

cars under a provision that, "insofar as the terms and conditions of the agreement relate to the operation, conduct and management of said railway lines or system or any part thereof, the same and the fulfilment of same shall be conditions precedent to the continued enjoyment" of such privileges and rights.

2. If the agreement had fully provided for such forfeiture, the city had waived it by passing by-laws fixing schedules for the running of the cars, by calling on the company to proceed at once with the construction and operation of new lines, which were accordingly built and subsequently operated at great expense to the company, and by accepting five per cent. of the gross earnings of the company payable under the agreement and aggregating about \$100,000, all these things having been done after the city had full knowledge of the alleged breach of the agreement.

3. The alternating current brought into the city from the power plant at Lac du Bonnet is used to drive electric generators at the Mill Street Station in the city and these develop the direct current used in propelling the cars. This direct current is power produced in the city and the company has the right to use it to operate its street cars without the consent of the city and to erect poles and wires for that purpose, but not for any other purpose.

4. The defendants had acquired the right to develop electric energy outside the city and to distribute it in the city through poles and wires, but only with the consent of the city; and, as that consent had never been given or applied for, an injunction should be issued to prevent the defendants from erecting poles or wires on the streets, lanes or highways of the city for the transmission of electric current developed outside the city limits for the purposes of electric lighting or commercial power, and requiring the removal of any poles and wires so erected.

5. The issue by the city engineer of a permit for the erection of the poles and wires objected to was not intended to authorize the use of them for electric power, and the engineer had no authority to give any permit that would obviate the necessity of the consent of the city being obtained.

6. The city was not estopped from applying for the injunction by having taken and paid for power transmitted over such poles and wires from the plant outside the city without its consent and against its protest.

Wilson, K.C., and Robson, K.C., for plaintiffs. Munson, K.C., and Laird, for defendants.