

Upon the evidence, the plaintiffs appear to have decided upon their present roadway after due consideration of the topography and the engineering difficulties to be overcome.

It appears to be at the present the only practicable way by which the plaintiffs can bring whatever is required for the prosecution of their mining operations and the due and proper working of their mines, including the carrying away of the ores, metals, and other products. The defendants have shewn no good reason for interfering at the present time, and under present conditions, with the reasonable user by the plaintiffs of the roadway for their necessary purposes. And to the extent of enjoining the defendants from interfering with and obstructing the way, the plaintiffs' cross-appeal should be allowed.

In support of their claim to begin and carry on mining operations upon the streets without the hindrance of the defendant corporation, the plaintiffs contend that the provisions of secs. 23 and 24 of the Act 7 Edw. VII. ch. 18 do not apply to them or affect their rights. It is said that to give effect to them as against the plaintiffs would be to deprive them of vested rights. The authority of the legislature to do so, if it deems it proper and right, must be conceded. The real question is, what has been intended and effected by the legislation?

Section 23 seems to be intended mainly for the protection of the title and rights of owners of mines, minerals, and mining rights, and to be declaratory of the existing law in that respect. Section 24 is intended to regulate the manner in which owners shall exercise their rights, and in that sense is restrictive. But that alone is not sufficient for concluding that it should not apply to owners who acquired their titles before the passing of the enactment. The obvious policy is, not to prevent the use and enjoyment of the mining rights, but to so order them in the public interest that the highways and those travelling in and upon them may be kept secure and free from danger owing to mining operations being carried on. And the language of the enactment may well be read as applying to conditions as they arise, and as so far affecting all owners of mining rights such as the plaintiffs have in the lands in question here. The plaintiffs' cross-appeal as to this part of the judgment fails.

The defendants' appeal fails, for the reasons given by the Chancellor.

The rights of the individual defendants as owners of the surface rights have been already touched upon in dealing with their claim to be entitled to compensation. The conclusion on that branch of their case is substantially a determination of their