of expropriation ; and it would be competent to the legislatures of the provinces to grant the powers required. So, in the case of the Bell Company, if it deemed the powers over property and civil rights which Parliament had given it to be insufficient, or inadequate, it might obtain additional or larger powers from the provincial legislatures. That is what the Company did. The Act was passed upon the petition of the Company. It recites its Act of Incorporation by Parliament, with certain powers ; but that doubts had arisen as to those powers in regard to those portions of its work and undertaking which were local and did not extend beyond the limits of the province. Then by sec. 2, similar powers to those granted by sec. 3 of the Act of Incorporation are granted, but qualified and modified in certain particulars.

By the Dominion Act the consent of a city, etc., must be obtained for more than one line of poles along any street. By the Ontario Act consent must be obtained for carrying *any* poles or wires along *any* street. By the Dominion Act where lines of *telegraph* are already constructed, no poles shall be erected on the same side of the street without consent. By the Ontario Act in such cases no poles whatever shall be erected on the same street without consent. By the Dominion Act (as amended by 45 Victoria c. 95) the location of the line or lines and the opening of the street for poles or for underground wires, is to be done under direction and supervision of the engineer etc., the provincial Act adds unless the engineer etc. shall have omitted, after one week's notice in writing, to make any direction.

Thus the Company having obtained certain powers to interfere with property and civil rights of the city etc., but entertaining doubts of their validity, went to the legislature and requested and obtained the removal of its doubts, and the grant of similar powers, but with restrictions and qualifications to which they were not previously subject. And the important and novel question arises, what the effect of that may be. I do not find that the Provincial Act gives the Company any right or power which they did not previously possess. Its effect is solely to limit restrict and even abrogate some of its powers. Are the Company bound by an Act relating to property and civil rights, simply because they

applied for it, and it was passed at their request? Undoubtedly the legislature could not have affected the Company's rights by passing such an Act against its will or without its knowledge. The Company had doubts as to the validity of its powers under the Act of Incorporation, and went to the legislature to have them removed. The legislature did so, and, by so doing, precluded every city, town and incorporated village from afterwards raising any question. In asking for confirmation of its powers, the Company consented to have them qualified and restricted in certain respects, and the question is whether it is not bound by that, as between it and the cities, towns and incorporated villages of the province. I think it is clear that the Company could *agree* with the city to construct its works in the manner and subject to the restrictions and limitations contained in the Act in question, and would be bound by the agreement. It might do this for some valuable consideration, or might do it in order to stand in better favour with the city than some other similar Company. For some sufficient reason it went to the legislature and said, we have certain civil rights and rights of property in the province, no matter whence derived, it may be from Parliament, it might be by express concession from certain cities, towns, &c., we wish to have those rights somewhat diminished or modified. The legislature accedes to the request and passes the Act. I think it had jurisdiction to do so at the Company's request, by virtue of its legislative power over property and civil rights in the province. There can be no doubt that the *municipalities* are bound by all the provisions of the Act, and the whole subject dealt with being a matter between the Company and the municipalities, if the Act binds the one, the other, at whose instance the Act was obtained ought also to be bound. The Company has asked the legislature to modify its power and rights over highways in the three named classes of the municipalities and the legislature has done so. I think the Company is estopped from denying the power of the legislature after it has complied with the request.

In Rothes *v.* Kirkcaldy Waterworks, 7 A.C. 694, Lord Watson said page 707, speaking with reference to the Defendant Company's Act "but such statutory provisions as those of sec. 43 occurring in a local and personal Act must be regarded as a contract between the parties, whether made by their mutual agreement or forced upon them by the legislature;" and in Davis *v.* The Taff Vale R.W. Co., (1895) A.C. 542, p. 552, the same learned Lord referred to his observation in the former case and said "where the provisions of a local and personal Act directly impose mutual obligations upon two persons or companies, such provisions, may in my opinion be fairly considered as having this analogy to contract, that they must, as between those parties be construed in precisely the same way as if they had been matter, not of enactment, but of private agreement." In Blakemore *v.* Glamorganshire Canal Navigation (1832) 1 M Y. & K 154, Lord Elden said at p. 162 with reference to Railway Acts: "When I look upon these Acts of Parliament, I regard them all in the light of contracts made by the legislature on behalf of every person interested in anything to be done under them and I have no hesitation in asserting that unless that principle is applied in construing statutes of this description they become instruments of greater oppression than anything in the whole system of administration under our

RECORD.

In the Court of Appeal for Ontario.

No. 13. Judgments. Maclennan, J.A. —*continued.*

constitution . . I apprehend those who come for them to Parliament do in effect undertake that they shall do and submit to whatever the legislature empowers and compels them to do, and that they shall do nothing else; that they shall do and shall forbear all that they are thereby required to do and to forbear as well with reference to the interest of the public as with reference to the interest of individuals." In York and North Midland Ry. Co., *vs.* The Queen (1853) 1 E. & B. 858 the Court of Exchequer Chamber at page 867 commented on this language of Lord Elden and said there was nothing in it to which it was necessary to take the least exception unless they were supposed to mean that words of permission should read as words of obligation. In Parker *v.* Great Western Ry. Co. (1844), 7 M. & G. 253, Tindal, C.J. at page 288, said " The language of these Acts of Parliament is to be treated as the language of the promoters." And see Maxwell on Statutes, 3rd Ed. 319, *et seq*: and Hardcastle on Statutes, 3rd Ed. 488, *et seq.*

My opinion briefly is this: a Dominion Corporation may obtain its powers over property in a particular province either from Parliament or from the legislature of the province or partly from one and partly from the other. In the present case by sec. 26 of its Act of Incorporation, the Company obtained from Parliament power to purchase and lease property, but no power of expropriation; it might obtain the latter power in any province from its legislature. If that be so, it follows I think that a Dominion corporation may by application to the legislature of a province have its powers over property in that province enlarged, diminished, varied or qualified in any manner whatever, whether such powers were originally obtained from the Dominion or from the province or partly from the one and partly from the other. For these reasons I am of opinion that the Company having applied for and procured this Act of the legislature, modifying its rights and powers on and over highways, etc. is as much bound thereby as the municipalities and that the Act is binding on both.

