

and other material deposited on the property of the plaintiff company, and from trespassing on the plaintiff company's property, and for an account and damages.

The action was tried without a jury at Toronto.

I. F. Hellmuth, K.C., McGregor Young, K.C., and W. J. McCallum, for the plaintiff company.

R. McKay, K.C., and P. E. F. Smily, for the defendant company.

MIDDLETON, J., in a written judgment, said that the title to a large quantity of tailings deposited by the defendant company in Peterson Lake was in question. By Crown patent, the plaintiff company was the owner of the bed of the lake. The tailings were deposited in the lake by the Nova Scotia Silver Cobalt Mining Company Limited and its successors; that company made an assignment for the benefit of its creditors; the assignee sold the property and assets to one Steindler, who in turn sold to the defendant company.

The defendant company's claim to all tailings deposited by the Nova Scotia Company failed by reason of there being no devolution of title.

The plaintiff company made no claim to the tailings deposited since the 2nd July, 1915.

The right to the tailings deposited by the defendant company before July, 1915, remained to be determined. As to these tailings there was no bargain or understanding save such as might be inferred from a request, upon one side, for permission to dump the tailings in the lake, and, on the other side, the granting of this permission.

The tailings, when deposited on the land of the plaintiff company, became its property.

Reference to *Boileau v. Heath*, [1898] 2 Ch. 301, 305.

When the defendant company returned this ore, won from the earth and earthy in its nature, to the bosom of the earth, the right to regard it as chattel property was lost—it became part of the land owned by the plaintiff company.

There was an intention of transferring the title to the tailings to the plaintiff company—it was not technically an abandonment; 12 Co. Rep. 113.

Reference to *Whitman v. Muskegon Log Lifting and Operating Co.* (1908), 152 Mich. 645, and other American cases.

Judgment for the plaintiff company upon the main question, with costs.