

Macdonald, J.]

[Dec. 14, 1910.]

TOWN OF SELKIRK v. SELKIRK ELECTRIC LIGHT CO.

*Municipality—Use of streets by electric light company after expiration of time limited—Injunction—Order to remove poles and wires—Estoppel.*

The defendant company had acquired the rights and business of a company which had in 1891 secured the right to erect poles and wires in the streets of the town of Selkirk and to carry on the business of supplying electric light and power in the town for a period of ten years. After the expiration of that period, and until the year 1909, the defendant company and its predecessors in title continued the business and erected from time to time new poles and wires in the streets without procuring any extension of the franchise, but also without any action being taken by the town to prevent the carrying on of the business.

*Held*, 1. The town was not estopped from passing a by-law in 1909 revoking and terminating the rights and privileges previously granted and then exercised by the defendant company and requiring the immediate removal of all their poles and wires from the streets, and was entitled to a declaration that the defendant company had no right any longer to maintain its system, an injunction to restrain it from maintaining the same or erecting poles or wires or transmitting electricity within the town, and an order requiring the company to remove their poles and equipment from the streets of the town.

2. The Attorney-General was not a necessary party to the action.

*Saugeen v. Church Society*, 6 Gr. 538, and *Fenelon v. Victoria Ry. Co.*, 29 Gr. 4, followed.

*Heap and Stratton*, for plaintiffs. *Wilson, K.C.*, and *Hamilton*, for defendants.

Mathers, C.J.]

[Dec. 23, 1910.]

CLARK v. WATERLOO MANUFACTURING CO.

*Sale of goods—Sale of Goods Act—Warranty—Implied condition.*

Action for breach of warranty of threshing machinery consisting of an engine, separator and several other articles sold by defendants under an agreement in writing containing the following among other clauses:—

"The said machinery is warranted to be made of good material, to be durable, and, with good care, to do good work if properly