

the defendants. As to the other lines of poles owned by the defendants at the time of the agreements, namely, the line from Deseronto Junction to Napanee, and the line from Napanee via Yarker to Tamworth, the plaintiffs are by the agreements given the right to string wires along these poles, but they are not bound to do so, nor are they bound to keep the wires strung along these poles in repair, it being competent for them to erect pole lines of their own on the defendants' right of way under the terms of the agreements. There being then in the agreement no obligation on the part of the plaintiffs to keep the defendants' poles in repair, item (c) of the counterclaim fails.

As to item (d) of the counterclaim, which asks for a declaration that poles erected by the plaintiffs on the railway right of way in excess of those mentioned in the agreements are the property of the defendants, subject to the plaintiffs' right to string wires thereon, there was no evidence shewing the erection by the plaintiffs of such poles. The agreement gives the plaintiffs the right to erect lines of poles along the right of way of the railway company for telegraph and telephone purposes. The number of lines which for such purposes they may so erect is not limited, and therefore whatever lines for such purposes they erect remain their property, subject to the defendants' rights under the agreements.

The plaintiffs' claim is dismissed with costs, and items (a) and (b) of the counterclaim are allowed, and items (c) and (d) of the counterclaim are disallowed. Owing to the divided success of the parties in respect of the counterclaim, no costs of the counterclaim are awarded to either party.

---

CARTWRIGHT, MASTER.

JANUARY 19TH, 1909.

CHAMBERS.

ONTARIO ASPHALT CO. v. COOK.

*Pleading—Statement of Defence—Motion to Strike out—Action by Judgment Creditors to Set aside Conveyances of Land—Defence that Judgment Satisfied—Qui tam Action—Amendment.*

Motion by plaintiffs to strike out all of the statement of defence of defendant B. A. Cook, except the first two paragraphs.

A. G. Ross, for plaintiffs.

J. M. Ferguson, for defendant.