

whose title has been acquired subsequently to that of the owner of the mines, etc. Having regard to the course of dealing and the order of conveyancing, if it may be called such, there is no reason to think that the title of the individual defendants is not subject to all the rights which are expressed to be granted to the plaintiffs by the letters patent of the 15th December, 1905. It appears clear that sec. 42 of R. S. O. 1897 ch. 36 is not applicable, for the reasons pointed out by the Chancellor, and therefore these defendants have no status to claim compensation for anything properly done by the plaintiffs in the exercise of their rights. This is a case in which the ores, mines, and minerals were dealt with separately from the surface of the land, but such dealing was before and not after the surface rights had been granted, leased, or located in the manner contemplated by sec. 42. It is conceded that they had not been granted or leased, but it is said they were located. In connection with public lands the term "located" has a well-known meaning, and it is not to be presumed that it was intended to be used in sec. 42 in a different sense. It is clear that in its ordinary sense it would not comprise such dealings with these lands as took place under the direction of the Department or the Commissioners of the Temiskaming and Northern Ontario Railway prior to the issue of the grant to the plaintiffs. The case of the defendants, corporate and individual, must rest upon whatever rights remained to be acquired and were acquired after the plaintiffs' grant—aided, however, as to the former, by any subsequent legislative enactments by which the plaintiffs' rights may be affected.

What, then, are the plaintiffs' rights?

The learned Chancellor has held that they may no longer use the roadway across the surface of the lots in question, resting his view chiefly upon the fact of the streets and lots in the townsite having been delineated and shewn on a plan before the construction of the plaintiffs' roadway. It is not questioned that the plan was not properly recorded until after the issue of the letters patent to the plaintiffs' predecessors in title.

The grant thereby made unquestionably carried with it everything that was reasonably necessary to the proper enjoyment and use of the thing granted, including, of course, such convenient way or ways, or means of ingress and egress, as were required.

The delineation on a plan of courses of streets for the use of the town-dwellers could not conclude the question of what was reasonable as a way or means of access to the plaintiffs' mining works, which had been in operation before the preparation or recording of the plan.