

shall be done under the direction and supervision of the engineer or such other officer as the council may appoint, and in such manner as the council may direct. Lord Macnaghten in stating the judgment of the Committee, says, at p. 60: "Their Lordships do not think the words . . . can have the effect of enabling the council to refuse the company access to streets through which it may propose to carry its line or lines. They may give the council a voice in determining the position of the poles in streets selected by the company, and possibly in determining whether the line in any particular street is to be carried overhead or underground."

Bridges, it will be observed, are mentioned in sec. 3 of the statute in the same category as highways and streets, and it is urged on behalf of the defendants that they have all the rights in regard to bridges, that under the judgment in the Toronto case it has been held they have in regard to streets. The wholesome restrictions imposed upon the defendants by sec. 248 of the Railway Act, R.S.O. 1906, ch. 37, were rendered necessary by the decision in *Bell Telephone Co. v. Toronto*, and the defendants notwithstanding the wide powers conferred by 43 Vict. ch. 67, could not now construct their lines upon, along, across, or under any "highway, square or other public place" without the consent of the municipality, or, failing such consent, without the leave of the Board of Railway Commissioners. An existing line like that in question in this case falls under sub-sec 9 of sec. 248, and gives the plaintiffs the right to apply to the Board of Railway Commissioners to have the poles removed. But the plaintiffs have no other remedy until they suffer actual damage, and this action must be dismissed with costs.

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ROSS v. McLAREN—DIVISIONAL COURT—MAY 9.

*Way—Private Way—Right to Fence in Sides of "Lane"—Reservation in Deed—Possession—Evidence.*]—Appeal by the plaintiff from the judgment of FALCONBRIDGE, C.J.K.B., ante 861. The Court (BOYD, C., LATCHFORD and MIDDLETON, JJ.) dismissed the appeal with costs. D. B. MacLennan, K.C., for the plaintiff. G. H. Watson, K.C., for the defendant.