

Rights of Bell Telephone Company.

(Concluded from page 95.)

Canada enacted a statute intituled "An Act to Incorporate the Bell Telephone Company of Canada," 43 Vict. chapter 67; (2) on March 10, 1882, the Ontario Legislature enacted a statute intituled, "An Act to confer certain powers upon the Bell Telephone Company of Canada," 45 Vict. chapter 71; (3) on May 17, 1882, the Parliament of Canada enacted a statute intituled, "An Act to amend the Act incorporating the Bell Telephone Company of Canada," 45 Vict. chapter 95; (4) the company carries on a long-distance telephone business and a local telephone business in various places in the Dominion, including the City of Toronto, operated by means of lines of telephone, as hereinafter defined. The local business consists of furnishing communication between persons using telephones in a city, town or other place where a central exchange exists. There are central exchanges to which run both the local lines and the long-distance lines. Any person in Toronto may use the long-distance lines for the purpose of speaking to a person outside of Toronto, by going to a central exchange and paying the usual charge therefor, and any telephone subscriber in Toronto, desiring to speak to a person outside of Toronto, may use the long-distance lines for the purpose by having connection made with them through the central exchange, and paying such usual charge. In doing this he would use his own instrument and line to the central exchange, and the long distance line from there. The long-distance lines are not used in local business. A line or lines of telephone consist of poles with wires affixed thereto, or of conduits with wires carried through the same; (5) the defendants contend that under and by virtue of the statutes above mentioned, except as to any pole higher than forty feet above the surface of the street, or any wire less than twenty-two feet above the surface of the street, they have the right to construct, erect and maintain their line or lines of telephone along the sides of or under any public highways, streets, bridges or watercourses in the City of Toronto; that the assent of the city is not essential to the exercise of such right, and that if, after notice in writing, to the city, of the intention to construct, erect and maintain such line, the engineer or other officer appointed by the council, or the council, omits to give reasonable directions as to the location of the line or lines and the opening up of the streets for the erection of poles or for carrying the wires underground, and to supervise the work, the defendants may lawfully proceed with the work or may procure a mandamus or order of the court to compel the engineer or other officer of the council to give such directions; (6) the plaintiffs contend that the defendants have no right to construct, erect or maintain their line or lines of telephone along the sides of or under any public highways, etc., without first obtain-

ing the consent of the municipal council, which consent the council may withhold, and if the council fails to consent the defendants cannot exercise such powers within the city; (7) the plaintiffs further contend that, in any event, the defendants have no right to construct, erect and maintain a line or lines of telephone along the sides of or under any public highways, etc., to carry on a local telephone business in the city, without first obtaining the consent of the municipal council; (8) the plaintiffs further contend that the statutes of the parliament of Canada, above referred to, do not confer upon the defendants the powers contended for by the company, but if they purport to confer such powers, they are to that extent *ultra vires*; (9) the plaintiffs further contend that, in any event, the line or lines of telephone can only be carried along the sides of or under any public highways, etc., subject to the control of such highways, etc., by the corporation, and subject to provisions for the protection of the public thereon, and in conformity with such terms, conditions and regulations as the municipality may from time to time enact or prescribe; (10) on the facts stated the court is asked to declare the rights of the plaintiffs and defendants in regard to the various contentions above stated. Held, that the power of the Canadian Parliament extends to the granting of charters of incorporation to companies with Canadian, as distinguished from Provincial, objects, and to declaring the objects of their incorporation. But, except in the case of companies incorporated for carrying into effect some of the heads mentioned in section 91 of the B. N. A. Act, the mere fact of a Canadian incorporation does not carry with it the right of interfering with property and civil rights in the different provinces in any way, no matter how strongly the objects of incorporation may seem to require such interference for their fulfilment. It is the work on the ground, and not the terms of the charter, which determine the question of legislative control, subject always to the power in reserve of the Canadian Parliament to assume authority over even purely local works, whether complete or contemplated, by declaring them for the general benefit: *Reg. v. Mohr*, 2 Cart. 257; *Citizens' Insurance Co. v. Parsons*, 1 Cart. 265; *Colonial Building Co. v. Attorney-General for Quebec*, 3 Cart. 118; *Tenant v. Union Bank* (1894) A. C. 45. It is to be observed that neither in the recital to the Provincial Act nor in the special case is it alleged that the works of the defendants connected the Province of Ontario with any other Province of the Dominion, or extended beyond the limits of this Province at the time the Act was passed. While the British North America Act, section 92, subsection 10, clause (c), provides for the declaration that certain works are for the general advantage of Canada, and gives to that declaration the effect of withdrawing such works

from the legislative jurisdiction of the provinces, it gives no effect or meaning to a declaration that any particular Act of a legislature, or of parliament, is for the general advantage of Canada. There is, therefore, no special effect to be given to that part of the Dominion Act of 45 Vic., which declares the defendant's Act of incorporation to be for the general advantage of Canada. That Act must be treated as a legislative recognition of the defendant's original Act of incorporation, and, therefore, in effect as a practical reenactment of it. But, although it was within the power of the Dominion Parliament, upon assuming legislative jurisdiction over the defendants, to have declared the provisions of the Ontario Act, no longer binding upon them, they have not, in express terms, done so, and the defendants must, therefore, still be entitled to all the rights and subject to all the restrictions contained in it which are not found to be abrogated by absolutely inconsistent provisions in the Act of Incorporation. The clear intention of the Ontario Act is to forbid the defendants from carrying any poles or wires at all, along any street, without the consent of the council. Had the language in which this prohibition is contained, been more ambiguous the subsequent provision as to streets along which telegraph poles had been erected would not have been without weight in construing it, but there is not sufficient ambiguity in the earlier language to justify a holding that it is to be controlled by the latter. The proper construction of these Acts is to treat the Ontario Act as conferring special rights upon the defendants in regard to their works in that province, and at the same time subjecting them to the necessity of obtaining the consent of the local municipalities to the use of the streets, while leaving to their Act of Incorporation its full operation in other provinces. Should this state of things be found unsatisfactory or unworkable, the Canadian Parliament, having declared the defendant's works and objects to be for the general benefit of the whole of Canada, has full power to amend their powers in Ontario as well as elsewhere. It should be declared that the defendants have no right to carry any poles or any wires (whether such wires are above or under ground) along any street in the City of Toronto without first obtaining the consent of the municipal council, but inasmuch as the Ontario Act does not make their power to carry their wires across streets dependent upon the previous consent of the council they may carry them across the streets, either above or under ground, subject, in the latter case, to the directions of the council and its engineer or other officer, as to the location of the line and the manner in which the work is to be done, unless such directions shall not be given within one week after notice in writing, and subject to the other provisions of the Act of Incorporation. Judgment for plaintiffs with costs.