

In that view only does plaintiffs' default give rise to anything in the nature of a defence to plaintiffs' action. If defendants wish to have the benefit of the principle enunciated in *Stewart v. Sullivan*, *supra*, they should proceed by way of motion. The fact of non-payment, though admitted, is no defence to the action. It follows that paragraphs 6, 7, 8, and 9, should be struck out leaving defendants to move if so advised, for a stay of proceedings. The part of paragraph 5 objected to alleges that the plaintiffs "by their use of the word registered" in their alleged trade mark, "are guilty of the indictable offence" defined in secs. 335 and 488 of the Criminal Code, and are thereby debarred from any relief in respect thereof.

I refer to the similar case of *Ont. & Minnesota v. Rat Portage L. Co.*, 22 O. W. R. 1; 3 O. W. N. 1078, 1182. There it was said at p. 2, that certain "facts stated in these eleven paragraphs were relied on by the defendants as reasons why the Court should not give the relief asked for by plaintiff," and they were, therefore, allowed to stand. At p. 5, it was said as to this that there was nothing "sufficient to justify a striking out of the pleading," per Middleton, J. And I so hold in this case. The part of paragraph 3 objected to is only useful as leading up to paragraphs 6, 7, 8, and 9. These being struck out, it follows that paragraph 3 should be curtailed as asked for in the motion. The costs of this motion will be in the cause as success has been divided.

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PRIVY COUNCIL.

JULY 24TH, 1912.

THE TORONTO AND NIAGARA POWER COMPANY v.  
THE CORPORATION OF THE TOWN OF NORTH  
TORONTO.

28 T. L. R. 563, 32 C. L. T. 826.

*Canada — Ontario — Electric Power Company — Power to Erect  
Poles to Carry Power Lines without Leave of Municipality.*

The powers given to the appellants by their act of incorporation passed in 1902, to enter upon streets for the purpose of erecting poles to carry power lines for the conveyance of electricity without first obtaining the leave and license of the municipality, are not restricted by the provisions of the Railway Acts.