

the business and operations of a mining, milling, reduction and development company, or such business and operations as may be set forth in the letters patent."

I merely mention that to show that that was the practice up to 1903. In that year the 3 Edward VII., by the Statutes of Ontario, chapter 7, section 36, an amendment was made. THE LORD CHANCELLOR: When that power has been exercised and you have appointed the people under that charter under section 3 they get the powers that are conferred under the general statute, chapter 197? MR. MASON: Subject to this, that the mining company is only incorporated for the purpose of carrying on within the province this mining and milling business.

THE LORD CHANCELLOR: Having been appointed they get powers conferred by the Companies Act, chapter 197, which enables them to hold land anywhere. MR. MASON: I think the limitation in section 3 must govern the general powers in the charter. However that may be I am pointing it out now as matter of historical fact this limitation was imposed until 1903 when by section 36 of chapter 7 we have the following:

"Section 3 of the Ontario Mining Companies Incorporation Act is amended by striking out the words 'within the province of Ontario or any of the counties and districts therein' occurring in the 7th and 8th lines of the said section."

So that having in view that this company was incorporated only in 1904, no argument can be raised that the practice was of very old standing. I submit that the same applies to the general trading companies although my learned friend challenges the extent to which I go. Then I shall have to ask your Lordships' indulgence for a moment in referring to a matter which your Lordships, I may say, have been unwilling to hear, because I think you have not quite understood the way in which we refer to it, or the object for which we refer to it. This petition of right was dismissed by the trial Judge, Mr. Justice Cassels, and as the action now stands it is dismissed by reason of the judgment of the Supreme Court. Now the way the matter arose was this. I may say briefly that if your Lordships find against us on the general ground what I have to say has no application, but should you find against us on the question of some sort of recognition or estoppel, or something of that sort, this matter will become of importance, and I do not want to be embarrassed in any subsequent trial by any decision of the Board. After the company was incorporated in 1904 it took over, in July, 1905, by assignment certain claims from Matson and Doyle. They claimed that by reason of their having collateral agreements which are set out in the record—agreements collateral to the leases—that they should have had given to them, when they fell in, certain claims that the individual miners might relinquish or might abandon for one reason or another, they said they had the right by reason of the agreements to take up the claims as they fell in. All the claims in the petition arise out of these operations, under that class of claim, with the exception of certain water rights which I will mention in a moment. In 1907 the Bonanza Company having got in 1905 an assignment of these claims, went to Ottawa, and there an arrangement was entered into which is set out in what we call the supplementary agreement of 1907. There is no claim made in the petition of right arising from any branch of that supplemental agreement of 1907. All these claims, including the water rights, arise by reason of matters that had arisen much earlier than that and are not in any way affected by this agreement of 1907. Therefore if your Lordships were to find that by reason of recognition, or anything of that kind, this agreement of 1907, were binding on the Crown in right of the Dominion we might be very seriously embarrassed at a subsequent trial, because my friends on the other side would say that by reason of that recognition we were estopped or prevented from setting up later the defence which I have suggested to all these other claims. I hope I have made my point clear, there has been no recognition in any shape or form by the Crown as we contend of these claims for damages that are set up in the petition of right. We intended, if I may say, to raise that question for decision here. As a matter of fact that is one of the reasons we thought we were primarily here for. You will see why I am justified in saying that I think by turning to the pleading itself, at page 18 of the record there