

the progress of science and improvement, have been shown by experience to be best; but he is not bound to experiment with recent experiment inventions not generally known, or to adopt expensive devices, when it lies in the power of the person injured to make use himself of an effective and inexpensive method of prevention. If, in the case under consideration, it were shown that the double trolley would obviate the injury to the complainant without exposing defendants or the public to any great inconvenience or a large expense, we think it would be their duty to make use of it, and should have no doubt of our power to aid the complainant by an injunction; but, as the proofs show that a more effectual and less objectionable and expensive remedy is open to the complainant, we think the obligation is upon the Telephone Company to adopt it, and that defendants are not bound to indemnify it; in other words, that the damage incidentally done to the complainant is not such as is justly chargeable to the defence. Unless we are to hold that the Telephone Company has a monopoly of the use of the earth, and of all the earth within the City of Nashville, for its feeble current, not only as against the defendants, but as against all forms of electrical energy which, in the progress of science and invention, may hereafter require its use, we do not see how this Bill can be maintained. We place our denial of an injunction on the grounds: Firstly, that the defendants are making lawful use of the franchise conferred on them by the State, in a manner contemplated by the statute, and that such act cannot be considered as a nuisance in itself. Secondly, that in the exercise of such franchise, no negligence has been shown, and no wanton or unnecessary disregard of the rights of the complainant. Thirdly, that the damages occasioned to the complainant are not the direct consequence of the construction of the defendant's roads, but are incidental damages resulting from their operation, and are not recoverable. The cases involving this principle are almost innumerable, and, in our examination of them, we are satisfied the great weight of authority bears in the direction we have indicated. As a result, the motion for an injunction must be denied." The learned counsel then commented on the cases quoted by Sir Richard Webster in his opening speech. "The defendant rested his case on the well-known case referred to of *Vaughan v. The Taff Vale Railway Company*. He submitted that the present case was almost identical with *Vaughan v. The Taff Vale Railway Company*. That was a case of what might be called dangerous employment of a dangerous article, a locomotive; and it was upon the ground that the statute had expressly authorised the use of a dangerous article, and that the dangers of the article were contemplated in authorising its use, that it was held at the result—namely, the spark setting fire to some of the property, was one contemplated, and one against which the defendant was protected. Assuming, of course, that the danger here from an electric railway in reference to the present case was a danger of simply disturbing somebody else's wires, that was the danger which the use of electricity involved. He submitted that, as the net result of the evidence, the plaintiffs had failed to discharge the burden which was upon them, of showing that his client had been guilty of any negligence in the adoption of the system actually adopted. If disturbance of the kind complained of was a nuisance, then a disturbance by a telegraph wire, either so long or so near as to affect, or even a telephone wire which was so close as to affect, would also be of the same character. Therefore the plaintiff's argument necessarily led to the result that any electrical disturbance which was so great as to make noises upon their telephone wires was a disturbance which was *per se* a nuisance, and which was actionable. On the other hand, what the defendants admitted was that these were disturbances which were necessarily incidental to every great city, to every place such as Leeds or London; and that, having regard to the quantity of telegraph, electric light, electric power, electric tramway wires, and so on, that were gradually being used for different purposes, electrical disturbances were things which were incidents in the present state of civilisation, even though they were not incidents ten years ago, when the telephone was established, and that they were disturbances which the telephone companies themselves could, and ought, and must, from the very nature of their business, protect themselves against. Supposing the plaintiffs were freeholders, and that he was a freeholder, and that between the lands there was a long boundary. On the boundary of his land he put up a telegraph wire of sufficient length; on the boundary of their land they put up a telephone wire, coming within the range of disturbance. Then they would be entitled, if Sir Richard Webster's law was good law, to complain of the use of the telegraph wire as a nuisance if there were electrical disturbances. His case was that these were disturbances which, in a crowded place and in cities, people who had a business depending on very delicate currents must necessarily contemplate, and that they could and ought to protect themselves against these disturbances from the very nature of their business, and from the nature of the requirements of mankind at large in regard to other electrical devices which were now coming into common use. If they looked at the New Telephone Company and the Post Office, they would see they acknowledged that it was an incident of their business, that they must protect themselves against the ordinary incidents of that business. All over the world, practically, other people were doing the same thing. In New York they were transforming the exchanges and abandoning earth-returns. In Stockholm, even, where there were 10,000 telephones, which was a great number for a place of that size, they were already transforming their exchanges. In other places, for instance in Paris, they had already transformed the exchange." That case was extended over six days, and was given against the Tramway Company, and these trams are now running successfully.

36. *Mr. Earnshaw.*] Is there a known case at the present time where the lines have been made on the return system where they have seriously interfered with the telephone services?—Yes, on account of the connections not being kept in proper order. In America, where heavy snowstorms are prevalent, more disturbances are likely on account of a difficulty of proper contact between the tram-wheels and rails.

37. You would not contemplate anything of that kind in a city like Dunedin; under ordinary conditions the circuit would be practically complete?—Yes. To show you that telephones are affected by other systems than the tramway system, Sir William Thomson in this very case cited an