

instance where, in a tunnel near Glasgow, the train lighted on entering the tunnel and the lamps extinguished on the train leaving the tunnel, disturbances occurred in the telephones. The telephone wires were double-backed and earthed some distance from the distribution-wires, and the disturbances ceased. He also said that the telephone labours under this disadvantage: that it strives to destroy the most practical system of railway circuits and to continue a relatively poor system of telephone circuits. In the case of telephones, the only remedy is to produce the only insulation which is considered first-class, without consideration for the railways; and for the telephone companies to claim that they alone have a right to earth-return is to practically monopolise the whole of the earth. The Judge, in the case against the German Government, in the Arles action, ruled that the telephone posts and wires were not among the original and primary objects for which the streets were opened. The streets were opened to facilitate transportation, and the company had no right to the use of them.

38. *Mr. Moore.*] All these cases you have cited, I presume, apply to private companies, not to Governments?—Yes. In the case of the Halle Company, the German Government have the exclusive rights for all telegraph and telephone systems.

39. Do the English cases apply to private companies?—Yes. The English Government own telephones in many towns, but the majority are worked by the National Telephone Company. In Newcastle the Government uses metallic return, and the National Telephone Company earth return, and it is a general remark that the Government telephones are the better. Another important decision was given in *The Cincinnati Inclined Plane Railway Company*, plaintiff in error, against *The City and Suburban Telegraph Association*, defendant in error: "The dominant purpose for which streets in a municipality are dedicated and opened is to facilitate public travel and transportation, and in that view new and improved modes of conveyance by street railways are by law authorised to be constructed; and a franchise granted to a telephone company of constructing and operating its lines along and upon such streets is subordinate to the rights of the public in streets for the purpose of travel and transportation. The fact that a telephone company acquired and entered upon the exercise of a franchise to erect and maintain its telephone poles and wires upon the streets of a city, prior to the operation of an electric railway thereon, will not give the telephone company, in the use of the streets, a right paramount to the easement of the public to adopt and use the best and most improved mode of travel thereon; and if the operation of the street railway by electricity as the motive-power tends to disturb the working of the telephone system, the remedy of the telephone company will be to readjust its methods to meet the condition created by the introduction of electro-motive power upon the street railway. Where a telephone company, under authority derived from the statute, places its poles and wires in the streets of a municipality, and in order to make a complete electric circuit for the transmission of telephonic messages, uses the earth, or what is known as the 'ground circuit,' for a return current of electricity, and where an electric street railway afterward constructed upon the same streets is operated with the 'single trolley overhead-system'—so-called—of which the ground circuit is a constituent part, if the use of the ground circuit in the operation of the street railway interferes with telephone communication, the telephone company, as against the street railway, will not have a vested interest and exclusive right in and to the use of the ground circuit as a part of the telephone system." (Decided Tuesday, June 2nd, 1891.)

40. *Mr. Lake.*] Is that a Court case?—Yes; it is a Supreme Court case. It goes on: "It is claimed that in addition to this conduction or leakage disturbance the single-trolley electric railway introduces serious disturbances on telephone lines by induction, for the reason that such electric railways employ large wires to convey the current used for the propulsion of their cars, and this current is constantly and rapidly changing its strength; that these rapidly-changing currents in the electric railway wires induce disturbing currents in parallel telephone wires near which the electric railways have been built, and thus prevent a successful transmission of telephonic messages. These interferences with the telephone service may be obviated, it is stated, by the railway company giving up the single-trolley system with the ground circuit, and substituting the double-trolley system with its two trolley wires, two trolley wheels, and electric current passing from one wire through one trolley, through the motor, back through the other trolley to the other wire, and so back to the generator, without escaping to the earth. The grounded circuit, it is insisted, should be abandoned and surrendered to the sole use and service of the defendant in error. But it is admitted that other remedies of the telephone disturbances may be easily obtained by constructing the telephone with a complete metallic circuit, or by resort to what is known as the M'Cluer device, consisting of a single return-wire, to which a number of telephone wires are attached. It is immaterial on which party the expense of the change may fall the more heavily. It is a question of legal right. The telephone business was not among the probabilities when the streets of Cincinnati, now made use of by the Telegraph Association, were dedicated or condemned for the public use. The primary and dominant purpose of their establishment was to facilitate travel and transportation; they belong from side to side and end to end to the public, that the public may enjoy the right of travelling and transporting their goods over them. The telephone poles and wires and other appliances are not among the original and primary objects for which streets are opened, for they may be placed elsewhere than on the highways, and yet accomplish their purpose. As a general rule, an occupation of the street, otherwise than for travel and transportation, is presumptively inferior and subservient to the dominant easement of the public for highway purposes; for, if not so, the primary object of their dedication or appropriation might be largely defeated. And the fact that permission is granted to occupy the streets or highways for a purpose other than travel does not confer a prior and paramount right to occupy them to the exclusion of their use for travel in a mode different from what obtained when such permission was given. To those improved agencies, devised for the convenience and advantage of the community in general, the franchise of the telephone company to occupy the streets for carrying on its business must be secondary and subordinate. Whether all