That being so, the judgment appealed from is right and ought to be affirmed.

No. 14. Certificate of Judgment allowing Appeal, 14th Sept., 1903.

No. 14.

In the Court of Appeal for Ontario.

Monday, the fourteenth day of September 1903.

Present: The Hon. the Chief Justice of Ontario, the Hon. Mr. Justice Osler, the Hon. Mr. Justice Maclennan and the Hon. Mr. Justice Garrow.

Between:

The Corporation of the City of Toronto . *(Respondents) Plaintiffs.*

and

The Bell Telephone Company of Canada . *(Appellants) Defendants.*

This is to certify that the appeal of the above-named Appellants from the judgment of the Honourable Mr. Justice Street, one of the Justices of the High Court of Justice for Ontario, pronounced on the tenth day of March 1902,

having come on to be argued before this court on the seventeenth day of November last past, whereupon and upon hearing counsel as well for the Appellants as the Respondents this court was pleased to direct that the matter of the said appeal should stand over for judgment; and the same having come on this day for judgment; it was ordered and adjudged that the said appeal should be and the same was allowed, but without costs of the proceedings herein in this court and the court below on either side; and it was further ordered and adjudged that the judgment appealed from be amended by striking out paragraphs 2 and 3 thereof and substituting the following therefor.

(2) This court doth declare that the Defendants' Act of Incorporation, 43 Victoria, cap. 67 (Dominion) and the amending Act, 45 Victoria, cap. 95 (Dominion) are within clause 10 (A) of section 92 of the British North America Act and within the exclusive legislative authority of the Parliament of Canada.

And this Court doth further declare that the powers conferred by the said Act of Incorporation as amended are not curtailed by the provisions of the Act, 45 Victoria, cap 71 (Ontario) as regards the right to construct, erect and maintain their line or lines of telephone along the sides of and across or under any highway or street of the City of Toronto for the purposes of either their local or long distance business subject however to the provisions set forth and contained in section 3 of the said Act of Incorporation as amended.

J. A. McANDREW,
Registrar C.A.

No. 15. Order allowing Bond and Appeal, 27th Feb., 1904.

No. 15.

In the Court of Appeal for Ontario.

The Honourable Mr. Justice Maclennan. In Chambers.

Saturday, the 27th day of February A.D. 1904.

Between

The Corporation of the City of Toronto *(Respondents) Plaintiffs*

and

The Bell Telephone Company of Canada *(Appellants) Defendants.*

Upon motion made this day on behalf of the above-named Respondents, upon reading the bond in the penal sum of two thousand dollars filed the 23rd day of February, 1904, and upon hearing counsel for all parties.

1. It is ordered that the said bond be allowed as a good and sufficient bond for security for the costs of the appeal of the said Respondents to His Majesty in His Privy Council and that the said appeal be and the same is hereby allowed the costs of this order to be costs in the cause.

Sgd. J. A. McANDREW,
Registrar C.A.

Ent'd O.B. 9
Issued 27.2.1904
C. S. G.

RECORD.

In the Court of Appeal for Ontario.

No. 16. Certificate of Registrar of Court of Appeal, 9th Mar., 1904.

No. 16.

In the Court of Appeal for Ontario.

Between

The Corporation of the City of Toronto . *(Respondents) Plaintiffs,*

and

The Bell Telephone Company of Canada . *(Appellants) Defendants.*

I, John Alfred McAndrew, of the City of Toronto, Registrar of the Court of Appeal for Ontario, do hereby certify to His Majesty in His Privy Council that the documents mentioned in the schedule hereto annexed comprise the Record of the Proceedings in this cause.

And I further certify that every page of such Record is marked with my signature and that the seal of the Court of Appeal for Ontario is affixed hereto with the sanction of the said Court.

And I further certify that the above-named Respondents, Plaintiffs, have given security to the Defendants upon their appeal to His Majesty in Council by a bond in the sum of $2,000 and which bond has been approved and allowed as a good and sufficient security to the Defendants for the costs of the appeal herein by the Hon Mr. Justice Maclennan, one of the Justices of this Court, under R.S.O. 1897. chap. 48, secs. 2 and 5.

In witness whereof I have hereunto set my hand and affixed the seal of the Court of Appeal for Ontario, this ninth day of March, one thousand nine hundred and four.

J. A. McAndrew.

(Seal)

Schedule.

1. Printed book of the cause as used in the Court of Appeal.
2. Type-written copy of judgment of the Hon. Mr. Justice Street referred to in the appeal book at page 10.
3. Type-written copy of the opinion of the Court of Appeal delivered by the Hon. Chief Justice Moss, the Hon. Mr. Justice Maclennan, and the Hon. Mr. Justice Garrow.
4. Type-written copy of the certificate of judgment in the Court of Appeal.
5. Type-written copy of the order of the Hon. Mr. Justice Maclennan allowing the security furnished by the Plaintiffs and allowing an appeal to be taken to His Majesty in His Privy Council.

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.*

RECORD OF PROCEEDINGS.

FRESHFIELDS,
New Bank Buildings,
31, Old Jewry, E.C.,
for the Appellants.

BLAKE & REDDEN,
17, Victoria Street, S.W.,
for the Respondents.