

SEPTEMBER 14TH, 1902.

C.A.

CITY OF TORONTO v. BELL TELEPHONE CO. OF CANADA.

Constitutional Law—Incorporation of Companies—Dominion Objects—Interference with Property and Civil Rights in Province—Telephone Company—Right to Carry Poles and Wires along and across Streets—Consent of Municipalities—Dominion and Provincial Acts—Construction—Estoppel.

Appeal by the defendants from the judgment of STREET, J., 3 O. L. R. 465, 1 O. W. R. 192, in favour of plaintiffs, upon a special case stated by the parties, holding that the appellants had not the right to carry any poles or wires (whether above or under ground) along any street in the city of Toronto, without first obtaining the consent of the municipal council of the city.

The appeal was heard by ARMOUR, C.J.O., OSLER, MACLENNAN, MOSS, and GARROW, J.J.A., on the 17th November, 1902.

W. Cassels, K.C., G. Lynch-Staunton, K.C., and S. G. Wood, for appellants.

C. Robinson, K.C., and J. S. Fullerton, K.C., for the plaintiffs.

ARMOUR, C.J.O., was appointed a Judge of the Supreme Court of Canada shortly after the argument, and died before judgment was given. MOSS, J.A., became Chief Justice in December, 1902.

MOSS, C.J.O.—Upon the case stated by the parties two questions arise for decision.

The first is whether the work or undertaking for the prosecution of which the defendants were incorporated by the Act 43 Vict. ch. 67 (D.) is one falling within the description of a work or undertaking connecting the Province with any other of the Provinces or extending beyond the limits of the Province, within the meaning of clause 10 (a) of sec. 92 of the B. N. A. Act.

If this question is answered in the affirmative, then the work or undertaking falls within the exclusive legislative authority of the Parliament of Canada under clause 29 of sec. 91 of the Act, and thereupon arises the second question, viz.,