

incorporation of banks, which, although they may be local, must be incorporated by the Dominion Parliament.

Under these provisions a Bank may be incorporated by the Dominion Parliament to do business in the city of Quebec, or in the city of Montreal, or in both, although within the Province of Quebec; but the Dominion Parliament could not authorize the establishment of a Telegraph Company in the cities of Quebec or Montreal, nor between any two points within the Province of Quebec, unless it declared that such Telegraph was for the advantage of the Dominion, or for the advantage of at least two of the Provinces of the Dominion. For the same reason, the Dominion Parliament could not authorize the establishment of a Telegraph wholly within the Province of Ontario or of any of the other Provinces, for such work and undertaking, being entirely within one Province, is expressly declared to be subject to the exclusive control and legislation of the Province within which it would be established.

If the Dominion cannot incorporate separate companies for the purpose of establishing separate lines of telegraph in one or two or more Provinces unless such lines are to connect two or more Provinces, or extend beyond the limits of one Province, or are expressly declared to be for the advantage of the Dominion or of two or more Provinces, it is because by their nature these separate Telegraph lines are local works and undertakings subject to the exclusive control of the legislature of the Province in which they are situated, and if the Dominion cannot authorize separate Companies to establish such separate lines of Telegraph, whence could it derive its authority to incorporate one Company to establish those several works? It is evident that the nature and character of such undertakings cannot be altered from being local undertakings to become general by the mere fact that they are to be established by one Company instead of several Companies. Their character is determined by the location and object, or by an express declaration of the Dominion Parliament, and not by the accident that the same Company is authorized to carry on similar works in different Provinces.

In considering the nature and character of the Bell Telephone, we must apply the same rules as are applicable to telegraph lines,—they

being of the same character, and therefore included in the general terms of other works and undertakings, to be found in S.S. 10 of S. 92 of the Act. From the case reserved by the learned Judge who presided at the trial, it appears that the Bell Telephone Company have extended their poles and wires from Bridge-water to Montmorency, and are using them for the purpose of their business in communicating within and between those points, both of which are within the District and Province of Quebec.

It is true that by its Act of Incorporation passed by the Dominion Parliament in the 43rd year of Her Majesty's reign, c. 67, the Bell Telephone Company is authorized to establish telephone lines in the several Provinces of the Dominion, but the Company is not incorporated for the purpose of connecting two or more Provinces by the telephone lines, and it cannot therefore establish independent lines of telephone in each Province, not connecting the one with the other. Each such work would be a local work or undertaking, and subject to the legislature of the Province in which it might be situate.

To empower the Dominion Parliament to give to the Bell Telephone Company the right to impede the circulation and traffic in the streets of Quebec, one of two conditions would have been required, that the Telephone Company should have been incorporated for the purpose of connecting by telephone lines the Province of Quebec with any other or others of the Provinces of the Dominion, or of extending its line of telephone beyond the limits of the Province of Quebec, or that it should have been declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more Provinces. Neither of these conditions existing, it follows that the Parliament of the Dominion had no power to confer on the Bell Telephone Company the right to erect telegraph poles in the streets of the City of Quebec, which are such an impediment as to be adjudged by a petty jury to be a nuisance.

It is not necessary to decide whether or not the whole Act of incorporation is *ultra vires*; it is sufficient for this case that the authority given to erect telegraph poles in the streets of the City of Quebec be *ultra vires*, to maintain the conviction pronounced against the defendant by a petty jury.