18 Vict., c. 215, a further Act was passed which, amongst other things, enacted in s. 4 that it shall and may be lawful for the said company to hold *lands* and *real property* and *estate* for the purposes of their incorporation, etc.

The right to use a portion of land to the exclusion of others is more than an easement; it is an interest in land (Goddard on Easements, page 6). The grant of a mere right of way for land does not convey the soil over which the way passes to the grantee, and so the grantee could not prevent another person, even a trespasser, from using the land if such user does not impede him in the exercise of his right of passage: *Rex* v. *Jolliffe*, 2 Term Reports 90.

In *Dyer* v. *Lady James Hay*, 1 McQueen 305, the Lord Chancellor declared that neither by the law of Scotland nor of England can there be a prescriptive right in the nature of a servitude or easement so large as to preclude the ordinary uses of property by the owners of the land affected.

In *Reilly* v. *Booth*, 44 Chancery Div., page 26, the following language occurs in the judgment of Lopes, J., which is cited with approval in *Metropolitan* v. *Fowler*: "The exclusive or unrestricted use of a piece of land beyond all question passes the property or ownership in that land, and there is no easement known to law which gives an exclusive and unrestricted use of a piece of land." Here the Legislature has give the Consumers' Gas Co. the unrestricted right to dig up and trench and lay the remains in perpetuity under the surface of the streets, squares, and public places in the city of Toronto; and the wilful interference by any persons with these mains so laid is declared to be a misdemeanour. Surely such a right granted by Act of Parliament is a hereditament, and an estate or interest in the land itself.

In *Rex* v. *The Governor & Co. of the Chelsea Water Works Co.*, 5 B. & Ad. 156, a water company was held to have such an interest in the soil where the pipes were laid, though they were only in possession at the will of the Crown, as constituted them occupants, because it was held that their occupation was exclusive, though for a limited purpose only. *Rex* v. *Brighton Gas, Light & Coke Co.*, 5 B. & C. 466, was to the same effect as to gas mains laid in public streets.

It is quite true that these decisions turned upon the meaning and force of the words "occupant" or "occupation," but to determine that the defendants in these cases were liable to be rated as occupants of the land it was held that their rights or interest were more than mere easements, for it was freely admitted that the possession of a mere easement would not render the person entitled to the easement rateable as an occupant.

In *Reg.* v. *The Company of the Proprietors of the West Middlesex Water Works*, 1 E. & E. 716, a case decided in 1859, and after *Chelsea* v. *Bowley*, Wightman, J., gives the judgment of the court (composed of Lords Campbell, Earl, Hill, and himself). He said "the first question is whether the company are rateable for their mains which are laid under the surface of the highway, without any freehold or leasehold interest in the soil thereof being vested in the company? We think they are. These mains are fixed capital vested in the land. The company is in possession of the mains buried in the soil, and so is *de facto* in possession of that space in the soil which the mains fill for a purpose beneficial to itself. The decisions are uniform in holding gas com-