

ing such consent, without the leave of the Board of Railway Commissioners. He found that the plaintiffs had suffered no actual damage, and, until they did so, he held their only remedy was to apply to the Railway Commissioners to have the poles removed; and dismissed the action with costs.

On behalf of the company it was argued before us that, as the company was given power, under sec. 3 of 43 Vict. ch. 67, to "construct, erect, and maintain its line or lines of telephone along the sides of and across or under any public highways, streets, bridges, watercourses, or other such public places, or across or under any navigable waters," and, as bridges are not mentioned in sec. 248 of the Railway Act, the company had the same rights with respect to this bridge as it was held by the Privy Council to have with respect to the streets of Toronto, in *Toronto Corporation v. Bell Telephone Co.*, [1905] A.C. 52.

Sub-section 2 of sec. 248 of the Railway Act provides that, except as therein provided, a telephone company shall not "construct, maintain, or operate its lines of telephone upon, along, across, or under any highway, square, or other public place within the limits of any city, town, or village, incorporated or otherwise, without the consent of the municipality." Sub-section 3 provides that, if the company cannot obtain such consent on terms acceptable to it, it may apply to the Board of Railway Commissioners.

The trial Judge was of opinion that the omission of the word "bridge" in sub-sec. 2 had not the effect that the company claimed; and I think he was clearly right. The bridge in question is a part of the highway, and is covered by the language of the sub-section.

The provisions of these two sub-sections do not apply to long distance or trunk lines. The location of these is, by sub-secs. 4 and 5, subject to the direction of the municipality, or of its officer, unless they, after a week's notice in writing, shall have omitted to prescribe such location and make such direction.

It is admitted that some of the lines in question are local, and some are long distance or trunk lines. With regard to the former, the company had no right to proceed without the consent of the plaintiffs or of the Board. With regard to the latter, they should have given the week's notice or have received the direction of the municipality or its officer. With respect to both classes of lines, they were mere trespassers; and I can find nothing in the law requiring the plaintiffs to apply to the Board, or ousting the jurisdiction of the Courts.