

Judgment for plaintiffs against defendants Allan and Her setting aside the sale with costs.

MEREDITH, J.

JULY 12TH, 1904.

TRIAL.

BELL TELEPHONE CO. v. TOWN OF OWEN SOUND.

*Municipal Corporations—Telephone Poles and Wires in Streets
—Power of Interference—Good Faith—Collateral Purpose
—Enforcing Tax — Injunction — Federal and Provincial Legislation—Underground Wires— Supervision.*

Action to restrain defendants from interfering with certain work of plaintiffs in the town of Owen Sound.

G. Lynch-Staunton, K.C., for plaintiffs.

A. B. Aylesworth, K.C., for defendants.

MEREDITH, J.—The facts of this case are simple and free from doubt. Plaintiffs' system of telephone communication has been in operation in defendants' municipality for some years, and, as usual in this country, by means of overhead wires upon wooden poles. Their office was upon the main street of the town, and the wires were carried into it from two poles—carrying the wires from opposite directions over the main street—on the opposite side of the street to a pole upon the same side, and thence into the office. They removed from that office into a new one, next door to it, and so it became necessary to move the wires, and that plaintiffs proposed doing by putting them underground, instead of overhead, thus removing one at least of their large and anything but picturesque poles, and all the danger and unsightliness of a great number of wires crossing the main street in two directions.

The thing was so obviously better for every one concerned that it is impossible to imagine any objection in good faith to it. In the interests of the public and in the interests of defendants nothing but advantage could come from thus changing the mode in which the wires crossed the thoroughfare. It is plainly insincere . . . to suggest that the road or the sidewalk would or could be injured by the work if done even with ordinary care. It could be done in a few hours, if need be, without inconvenience to traffic at all, and without interfering in the least degree with the sidewalk or curb or gutter, or doing a particle of injury to any of them or to the roadbed. The road is but a macadamized one, and one that