

company obtained a charter in October, 1901, under R. S. C. ch. 119. The plaintiffs, for many years, have sold and distributed electricity for purposes of light, heat, and power in Ottawa, and have erected poles and wires along certain streets, subject to the terms and conditions of by-laws of the corporation of Ottawa.

The defendant company is authorized to erect and maintain poles and wires for the like purposes as the plaintiff company.

G. F. Henderson, Ottawa, and D. J. McDougal, Ottawa, for plaintiffs.

W. Nesbitt, K.C., and Glyn Osler, Ottawa, for defendants.

MACMAHON, J.—In dealing with the case it must not be overlooked that the litigants are both electric light companies, and, therefore, on an equal footing in regard to the business they were respectively chartered to carry on, and the plaintiffs being in prior occupation of the streets gives them no exclusive right or privilege to the use of such streets or to the particular sides of the said streets occupied by their poles and wires. But, being first in occupation and using the streets under an authority conferred by the municipality, they are entitled to protection against a company subsequently using the streets, under a like authority, in such a manner as is likely to injure the property of the plaintiffs, or endanger their workmen or servants: *Bell Telephone v. Belleville E. L. Co.*, 12 O. R. 571; *Consol. Elec. Light Co. v. People's Elec. L. Co.*, 94 Ala. 372; *Rutland, etc., Co. v. Marble City, etc., Co.*, 65 Vt. 377. . . . There was considerable divergence in the evidence given by those skilled in the practical working of electric light and other electrical plants, as to the distance within which the poles and wires of one electric light system might with safety be placed to that of another electric light company. . . . Notwithstanding the immunity from accidents which it is said may exist for a time where the poles of one electric company are erected and pass between the wires of another company, there is beyond question an element of great danger in construction, depending in some measure on climatic changes, the danger being much greater where, as in the section of the Province in which these companies are chartered to carry on business, there are frequent sleet and snow storms. Upon the evidence, three feet may be regarded as a distance of safety between primary and secondary wires, but as between two secondary wires they may parallel each other at a distance of from 6 to 9 inches without the slightest danger.