there was not a tittle of evidence to support the assumption —that the action of the police authorities of which the appellant complains was taken under the impression that it was authorized by that letter.

We are of opinion that the letter of the Mayor of the 2nd October did not authorize nor assume to authorize any such action as was taken by the police authorities, and that the resolution of the Board of Control was not a ratification of what the Mayor had done, nor would it have been even if it had been communicated to the police authorities, any authority for their action.

The authority in both cases was to prevent the erection of the poles or towers and was not and cannot by any process of reasoning be treated as an authority to arrest or to prosecute anybody.

What really happened, I have no doubt, was that in carrying out the Mayor's directions to the Chief Constable the appellant resisted the members of the police force and in so doing were, in the opinion of the police sergeant, guilty of disorderly conduct within the meaning of the city by-law, and that the officer, as a conservator of the peace and not under the authority of the Mayor's letter, did the acts of which the appellant complains.

The appellant's case, therefore, failed on the facts; but I agree that if it had been otherwise, and the authority given by the Mayor had been to arrest, he must have failed, for the reasons given by the learned Judge; the case being not distinguishable from *Kelly* v. *Barton* (1895), 26 O. R. 608; 22 A. R. 522.

The appeal should be dismissed with costs.

HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE and HON. MR. JUSTICE HODGINS, agreed.