

SEPTEMBER 14TH, 1903.

C. A.

## OTTAWA ELECTRIC CO. v. CONSUMERS' ELECTRIC CO.

*Municipal Corporations—Contracts with Electric Light Companies—Use of Streets—Poles and Wires—Proximity—Rival Companies—Injunction—Apprehension of Danger—Judgment—Limiting Relief.*

Appeal by plaintiffs from judgment of MACMAHON, J., 1 O. W. R. 154, in so far as it was against plaintiffs in an action brought to restrain defendants from erecting or maintaining poles and wires in certain streets in the city of Ottawa, in such proximity to those of plaintiffs' as to interfere with the proper working of their system, or to constitute menace and danger to plaintiffs or to their employees or to the general public. The judgment was in favour of plaintiffs as prayed, but in settling the judgment a clause was inserted (by direction of the Judge) allowing defendants to maintain their wires on certain streets within the distance otherwise prohibited by the judgment, upon insulators being provided. The plaintiffs appealed from this part of the judgment. Defendants, by way of cross-appeal, contended that the action should be dismissed altogether.

A. B. Aylesworth, Q.C., and G. F. Henderson, Ottawa, for plaintiffs.

W. Nesbitt, K.C., and Glyn Osler, Ottawa, for defendants.

The judgment of the Court (MOSS, C.J.O., MACLENNAN, GARROW, and MACLAREN, JJ.A.), was delivered by

GARROW, J.A.—This is an appeal by the plaintiffs from the judgment of MacMahon, J., awarding to the plaintiffs an injunction restraining the defendants, a rival electric company, from so placing their poles, wires, etc., as to interfere with the poles, wires, etc., of the plaintiffs, the elder company; but, as the plaintiffs allege, unduly limiting the injunction in paragraphs 7 and 8 of the judgment. And a cross-appeal by the defendants against the whole judgment.

Dealing first with the latter, I am of the opinion, after a perusal of the evidence, that, while the case can scarcely be called a strong one, the apprehension on the plaintiffs' part