

LATCHFORD, J., in a written judgment, said that the plaintiff's contention was, that his buildings were exempt from assessment by virtue of sub-sec. (4) of sec. 40 of the Assessment Act, R.S.O. 1914 ch. 195: "The buildings, plant and machinery in, on or under mineral land, and used mainly for obtaining minerals from the ground, or storing the same, and concentrators and sampling plant . . . shall not be assessable."

The material filed established that the buildings were used mainly for obtaining the trap, crushing it, and storing it, pending shipments to a place where it was to be used to form concrete.

If the land of the plaintiff was "mineral land" and trap-rock was a "mineral," the buildings were exempt.

In the Assessment Act, there is no definition of "mineral land" or "mineral." In the Mining Tax Act, R.S.O. 1914 ch. 26, "mineral substance" is, by sec. 2 (a), declared not to include, where used in that Act, "limestone . . . building stone, or stone for ornamental or decorative purposes." In the Mining Act, R.S.O. 1914 ch. 32, sec. 2 (j), the noun "mine" includes any opening or excavation or working of the ground for the purpose of winning "any mineral or mineral-bearing substance, and any ore body, mineral deposit, stratum, soil, rock, bed of earth, clay, gravel or cement . . ." By clause (l), "mineral" includes "coal, gas, oil and salt."

Reference to Ontario Natural Gas Co. v. Smart (1890), 19 O.R. 591, Ontario Natural Gas Co. v. Gosfield (1891), 18 A.R. 626, 631; North British R.W. Co. v. Budhill Coal and Sandstone Co., [1910] A.C. 116; Great Western R.W. Co. v. Carpalla United China Clay Co. Limited, [1909] 1 Ch. 218, [1910] A.C. 83; Caledonian R.W. Co. v. Glenboig Union Fireclay Co., [1911] A.C. 290, 299; Symington v. Caledonian R.W. Co., [1912] A.C. 87, 92.

In the present case the evidence was sufficient to warrant a finding that the plaintiff's property was not "mineral land," within the meaning of sec. 40 of the Assessment Act. The workings constitute what is ordinarily called a "quarry." Nothing but what, in the usual acceptation of the word, is regarded as a mine can give to land the character of "mineral land" within the meaning of sub-sec. (4).

On another ground also, the plaintiff's case failed. His remedy was by appeal from the assessment under sec. 83 of the Assessment Act, and he should be confined to that remedy: Ottawa Young Men's Christian Association v. City of Ottawa (1913), 29 O.L.R. 574, 581; St. Pancras Vestry v. Batterbury (1857), 2 C.B.N.S. 477.

*Action dismissed with costs.*