

LENNOX, J., read a judgment containing an elaborate discussion of the law. He said that the question to be decided was, whether the plaintiff enjoyed an absolute or only a qualified or possessory title in the fox; and this question was to be answered by determining whether the fox should be regarded as of the domestic or tamed class of animals or of the class known as animals *feræ naturæ*. The former are the subject of absolute property, and the owner retains his right of property if they stray away, and may retake them if he can find them, living or dead: Halsbury's Laws of England, vol. 1, p. 365, para. 797. In the latter class the owner has no absolute property; he has a recognised qualified property, and may, by obtaining complete physical control, become the absolute owner—by killing the animals for instance: *op. cit.*, paras. 798, 802. The plaintiff's qualified property in the fox, by expenditure of time and money and housing on his own land, and the incipient power of enlarging this into absolute ownership, both came to an end when the fox escaped and was reduced into actual possession by the defendants, without the plaintiff's intervention or knowledge. It was not pretended that there was an *animus revertendi*, that the fox regarded its pen as other than a prison, or that it would voluntarily return to captivity or human control—it was struggling for freedom, pursuing the instincts of its class, and had reverted to the common stock at the time it was destroyed. There was no room for doubt as to the class to which the fox should be assigned.

There is nothing in the Ontario Game and Fisheries Act, R.S.O. 1914 ch. 262, which indicates that foxes are to be regarded as game or are entitled to protection.

Reference to sec. 345 (3) and (4) of the Criminal Code.

ROSE, J., agreed with LENNOX, J.

MEREDITH, C.J.C.P. (written reasons to be given later), and FERGUSON, J.A., agreed in the result.

*Appeal dismissed with costs.*