

## COURT OF APPEAL (ENGLAND).

June 12, 13, 1884.

Before BRETT, M.R., BOWEN, L.J., FRY, L.J.

THE BOARD OF WORKS FOR THE WANDSWORTH DISTRICT V. THE UNITED TELEPHONE COMPANY (LIMITED).

*Metropolis Local Management Act, 1855 (18 & 19 Vict. c. 120), s. 96—Street vested in Local Authority—Property of in Street—Right of to Prevent Wires being Carried over Houses and across Street.*

Appeal from the judgment of STEPHEN, J., at the trial without a jury.

The question raised in the action was, whether the plaintiffs, in whom a street was vested under the Metropolis Management Act, 1855, (18 & 19 Vict. c. 120), s. 96, were entitled to an injunction to prevent the defendants from carrying wires diagonally across the street at the level of the chimneys, the owners of the houses not objecting, and there being neither nuisance nor appreciable danger.

STEPHEN, J., gave judgment for the plaintiffs.

The defendants appealed.

Their LORDSHIPS allowed the appeal, holding that the principle laid down in *Coverdale v. Charlton* (48 Law J. Rep. Q. B. 128) applied; that only such a property in the street, both with regard to depth below and height above, was vested in the plaintiffs as was necessary for the ordinary user of the street as a street; and that no interference with that property had been established in this case, inasmuch as no nuisance had been created, nor was there any appreciable danger.

## A JUDICIAL REMINISCENCE.

In 18— (the year is now forgotten) a shocking crime was committed in the county of Jefferson, near the Bullitt county line, being the murder of an entire family, named Joyce, and the burning of their dwelling. The family was an humble one, but highly esteemed. Of course the community was profoundly excited. A negro man living in the neighbourhood was suspected of the crime, and arrested. A confession of guilt was extracted from him. Admitting his own

guilt, he implicated three other negroes as participators in the deed, and all four were jointly indicted.

On the motion of the Attorney for the State, who represented that the party confessing was a necessary witness for the Commonwealth, a *nolle prosequi* was ordered as to him, in order to use his testimony. On the trial, he was introduced and sworn as a witness. I deemed it my duty to charge him that he was no longer in any danger of prosecution for the crime preferred against him and others; urged him to tell the whole truth uninfluenced by any confession he may have made, to retract all that was false, and took much trouble to assure him that he would be protected by the court. He was the main witness for the prosecution. He adhered to the statement he had previously made, and directly implicated the three other negroes. He further developed the fact that his confession was extorted from him by threats and the severest infliction of bodily pain.

The defence of the three who were tried consisted mainly of satisfactory, if not conclusive, evidence of an *alibi*. The jury empanelled was composed of highly respectable citizens, of more than ordinary intelligence. In the progress of the trial I felt called upon to charge the jury that the testimony of an accomplice, unless sustained by corroborating testimony, was at best entitled to but little weight, and, having been extorted in the manner detailed, was entitled to no weight whatever. This instruction was given *ex mero motu*, and in the most emphatic manner of which I was capable. It was quite apparent that the populace was deeply excited, and that the spirit of the mob was ready to burst forth. The court-room was densely packed with an infuriated people.

The case was argued at length with a spirit, on behalf of the Commonwealth, not calculated to allay the feverish and lawless temper of the crowd, and, on the part of the defence, which showed but too clearly a slavish fear of an outraged public sentiment. Seeing distinctly the portending storm, I quietly instructed the sheriff and his deputies, and also the jailer, to remove the prisoners, one at a time, as quietly as possible to the jail.