

in subordination to this use, unless a contrary intent be clearly expressed ; and therefore a telephone company having no vested interest in or exclusive right to the ground circuit or earth system as against a railway company incorporated by statute, can not recover by way of damages the cost of converting from such a system to some other system which would not be interfered with by the use by the railway company of electric power.

Geoffrion, Q.C., for plaintiff.

Beique, Q.C., and *Lafleur*, for defendant.

LORANGER J.]

RASCONI v. CITY OF MONTREAL.

Municipal law—Early closing by-law—Penalty and imprisonment—Discriminating by-law—Freedom of commerce—Regulation of working hours of shop-keepers.

By c. 50 of the statutes of 1894 of Quebec every municipal council of a city or town was authorized to make by-laws ordering that during certain hours, to be fixed by the by-laws, the stores of one or more categories shall be closed and remain closed ; but no penalty was prescribed for the infraction of such by-laws. In accordance with the above statute the defendant corporation passed a by-law ordering the closing of stores during certain hours in the evening, but it excepted from the operation of the by-law those stores, among others, where fruits, confectionery, tobacco, or retail liquors were sold. The by-law provided a penalty not to exceed \$40 for its infraction, or in default of payment, to imprisonment for a term not exceeding two months. The plaintiff, who carried on a grocery business, and sold in his store fruit, tobacco and liquor by retail under a government license, applied to quash the by-law.

Held, that the statute (Que. 1894, c. 50) not having authorized municipal councils to impose a penalty, with imprisonment in default of payment, for infractions of the by-laws ordering the closing of stores, the provisions of the by-law in question which ordered such penalty and imprisonment are ultra vires the defendant corporation ; that the provisions of articles 140 and 141 of the city's charter (Que. 1889, c. 79) by virtue of which the defendant assumed this power, do not apply.

That in the absence of express statutory provision, municipal corporations cannot impose pecuniary penalties, and imprisonment in default of payment, under the authority of by-laws.

That the by-law in question is arbitrary and oppressive, and moreover makes an unjust discrimination between different classes of tradesmen selling the same articles, and orders, without just cause, the closing of stores at hours when trade can be carried on without contravening any police regulations respecting order, health, morals or public well-being ; that it restrains freedom of trade ; and that the by-law ought therefore to be held null and void.

Dupuis and *Sussier*, for plaintiff.

Roy and *Ethier*, for defendant.