subject to such agreement in respect thereof as shall be made between the company and the said municipalities respectively," as used in sec. 2 of 45 Vict. ch. 19. It was admitted by the respondents that this agreement need not be under seal. It was not expressly required even to be in writing. But it must be at least a formal agreement, as distinguished from mere silent acquiescence or implied consent; and the one thing apparently certain about it was, that, by the use of the words "only upon," its existence was made a condition precedent which must be fulfilled by the company before it could become entitled to enter upon the streets and public places of the city to construct its works.

His Lordship referred to the agreement of the 13th November, 1889, which was the origin of the appellants' underground system, and said that it was not disputed that an absolute indefeasible right was by this agreement conferred upon the appellants to maintain, use, and enjoy their underground system until the respondents should exercise their right of purchase; but it was contended by the appellants that, owing to the presence in the agreement of the words in brackets, "in addition to their other works," etc., and to the provisions touching the purchase of all the "interest and assets" of the company, comprising plant, buildings, and material, a right equally absolute and indefeasible was conferred upon them to use, maintain, and enjoy their overhead system for the same period. This involved a rather forced construction of the language of the agreement; but, even if this were its true construction, it would be competent for the parties, by a subsequent agreement, to rescind the agreement so far as its provisions related to the overhead system, and to give up the right claimed to be acquired by it in reference to that system.

If such a right was conferred by that agreement, it was, by the later agreement of the 10th December, 1900, absolutely abandoned, and the right of the respondents again asserted to require the overhead system to be removed if they so pleased.

The specification for the agreement of the 29th December, 1905, touching the supply of electricity for street lighting for five years from the 1st January, 1906, similarly required that all the poles used by the contractor should, at the expiration of the contract, be removed, or, at the option of the respondents, purchased.

The absolute right conferred upon the respondents by sec. 2 of 45 Vict. ch. 19 to permit or prohibit the erection or maintenance of an overhead system of wires for electric supply on the streets, squares, and public places of the city, had thus been asserted,