

Several years ago the Bell Telephone Company, incorporated under 43 Vict. ch. 67 (D.), introduced their system into that town, and strung wires upon poles erected by them upon several of the streets, amongst them Hellems avenue. This they had the right to do without the consent of the town: *City of Toronto v. Bell Telephone Co.*, [1905] A. C. 52.

The Canadian Pacific Railway Company, incorporated by 44 Vict. ch. 1 (D.), are by sec. 16 of that Act authorized to construct and maintain a line of telegraph connected with the line along their railway, and use this for commercial purposes. At least as early as 1887 they had constructed a line of telegraph so connected which ran through Welland, and, amongst other streets, on Hellems avenue. This was and is one of the main channels of communication between Toronto, Buffalo, and Detroit. No question is raised by the defendants as to the right of these two companies to use the streets as they have done.

For convenience the two companies have been and are using each other's poles on the east side of Hellems avenue. At the point in question in this action the poles belong to the Canadian Pacific Railway Company; they each have 4 cross arms, the upper two carrying 4 wires each of the Canadian Pacific and the lower two the Bell Telephone Company's wires, 10 and 4 respectively—the poles being about 38 ft. 6 in. high out of the ground.

About two weeks ago the defendant company, a company buying power and distributing it, having received permission from the town (by-law 244) to erect and place a transmission line along and over the streets of Welland, began a line of poles along the east side of Hellems avenue as far as Grove street, along which street it was intended to turn east to another street running south. The intention was to run two sets of wires, the upper carrying 12,000 volts and the lower 2,200 volts, either being admittedly a dangerous current. In doing so they erected two poles about 53 feet high, having three gains cut therein for cross arms, and these poles actually touch the wires of the plaintiffs.

An interim injunction was applied for by the Canadian Pacific Railway Company, and granted by the Chancellor;