

have expended money or done some act on the faith of his mistaken belief; and the person against whom the estoppel is set up must have known of his own rights and of the other person's mistaken belief, and must have encouraged him in his expenditure of money or other act, either directly or by abstaining from asserting his legal right: Halsbury's Laws of England, vol. 13, p. 167, para. 201. . . .

Subject to what I shall say as to the agreement of the 13th November, 1889 . . . all the documentary evidence is inconsistent with the view that any general assent to the use of the streets . . . was ever given, and leads irresistibly, I think, to the conclusion that the respondent was never under any mistake or misapprehension as to its legal rights. . . .

The agreement of the 13th November, 1889, . . . was relied upon not only as a recognition by the appellant of the right of the respondent to use the streets . . . of the city for the purposes of its overhead system, but also as containing an express grant of that right. . . .

This agreement, no doubt, recognises the fact that the respondent had been and was doing that which is mentioned in the recital, and that it was done by means of an overhead system; but, in considering what effect should be given to this recognition, regard must be had to the fact that the appellant had, by the agreement of the 30th August, 1883, given to the respondent the right to use the streets in a large section of the city for the purposes of its business and to carry it on there on the overhead system, and that it had an overhead system for street lighting. . . . The recitals may well be treated as having reference to the overhead system which had been established and was being used . . . and the recitals cannot fairly or properly be treated as a recognition of an existing right in the respondent to exercise its statutory powers to use all or any of the streets . . . of the city, at all events for the purpose of an overhead system. . . .

That the respondent well knew that it had no right to use the streets . . . of the city without at all events the consent of the appellant, and that that consent must be evidenced by a formal document, is, I think, the only conclusion that properly can be drawn from the facts and circumstances. . . .

There remains to be considered the question whether the agreement of the 13th November, 1889, confers upon the respondent the right to establish and maintain an overhead system