

legislation was sought as a measure of precaution rather than with the purpose or intention of giving up any powers or rights the defendants were entitled to under their Act of incorporation.

Nor is there anything on the face of the legislation to indicate that the defendants had entered into or were making a bargain to that effect. There is nothing there to prevent them from now insisting on such rights as were given them by the Parliament in respect of matters on which it had undoubted authority. Among these were the rights given by sec. 3 of the Act of incorporation, which enables them subject to the provisos and conditions therein and in the amending Act 45 Vict. ch. 95 (D.) contained, to construct, erect, and maintain their line or lines of telephone along the sides of and across or under any public highway or street. These, having been granted in furtherance of objects or purposes properly authorized by the Parliament, could not be impaired by the action of the Provincial Legislature.

Therefore the defendants are entitled to the full benefit of the language of sec. 3 of their Act of incorporation as amended, notwithstanding the Act 45 Vict. ch. 71 (O.)

The result is, that the appeal should be allowed, and that instead of the declaration made by Street, J., it should be declared that the powers conferred by the defendants' Act of incorporation, 43 Vict. ch. 67 (D.), as amended by the Act 45 Vict. ch. 95 (D.), are not curtailed by the provisions of the Act 45 Vict. ch. 71 (O.), as regards the right to construct, erect, and maintain their lines or lines of telephone along the sides of and across or under any highway or street of the city of Toronto, subject, however, to the provisos set forth and contained in sec. 3 of the Act of incorporation as amended.

Under the circumstances, there should be no costs of the litigation to either party.

GARROW, J.A., gave reasons in writing for the same conclusion as Moss, C.J.O.

OSLER, J.A., also concurred.

MACLENNAN, J.A., concurred in holding that the defendant company was one to which Parliament could and did give not merely corporate powers, but certain powers to interfere with property and civil rights in the several Provinces of the Dominion.

He dissented, however, as to the effect of the Provincial Act, the concluding part of his opinion being as follows:—

A Dominion corporation may obtain its powers over property in a particular Province either from Parliament or from