

Moss, C.J.O.:— . . . The company were incorporated in . . . 1906, under the Ontario Companies Act, with a capital stock of 800,000 shares of the par value of \$5 each, and all have been issued and are held as fully paid up. They were issued in the first instance to the proprietors of the mining property in consideration of the transfer thereof to the company. The property consists of 40 acres, area of mine. Mining operations are being carried on, and there are no receipts except from the sale of ore taken from the mine. It is admitted that, after deducting working expenses, there remains a sum of \$100,000, and that if the mine is liable to an income tax, that sum is a reasonable assessment. It is also admitted that dividends have been declared based upon the net receipts ascertained in the manner above stated.

The company contend that the Railway and Municipal Board erroneously held that sum to be "income derived from the mine," within the meaning of those words as employed in sub-sec. 3 of sec. 36 of the Assessment Act. The argument is that, inasmuch as the ore—the product of the mine—represents the capital of the company, every withdrawal is in fact a return of so much of the capital, and therefore, until all the capital has been returned, there can be no income capable of assessment under sec. 36 (3).

English and Scottish cases decided upon the various Income Tax Acts from time to time in force in Great Britain shew that the same argument has been urged against the application of these Acts to somewhat similar instances, but, with perhaps one exception, always with indifferent success; and in *Coltness Iron Co. v. Black*, 6 App. Cas. 315, Lord Blackburn (at p. 336) accepts it as a settled rule that the constant course, from the statute 43 Eliz. ch. 2 downwards, was to construe an annual tax imposed on coal mines, quarries, and the like, as being imposed on that which is produced from them. But, in truth, the cases in the English Courts lend little, if any, assistance.

The question falls to be determined by reference to the language of the enactment. So far as material, it is in these words:—

"36 (1)—Except in the case of mineral lands hereinafter provided for, real property shall be assessed at its actual value. . . .