

steam railroad imposes a new burden,¹ and that a horse railroad does not;² and the distinction, which is one of degree, turns on the different effects produced on the streets occupied by the railroads, and on the beneficial use of abutting property. In allaying the legal position of the electric railroad to that of the horse railroad, the Michigan court seems to have made assumptions and statements of fact which will not bear close examination. Grant, J., tells us that electric cars are not more noisy, do not cause greater obstruction or hindrance, impose no greater burden, except by their poles, than horse-cars; and that they do not occupy more space than horse-cars with the horses that draw them. From these propositions we must, with all deference, dissent. The noise and jar of the ordinary electric cars, often joined in trains, the speed with which they run, the danger of driving along and upon the tracks, or even across them, the risk of injury or death from contact with broken wires, the unsightliness of the poles and cars and cross-wires and guard-wires and trolley-wires, are all matters of common knowledge.

That telegraph and telephone poles are an additional servitude is fairly well settled,³ the cases to the contrary, such as *Pierce v. Drew*,⁴ in Massachusetts, being based on highly artificial analogies between the ancient and modern use of highways for purposes of communication. To avoid this class of decisions, the Michigan court would say, with the Supreme Court of Rhode Island,⁵ that telegraph and telephone wires are only very

¹ *Mahon v. Ry. Co.*, 24 N. Y. 653; *Kucheman v. Ry. Co.*, 46 Ia. 366; *Chamberlain v. Ry. Co.*, 41 N. J. Eq. 43; *Terre Haute, &c., Ry. Co. v. Scott*, 74 Ind. 29; *Indianapolis Ry. Co. v. Hartley*, 67 Ill. 439; *Stetson v. Ry. Co.*, 75 Ill. 74; *Imlay v. Ry. Co.*, 26 Conn. 249; *Adams v. Ry. Co.*, 18 Minn. 260 (see also 22 Minn. 149); *Cox v. Ry. Co.*, 48 Ind. 178; *Carson v. Ry. Co.*, 35 Cal. 325 (see also 41 Cal. 256); *Blerch v. Ry. Co.*, 43 Wis. 183; *Laurence Ry. Co. v. Williams*, 35 Ohio St. 168; *Williams v. New York Central Ry. Co.*, 16 N. Y. 97; etc. See also cases and authorities cited in *Taggart v. Ry. Co.*, 19 Atl. Rep. 326.

² *Elliot v. Fairhaven Ry. Co.*, 32 Conn. 579; *A. G. v. Met. Ry. Co.*, 125 Mass. 515; 2 *Dillon on Mun. Corp.*, 868, and cases cited in notes; *Shea v. Ry. Co.*, 44 Cal. 414; *Citizens' Coach Co. v. Camden H. R. Co.*, 33 N. J. Eq. 267.

³ See 2 *Dillon on Mun. Corp.*, § 698a, and cases cited.

⁴ 136 Mass. 75.

⁵ *Taggart v. Ry. Co. (R. I.)*, 19 Atl. Rep., 326.