

or light, as fully and effectually as the circumstances require, brought this action against the Municipal Corporation of North Toronto for an injunction to restrain that body from interfering with or preventing the plaintiffs in the erection of poles and lines of wire in and along Eglinton avenue, a highway within the corporation limits, or, in the alternative—by amendment asked for at the trial—for a declaration that they were entitled to erect their poles and wires for the transmission of electricity upon and along the public streets of the municipality, without the leave or license of the defendants.

The learned Chancellor awarded the plaintiffs the latter relief, subject to certain conditions as to depositing plans and books of reference; and obtaining the approval of the engineer of the Dominion Board of Railway Commissioners thereto.

The plaintiffs were incorporated by 2 Edw. VII. ch. 107 (D.), which was assented to on the 15th May, 1902. Section 21 of the Act declares that sec. 90—together with certain other sections—of the Railway Act, shall apply to the plaintiffs and their undertakings, in so far as the said sections are not inconsistent with the special Act.

The Railway Act in force at that time was 51 Vict. ch. 19, which was assented to on the 22nd May, 1888. But, between that date and the date of the Act incorporating the plaintiffs, a number of amendments to the earlier Act had been made; and, among others, sec. 90 was amended by adding thereto a new sub-section.

This enactment is contained in the first sections of 62 & 63 Vict. ch. 37, which was assented to on the 11th August, 1899. When, therefore, in 1902, sec. 90 of the Railway Act was incorporated into the plaintiffs' incorporating Act, the sub-section added by 62 & 63 Vict. ch. 37 formed part of the enactments which were made to apply to the plaintiffs and their undertakings, in so far as they were not inconsistent with the incorporating Act.

At the trial, the existence of this sub-section appears to have been overlooked, and the learned Chancellor's attention was not directed to it. . . . Its language appears to render it applicable in many respects to the case in hand. To begin with, it specifies and deals with the case of companies empowered by Parliament to construct and maintain lines for the conveyance of light, heat, power, or electricity—that is to say, some of the very objects for which the plaintiffs were incorporated. And, with regard to that subject, it enacts that "when any company has power by any Act of the Parliament of Canada to construct and maintain . . . lines for the conveyance of light, heat,