

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of the
National Telephone Company, Limited, v. The
Constables of St. Peter Port; from the Royal
Court of the Island of Guernsey; delivered
24th March 1899.*

Present at the Hearing:

THE LORD CHANCELLOR.

LORD MACNAGHTEN.

LORD MORRIS.

LORD SHAND.

LORD DAVEY.

LORD BRAMPTON.

LORD ROBERTSON.

[*Delivered by Lord Davey.*]

This is an Appeal from an order of the Court of Judgments in the Island of Guernsey dated the 15th June 1897 affirming a previous order of the Royal Court. The suit was instituted by the representative of the Appellant Company against the Respondents the Constables of St. Peter Port. The cause of action is thus described in the Register of the Royal Court:—

“ La cause de Monsieur W. E. L. Gaine agissant pour
“ la Compagnie dite ‘The National Telephone Company
“ Limited’ (laquelle dite Compagnie a le droit en vertu
“ d’une Licence en date du 29 Novembre 1884 octroyée par
“ le Ministre des Postes anglisé ‘The Postmaster General’
“ en conformité avec les pouvoirs qui lui sont attribués par
“ les Actes de Parlement relatifs aux Télégraphes 1863–92
“ pour exploiter et de se servir du système télégraphique
“ dont les moyens de transmission et de reception seront des
“ téléphones) contre Messieurs Edward Valpied et Robert
“ Henry Payne, Connétables de la Ville et Paroisse de
“ Saint Pierre Port, à leur payer 250*l.* stg. argent au Cours

“ d’Angleterre pour avoir les dits Connétables le 3 Juin ou
 “ environ mal-à-propos et contre droit coupé ou fait couper
 “ les fils téléphoniques appartenant à la dite Compagnie
 “ que la dite Compagnie a tendu à travers la route publique
 “ dite ‘La Grande Rue’ en la paroisse de St. Pierre Port.
 “ Et leur payer leurs dépens : a été inscrite sur le rôle des
 “ causes à plaider.”

The Respondents pleaded three exceptions to the Appellant’s claim :—

“ 1^o Que la dite licence en date du 29 Novembre 1884
 “ ayant été modifiée par un accord entre la dite Compagnie
 “ et le dit Ministre des Postes en date du 25 Mars 1896,
 “ l’article 4 lequel porte qu’à partir du 4 Avril 1896 la
 “ dite Compagnie cessera de faire des affaires téléphoniques
 “ ailleurs qu’en dedans de ‘Exchange Areas’ et que la
 “ dite licence et la permission, les pouvoirs et autorités par
 “ elle conférés, sont, à partir du dit jour, limités aux dits
 “ ‘Exchange Areas’ et n’auront plus d’effet et opération
 “ qu’en dedans des dits ‘Exchange Areas’ et la dite Ile de
 “ Guernesey n’ayant pas été un des dits ‘Exchange Areas’
 “ le 3 Juin 1896 ou environ aucun droit qui a pu être
 “ accordé à la dite Compagnie par la dite licence par rapport
 “ à la dite Ile de Guernesey, n’existe plus à la dite dernière
 “ date : 2^o Que la dite Compagnie n’a été constituée d’après
 “ son Acte de Société ou anglicé ‘Memorandum of Assoc-
 “ iation’ que pour entreprendre et conduire des affaires
 “ téléphoniques dans le Royaume Uni de la Grande Bre-
 “ tagne et que par conséquent elle n’a aucun droit légal d’étendre
 “ ses opérations jusqu’à l’Ile de Guernsey laquelle est en
 “ dehors du dit Royaume Uni. 3^o Que d’après la coutume
 “ la dite Compagnie n’avait aucun droit de tendre des fils
 “ à travers la dite rue publique sans la permission des dits
 “ Connétables de la dite paroisse, comme dépositaires ou
 “ gardiens des rues publiques et de la sûreté publique dans
 “ la paroisse, et que les dits Connétables avaient expressé-
 “ ment défendu à la dite Compagnie de tendre des fils à
 “ travers les rues publiques de la dite paroisse.”

These exceptions were allowed by the Royal Court and the action was rejected with costs, and this judgment was affirmed by the Court of Judgments.

The Appellants before their Lordships did not contest the first and second exceptions. It is admitted that at the date of the action the Telegraph Acts of the United Kingdom did not enable the Postmaster-General to confer upon the Company the privileges contained in his license within the Island of Guernsey and his license

does not in fact do so the Island not being an "Exchange Area." It was also admitted that the Company was not then authorised by its Memorandum of Association to carry on business within the Island. The latter point does not appear to their Lordships to be material. If the business was *ultra vires* of the Company that is a question for the shareholders or for the Attorney-General and not one which the Constables had any interest to raise.

The Appellants however deny that the Constables have by law any such power as that claimed by the third exception and they further say that if there be any rule of law which requires their previous consent to be obtained to the stretching of wires across the streets it does not follow that the Constables had a right to ~~take the law into their own hands and of their own motion cut the wires for which proceedings (they say) a special power must be shown.~~

Their Lordships think that there are not sufficient materials before them to enable them to say that the Constables have not such a power as is claimed and is declared by the Guernsey Court to be vested in them, viz., to prohibit the wires being stretched across the public streets and to remove them if placed there without their consent. It must be admitted that such a power is not expressly conferred on the Constables by the "Ordonnance Générale relative aux routes "rues et chemins" of 1840 and is not to be found in that document unless it be contained in the general power of "surveillance" of the highways. But their Lordships do not think it necessary in the view which they take of the case to express any decided opinion on this point.

It is important to observe what is the substance or in the language of English pleaders the gist of the action. The complainants allege a

statutory right to place their wires across the street and complain of the interference by the Respondents with their statutory right. The defence pleaded by the first exception is that the Appellants have no such right. If so the action fails. It is true that the declaration avers that the wires were "cut" but there is no allegation of unnecessary damage to the wires in removing them and the action does not appear to be so framed as to enable the complainant to recover for such unnecessary damage (if any). Their Lordships think that an action will not lie against the present Respondents for the mere removal of the Appellant's goods from a public place in which they had no right to place them. That appears to be the case in these pleadings for no other right but the alleged statutory right is averred. The Appellants have not brought before their Lordships any rule or practice in the Guernsey system of pleading which would justify them in putting on these pleadings any interpretation different from that which the Court seems to have adopted.

Their Lordships will therefore humbly advise Her Majesty that the appeal should be dismissed. The Appellants will pay the costs of it.
