

lers or affect the other legitimate uses to which municipalities may apply them, without authority from the Legislature. The use of the municipal corporation is not limited to the surface of the streets, it extends above and below. Others cannot have their use without *authority*. Petitioners are the proprietors so far at least. Has the power, claimed by them, been granted in this case to respondents? It has in the words of the Letters Patent, but do they follow the words of the law? I take it that the Letters Patent go to this extent and no further: The respondents are incorporated and have the powers mentioned in sec. 8. Why this was not cited or rather recited in the Letters Patent, I know not; why the powers were defined except in the words of the statute, I do not know. They have the powers, privileges and immunities required for the carrying on of their undertaking. Does this give them the power to go on and place poles and stretch wires on and above every street in every city, town and municipality in the province without reference to municipal authority? Are they thus rendered entirely independent of municipal authority? Because we must, in the interpretation sought to be placed, if accepted, go to the full extent and say the municipal authorities have no control or voice over them. I cannot so read the law. The public uses of the streets are in modern times greatly extended. Respondents were incorporated as a telephone company with powers to do a general business. Is it *absolutely necessary* to do business that they should use the streets, and have they, under Letters Patent, that right without any control from the municipal authorities? I take it not; and they seem in their action to have recognized this, for they say, and prove, that, instead of doing what they claim the right to do, to construct, maintain and operate a line or lines of telephone through, under or along the sides and across streets, highways, bridges or water courses of towns, cities or other incorporated or rural municipalities in said province, wherein said association shall at any time carry on its operations, provided the passage or traffic in said streets or highways shall not be impeded or interfered with by the location of poles and wires by the association, they

have largely used private property instead of the streets; but they claim that in all municipalities they may go on with their work independent of the municipal authority, leaving courts to say if they interfere with the passage or traffic over the said streets; limiting the use of such streets solely to that of *passage and traffic*, which originally may have been the rule, but not now. If this is correct by the law, respondents have greater powers than any other incorporation which can use our streets for any purpose connected with lights or even water. For instance 4798 Revised Statutes, Q., sub-sec. 6, Gas and Water Companies, must in their declaration state the name of the city, town, village, in which the operations of the company are intended to be carried on, and, 4800, 4801, can only be incorporated when the municipality pass a by-law authorizing such company to lay down pipes for the conveyance of water or gas or both under the streets, squares, etc. Again, the law in incorporating the Bell Telephone Company, who I may here remark, so far as this contest is concerned, have nothing to do in this case (though referred to both in the pleadings and evidence),—see 44-45 Vic. chap. 76,—makes them subject to oversight and control by the municipality in the construction of their works, etc. See also for Natural Gas Companies, 49-50 Vic. chap. 74, sec. 3, now 4895 Revised Statutes. The exception which I find is for Electric Telegraph Companies, 4905, taken from Consolidated Statutes Canada, chap. 67, sec. 8, Railways, 5132, sub-sec. 5, but highways must be restored to their former state. These powers are given by express legislative enactment, not by implication.

A telephone company may do a business without using streets, but of course not a large business, and I may here say that respondents have evinced, and it is greatly to their credit, a desire to interfere as little as possible with the streets of Sherbrooke, but they are now asserting a right to use them independently of the municipal corporation, and the legal question is one which I have to decide. With the comparatively new uses that are made of electricity the danger to human life from the use of such a power, the responsibility which might devolve upon