

the new method makes of the street, and not by the motive power which it employs in such use. It was held that the erection of poles in the centre of the street, and on the sidewalk in front of the plaintiff's property, with connecting wires, for the purpose of applying electricity as a motive power to propel street cars, was not imposing an additional servitude upon the street, and that the owner had no cause of action. In *Williams v. Railroad Co.*, 41 Fed. Rep. 556, the court says: 'The operation of a street railroad by mechanical power, when authorized by law, on a public street, is not an additional servitude or burden on land already dedicated or condemned to the use of a public street and is therefore not a taking of private property, but is a modern and improved use of the street as a public highway, and affords to the abutting property holder, though he may own the fee of the street, no legal ground of complaint.' In the case of *Briggs v. Railway Co.*, 79 Me. 363, 10 Atl. Rep. 47, the court said: 'We do not think the construction and operation of a street railroad in a street is a new and different use of the lands from its use as a highway. The modes of using a highway, strictly as a highway, are almost innumerable, and they vary and widen with the progress of the community. . . . The laying down of rails in the street and running street cars over them for the accommodation of persons desiring to travel on the street, is only a later mode of using the land as a way, using it for the very purpose for which it was originally taken. It may be a change in the mode, but it is not a change in the use. . . . We do not think the motor is the criterion. . . . This defendant company is using the land as a street. Its railroad is a street railroad. Its cars are used by those who wish to pass from place to place on the street. A change in the mode is not a change in the use.'

"All this is strictly applicable to the facts of the present case. High street was a public street of the city before the defendant's tracks were laid, and it is so still. Whether the motive power of the cars be horses, electricity, or a submerged cable makes no difference in the use, and no one of these modes of use confers any right of action upon the abutting owner. In *Taggart v. Railway Co.* (R.I.), 19 Atl. Rep. 326, it was held that a street railway operated by electricity imposed no new servitude upon the property owner, although poles and wires were erected in the street in connection with the railway. Laying a street-car track so close to the sidewalk that vehicles cannot stand gives no ground for action. *Kellinger v. Railway Co.*, 50 N.Y. 206."

## Proceedings of Law Societies.

### LAW SOCIETY OF UPPER CANADA.

MICHAELMAS TERM, 1891.

Monday, November 16th.

Convocation met.

Present—10 to 11 a.m.: The Treasurer, and Messrs. Irving, Meredith, Magee, Moss, Hoskin. After 11, in addition: Messrs. Barwick, Robinson, Teetzel, Aylesworth, and Watson.