

MIDDLETON, J.

MARCH 21ST, 1918.

*TEMISKAMING TELEPHONE CO. LIMITED v. TOWN
OF COBALT.

Telephone Company—Right to Maintain Poles and Wires in Streets of Town—Company Incorporated in 1905 by Charter Issued under Ontario Companies Act—Seal of Province—Charter Preceding Incorporation of Town—Crown Domain—Rights under Charter—Act to Prevent Trespasses to Public Lands, R.S.O. 1897, ch. 33, sec. 1—Contract with Town Corporation—Permission to Use Streets—Monopoly for Five Years—Municipal Act, 1903, sec. 331—Powers of Company—Municipal Franchises Act.

Action for declaration of the plaintiffs' right to maintain and operate their telephone system in the town of Cobalt, for an injunction restraining the defendants, the Municipal Corporation of the Town of Cobalt, from interfering with the plaintiffs' poles and wires, and for damages.

The action was tried without a jury in Toronto.

I. F. Hellmuth, K.C., M. H. Ludwig, K.C., and F. L. Smiley, for the plaintiffs.

H. H. Dewart, K.C., and W. N. Tilley, K.C., for the defendants.

MIDDLETON, J., in a written judgment, said that the defendants claimed the right to prevent the plaintiffs from using the streets of the town for their pole-lines and to require the plaintiffs to remove their poles and wires.

On the 5th April, 1905, the plaintiffs were incorporated by letters patent issued under the seal of the Province, by virtue of the Ontario Companies Act, with power "to carry on within the district of Nipissing the general business of a telephone company, and for that purpose to construct, maintain, and operate a line or lines of telephone along the sides of or across or under any public highways, roads, streets, bridges . . . or other places, subject, however, to the consent to be first had and obtained and to the control of the municipal councils having jurisdiction in the municipalities in which the company's lines may be constructed and operated and to such terms, for such times, and at such rates and charges as by such councils shall be granted, limited, and fixed for such purposes respectively."

The incorporation of the Town of Cobalt was 7 months later than the plaintiffs' charter, and the Township of Coleman was not organised until April, 1906.