throughout the city. . . . It is clear that the object of the agreement was to confer the right to use an underground system. . . . The reference . . . to the overhead system was designed, I think, to prevent the agreement from operating to take away any rights which the respondent possessed to use the overhead system, and . . . the respondent possessed that right under the agreement of the 30th August, 1883, the resolution of the 10th December, 1883, and the existing street lighting contract, subject to the conditions embodied in them. . . .

Upon the whole, I am of opinion that the respondent has the right to use, for the purposes mentioned in sec. 2, any of the streets . . . of Toronto for the purposes of an underground system, under and subject to the terms and conditions of the agreement of the 13th November, 1889; but that for the purposes of an overhead system it has no right to use any of the streets . . . except such of them as lie within the section of the city mentioned in the agreement of the 30th August, 1883, and such of them as to which . . . special permission . . . was given, and as to these subject to the terms and conditions of the agreement by which the permission was granted.

If the right of the respondent to use the streets . . . of the city be thus limited, as in my opinion it is, and loss results to the respondent, the fault lies at its own door. The provisions of the law under which it was incorporated are plain, and appear to have been fully understood by the respondent; and yet, putting its case on the highest ground on which it can be put, with this knowledge it went on extending its operations and making the large expenditures which it has made, entirely disregarding the limitation of its powers which the statute itself imposes, and without taking the trouble even to make application to the appellant for its consent. It may be that . . . if application had been made the consent would have been given; but that, in view of the course which from the outset the appellant adopted, I do not think. . . .

Having come to the conclusion I have reached, it is unnecessary for me to consider the question whether the respondent's rights extend to territory added to the city since the letters patent were issued.

As the poles for the cutting down of which the action is brought were not being erected within the section of the city mentioned in the agreement of the 30th August, 1883, or any permission to erect them given by the appellant, the result is, that, in my opinion, the appeal should be allowed, and there