

title of the owner of the mining claim had its inception in the discovery and the recording of the discovery.

It is said that the Water Power Company made application for the lease in 1907, prior to the plaintiffs' discovery, and that by parity of reasoning its rights ought to date back to the date of the original application and, therefore, would be superior to the rights of the plaintiffs. I do not think that this follows. It may well be that the Crown Lands Office will deal with applicants for power leases in the order of their priority; but the application for the lease confers no title whatever; it gives no right to the applicant, and his title is derived from the lease and from the lease alone. When the lease purports to give, as it does, "the right to overflow any Crown lands along the shore of the Mattabitchewan river and its lake expansions and tributaries," I think this is not intended to derogate from or interfere with the inchoate title of the locatees of mining claims; nor do I think that it would be competent for the Crown to defeat this statutory title by any lease.

I left the question of damages to the jury; and, while they have awarded the amount sworn to by the plaintiff as having been expended upon the property, I asked them upon their return if they intended to allow the items so claimed. They told me that they did not; that they had allowed the same amount, setting off the value of the claim, as a claim against the exaggeration of the amount expended in the statement put in. They also explained to me that they had not included in the sum named the value which they fixed for the wood upon the flooded land. This amount, at the figures given by the jury—forty cords per acre, 25 cents per cord, for the forty flooded acres—would give an additional sum of \$800; so that the damages would be \$3,627. I can see no reason why the plaintiff should not be allowed for the timber.

The appeal to Divisional Court was heard by HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B., HON. MR. JUSTICE BRITTON, and HON. MR. JUSTICE RIDDELL.

Jas. Bicknell, K.C., and J. L. McDougall, for the defendants, appellants.

R. McKay, K.C., for the plaintiff, respondent.