The defendants maintained that, if the waters of the lake have washed away the bank and encroached in and upon lot 178, the lands up to the foot of the high bank before-mentioned became the property of the Crown, and that the south-westerly external boundaries of the lot shifted as the waters of the lake encroached thereon, giving full right to the Crown to enter into the Crown lease before-mentioned.

The point involved is extremely interesting, and is one which, if I correctly apprehend the English and Canadian cases, has never yet been expressly decided, either in the old country or here. . . .

The evidence is overwhelming . . . and I find it to be the fact, that the locus now in controversy is part of the lot 178 north of the old Talbot road.

From this conclusion, it follows that, if the plaintiffs' contention in law is well founded, it is quite immaterial whether or not the construction of the derrick is entirely in the water, or partly in the water and partly on the beach—the fact being that it is on Carr's property.

In Gould on Waters, 3rd ed., sec. 155, pp. 306 to 310, inclusive, after stating the general rule that "land formed by alluvion, or the gradual and imperceptible accretion from the water, and land gained by reliction, or the gradual and imperceptible recession of the water, belong to the owner of the contiguous land to which the addition is made; and that, conversely, land gradually encroached upon by navigable waters ceases to belong to the former owner" . . . the author proceeds (p. 309): "But, when the line along the shore is clearly and rigidly fixed by a deed or survey, it will not, it seems, afterwards be changed because of accretions, although, as a general rule, the right to alluvion passes as a riparian right." . . .

[Reference to Saulet v. Shepherd (1866), 4 Wall. S.C.U.S. 502; Chapman v. Hoskins (1851), 2 Md. Ch. 485.]

Now, in the case in hand, the plaintiffs say that they could gain nothing by accretion, by alluvion, or other cause; and, consequently, they should not lose by encroachment of the water upon their land, to which fixed termini were assigned by the grant from the Crown. This doctrine seems to be well supported by decisions of Courts which are not binding upon me, but which command my respect, and which would seem to be accurately founded upon basic principles. . . .

[Reference to Smith v. St. Louis Public Schools, 30 Mo. 290; Blackstone, bk. 2, Lewis's ed., pp. 261, 262; Bristol v. County of