

Municipal Freedom.

By W. D. Lighthall, M.A.,

(Concluded.)

The effects to-day of this clause and those of the constituent charters and of the operations described, are that the large population of Montreal and its vicinity are charged four times the prices for electric light and power which are current in Toronto; they are held absolutely at the mercy of the combine, which is dropping previous discounts and forcing up its prices; the streets are torn up, destroyed and overloaded with apparatus at the will of the Company; the city authorities are audaciously jockeyed out of introducing a general conduit system; the combine and the Bell Telephone Company claim to occupy practically all the available conduit space on some of the principal streets; and the people are mocked with the boast that these advantages over them are perpetual and cannot be escaped.

About the time that Montreal, Westmount, and other places were aroused concerning this charter, and I, as Mayor of Westmount, advised the Union of Municipalities, Toronto became engaged in a dispute with the Bell Telephone Company over a similar claim to occupy at will, tear up, and fill the streets with conduits and apparatus. The Company claimed this power (the reader will observe that I do not call such a power a "right") under its Dominion charter, which, it held, overrode any provincial or municipal provisions. The city resisted and Mr. Justice Street rendered judgment in its favor, holding that the Company's Dominion Acts of 43 and 45 Vic. did not do away with the obligations and restrictions contained in its Ontario enabling Act 45 Vic., cap. 71, under which municipal consent was virtually required for carrying its poles and wires along streets. In 1882 the Provincial Court of Appeal reversed this judgment by a majority decision; and in October, 1904, the Privy Council maintained the reversal. This decision, removing, as it does, every hope of Provincial protection, is of the highest importance to all municipalities in Canada and makes remedial legislation by the Dominion Parliament necessary. Such legislation is now being defied by removal of municipal control from such a company is the virtual destruction of the local franchise and of any consequent choice of service. Telephony in any locality, is by its nature a virtual monopoly. Two systems are inconvenient where they are not impracticable. The only way to get satisfaction is for the municipality to have the power of making the best bargain it can for an exclusive service. The business of the Bell Company itself, strong in capital and experience, would, in the humble opinion of the writer, be better served by its securing a system of exclusive contracts for local franchises than by the attempt to constantly combat competitors and to meet the rising public opinion against its monopoly. The long distance lines would give most satisfaction in the hands of the General Post Office.

An illustration of one of the unfortunate methods to which the Company is driven is the case of Fort William and Port Arthur. These two towns, situated close together at the western end of Lake Superior, far from other centres of population, were served for years by the Bell Company and complained of poor

second-hand apparatus and bad service. Finally they established two intercommunicating systems as municipal enterprises, under authority of the Ontario Municipal Act. A serious war of rates followed, attended by active interference of the Bell Company in the local elections, inspired attacks in the press, and other like measures. The local telephones were however very popular. To meet the competition, the Bell Company arranged with the Canadian Pacific Railway, to shut them out of connection with the two stations and the grain elevators. The Bell Company had had for some years an agreement with the Canadian Pacific Railway Company for mutual exchange of business and passes. In 1902, they remodelled this contract so as to insert the stipulation that the Bell Company should have the exclusive right of placing telephones in all stations of the railway for eight years. Hearing of this Mr. W. F. Maclean, M.P., an energetic champion of popular rights, demanded in Parliament the introduction into the Railway Act 1903, which was then under discussion, of a clause permitting any municipality or company to connect with its railway station. Hon. Mr. Blair then drew and inserted section 193, wording it as follows:

"193. Whenever any municipality, corporation or incorporated company has authority to construct, operate and maintain a telephonic system in any district, and is desirous of obtaining telephonic connection or communication with or within any station or premises of the Company, in such district, and cannot agree with the Company with respect thereto, such municipality, corporation or incorporated company may apply to the Board for leave therefor, and the Board may order the Company to provide for such connection or communication upon such terms as to compensation as the Board deems just and expedient, and may order and direct how, when and where, by whom, and upon what terms and conditions such telephonic connection or communication shall be constructed, operated and maintained."

Notwithstanding this section, the Canadian Pacific Railway refused to allow the two towns any connection, alleging the Bell contract. The towns applied to the new Railway Board. The applicants maintained that the Bell Company had no standing under the section; that the contract was against public policy, and that in any event, no damage of importance was legally or equitably suffered by either company. A preliminary judgment was rendered by the Board, in which Commissioners Mills and Bernier upheld the contention that the contract was contrary to public policy; but they were overruled by the Chairman, Mr. Blair, who as chairman was given by the Act the sole voice on legal points, and who rejected the contention and ordered proof of compensation. Another hearing was consequently held upon the latter point, the towns appearing under reserve of all objections and rights of appeal and other rights. No judgment had been rendered when this article was being written.

Another class of municipal rights were concerned in the Bill of the Toronto and Hamilton Railway in 1903 over which one of the most active lobby contests took place ever seen in the Dominion Parliament. The in-