

The special Act (sec. 21) incorporates sec. 90 of the general Railway Act, 51 Vict. ch. 19. That section provides (a) that the company may enter into or upon any lands of Her Majesty without any previous license therefor . . . and make surveys and examinations and ascertain such parts as are necessary and proper for the line. It may be that this can be read as applicable to highways which are vested in the Crown as to the freehold; and, if so, the language is pertinent to both aspects of the case in hand, i.e., the company can enter without getting leave, but it is not absolved from preparing proper plans for public notification of what is being proposed to be done.

Section 145 of the general Act (also incorporated) enacts that the deposit of map, plan, and book of reference shall be deemed a general notice to all parties of the lands (i.e., privilege or easement) which will be required for the line.

The sections of the Railway Act of 1888 applicable to maps and plans are also in general terms incorporated with the special Act (sec. 18). These sections are from 123 to 131, as now important. By sec. 124, the map, plan, and book of reference are to be deposited at the Department of Railways and are to be examined and certified by the Minister and transmitted to the different localities interested; any person may resort to and take copies of these documents (sec. 126); and, by sec. 134, till such original documents have been so deposited, the construction of the line shall not be proceeded with.

Had this public notice been given, it would have been open for the authorities of the defendants to have intervened before the Minister or otherwise, and have pointed out the obvious dangers likely to arise from the proposed method of construction over the local electric lines of the defendants. At present, without some safeguard of preliminary character, the company assert the right to go off-hand on the ground, place the poles over the line of the defendants without notification or supervision of any kind, public or private. The Bell Telephone Act provides for the sanction of the municipal authorities in cities, towns, and villages as to the height of the poles and the affixing of the wires, as to the number of lines of poles along the streets of a town, and as to not duplicating poles along the same side of a street, and the like safeguards, which are conspicuously omitted from the Act of 1902. It cannot be because the danger of electrical transmission is being lessened by the efflux of time, but perhaps because there was not sufficient vigilance exercised during the passage of this Act in the interests of public safety.

According to the best opinion I can form, the law requires