

# The Ontario Weekly Notes

Vol. III.

TORONTO, FEBRUARY 7, 1911.

No. 21.

COURT OF APPEAL.

FEBRUARY 1ST, 1912.

\*COUNTY OF HALDIMAND v. BELL TELEPHONE CO.

*Municipal Corporations—Telephone Company—Right to Erect Poles on Bridge—Consent not Given by Municipality—43 Vict. ch. 67, sec. 3(D.)—45 Vict. ch. 95 (D.)—Restrictions Imposed by sec. 248 of Railway Act (D.)—Application to Board of Railway Commissioners—Trespass—Injunction—Stay.*

Appeal by the plaintiff from the judgment of LATCHFORD, J., 2 O.W.N. 1154.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, J.J.A.

T. G. Meredith, K.C., for the plaintiffs.

G. Lynch-Staunton, K.C., for the defendants.

MACLAREN, J.A.:—The plaintiffs' action was for an order compelling the defendants to remove their poles from the piers of the bridge crossing the Grand river at the village of Cayuga.

In May, 1887, the county council gave permission to the defendants to fasten a small scantling fixture to the rafters of the bridge, projecting about three feet from the side, upon which to put their wires. The wires remained there until 1907, when the defendants removed them to the other side of the bridge, stringing them upon poles inserted in the stone piers of the bridge. There were some negotiations between the parties as to allowing the poles to remain, but no agreement was come to.

By their defence, the defendants, under their charter, 43 Vict. ch. 67(D.), amended by 45 Vict. ch. 95, claimed a right to do what had been done.

The trial Judge held that, under sec. 248 of the Railway Act, R.S.C. 1906 ch. 37, the defendants could not do what had been done without the consent of the municipality, or, fail-

\*To be reported in the Ontario Law Reports.