

Evidence was adduced by the appellant establishing that on the 30th October, 1912, he was arrested by Sergeant Martin, a member of the police force of Toronto, and afterwards taken to the police station; that the reason for the arrest was the refusal of the appellant to stop the work which he was superintending of erecting steel poles and putting up transmission wires on a city street for the Toronto and Niagara Power Company. It was also shewn that McKenney acted in obedience to the direction of Sergeant Verney, acting Inspector of No. 7 Division, and that the latter acted under the written instructions of the Chief Constable.

It was proved that on the 31st October, 1912, McKenney laid an information before the acting Police Magistrate for the city, charging the appellant and eight other men with having been disorderly, contrary to a city by-law; that they were remanded from time to time until the 30th of the following December, when they were all acquitted; and an endeavour was made to fix the respondent corporation with responsibility for these proceedings.

It appeared in evidence that previous to the arrest of the appellant there had been disputes between the respondent corporation and the power company as to the latter's right to erect its poles in the city streets; that on the 2nd October, 1912, the Mayor had written to the Chief Constable authorising him "to prevent the erection of certain steel towers by the Toronto Power Company," and that an attempt on that day to erect the poles had been stopped owing to the intervention of the police, acting under the authority of this letter. On the following day, a letter was written by the chief engineer of the power company to Mr. Harris, the respondent corporation's Commissioner of Works, in which, after stating that, owing to a misunderstanding of the company's foreman of construction, he had started to erect the poles, although he asserted that he had no intention of stringing wires, he went on to say: "I trust that you will consider this a misunderstanding rather than an attempt to put this through without your consent and apologise for the situation that has arisen;" and concluded by asking Mr. Harris to forward his consent or advise of his objection.

On the 12th October, 1912, Harris replied to the chief engineer advising him that the consent would not be given.

In the meantime, at a meeting of the Board of Control held on the 8th of the same month, a communication was read from the City Solicitor advising that he had received an application