

cipality by which it shall be authorised to do so upon such terms and conditions as the corporation may impose; and it cannot have been contemplated that a company should be at liberty to make use of the streets . . . at its mere will and pleasure unless the municipal authorities should intervene and forbid altogether the use of them, or the use of them unless the company should be willing to agree to terms and conditions governing their use if, in the opinion of the municipal authorities, it should be deemed necessary or advisable in the public interests to impose any such terms and conditions. . . .

[Reference to *Ghee v. Northern Union Gas Co.* (1899), 158 N.Y. 510, 511; *British Columbia Electric R.W. Co. Limited v. Stewart*, [1913] A.C. 816.]

There is no case that makes it necessary for us to hold that the power which sec. 2 vested in the appellant could be exercised otherwise than by a corporate act . . . an act done by the corporation itself under the authority of its municipal council. . . .

[Reference to *Township of Pembroke v. Canada Central R.W. Co.* (1882), 3 O.R. 503; *Port Arthur High School Board v. Town of Fort William* (1898), 25 A.R. 522; *In re Township of Nottawasaga and County of Simcoe* (1901), 3 O.L.R. 169; *Regina v. Great Western R.W. Co.* (1862), 21 U.C.R. 555; *City of Toronto v. Toronto R.W. Co.* (1905-6), 11 O.L.R. 103, 12 O.L.R. 534.]

In all these cases the municipal council had acted, and the only question was, whether, having acted by resolution and not by by-law, its action was effective; and none of them lends colour to the view that the power conferred upon the municipal authorities could be effectively exercised otherwise than by some corporate act.

It is open, I think, to grave question whether the doctrine of estoppel, or the barring of rights by acquiescence or laches, have any application to the creation of such rights as by sec. 2 the appellant was empowered to confer upon the respondent. . . .

I am of opinion, however, that, even if the views I have expressed are unsound, the respondent's case, except as to the matters to which I shall afterwards refer, fails, and that neither on the ground of laches or acquiescence on the part of the appellant nor of estoppel nor on the fiction of lost grant was the respondent entitled to succeed. . . .

In order to raise an estoppel, the person who sets it up must have been mistaken as to his own legal rights, and must