

thereof, erected poles and strung wires thereon in the various streets, etc., throughout said city.

Clause 7 of the said by-law provides that, in order to prevent a monopoly by the company, and to avoid the erection of unnecessary poles in the city streets, the company shall, if requested by resolution of the city council, grant to any other company the privilege of stringing wires upon any poles erected by, belonging to, or under the control of the company for the supply and distribution of electricity for the purposes of light, heat, or power, such other company paying for the privilege such compensation as may be fixed by arbitration. The said section goes on to provide that the company, meaning the plaintiff company, shall allow the city corporation, without compensation, to string wires on their poles for their fire alarm or police signal systems, or for power or lighting purposes, whenever required to do so by a resolution of the council.

By an agreement bearing date the 1st December, 1913, between the Hydro-Electric Power Commission of Ontario and the Municipal Corporation of the City of St. Catharines, the Commission agreed to deliver electrical power to the corporation on the terms in the said agreement set forth.

On the 6th April, 1914, the following resolution was passed by the city council: "That, under and pursuant to section 7 of by-law number 1753, intituled 'A By-law respecting the Lincoln Electric Light and Power Company of St. Catharines Limited,' passed on the 26th day of September, 1905, the said the Lincoln Electric Light and Power Company of St. Catharines Limited be and they are hereby required to allow this corporation to string wires on their poles in the city of St. Catharines for power and lighting purposes; and that a certified copy of this resolution be forthwith transmitted to the said company."

The defendant Commission claims the right under the said by-law and resolution to use the plaintiff company's poles in the city of St. Catharines for the purpose of stringing wires thereon. The plaintiff company contends that, under the concluding clause of paragraph 7 of the said by-law, the right to string wires on the plaintiff company's poles, without compensation, exists only for the purpose of the city's fire alarm and police systems, and for supplying power and light for the city corporation's own use, and that such poles cannot be used in a commercial business, and for furnishing heat, light, and power to consumers in the city of St. Catharines, in competition with the plaintiff company; and the plaintiff company further complains that, even if the defend-