

being made by the Government of Ontario as to the reserves and in case of dissatisfaction by the last-named Government with any of the reserves already selected or in case of the selection of other reserves for the appointment of a joint Commission to settle and determine all questions relating thereto.

The learned Counsel of the Appellants however says truly that his clients' titles are prior in date to this agreement and that they are not bound by the admissions made therein by the Dominion Government. Assuming this to be so their Lordships have already expressed their opinion that the view of their relative situation in this matter taken by the two Governments was the correct view. But it was contended in the Courts below and at their Lordships' Bar was suggested rather than seriously argued that the Ontario Government by the acts and conduct of their officers had in fact assented to and concurred in the selection of at any rate Reserve 38 B notwithstanding the recital to the contrary in the agreement. The evidence of the circumstances relied on for this purpose was read to their Lordships but on this point they adopt the opinion expressed by the learned Chancellor Boyd that the Province cannot be bound by alleged acts of acquiescence on the part of various officers of the Departments which are not brought home to or authorised by the proper executive or administrative organs of the Provincial Government and are not manifested by any Order in Council or other authentic testimony. They therefore agree with the concurrent finding in the Courts below that no such assent as alleged had been proved.

It is unnecessary for their Lordships taking the view of the rights of the two Governments which has been expressed to discuss the effect of the second surrender of 1886. Their Lordships do not, however, dissent from the opinion expressed by the Chancellor of Ontario on that question.

To revert now to the preliminary objection their Lordships do not desire to impute any want of good faith to the advisers of the Appellants. They may have thought that their clients were not bound by the statutory agreement and that it was not therefore necessary to mention it in their petition for leave to appeal. But the omission to do so was a grave and reprehensible error of Judgment, for the existence of the

agreement supplies an answer to the allegation of the general public importance of the questions involved upon which the petition for leave to appeal was founded as regards both the two Governments and the Indians. If the objection had been taken in a petition to rescind the leave granted it would probably have succeeded and their Lordships would now be amply justified in refusing to hear the appeal on its merits. But it was necessary to hear the argument in order to appreciate the objection and the Appeal has had this advantage that it has enabled Mr. Blake as Counsel for Ontario to state that he and the learned counsel for the Dominion acting under authority from their respective Governments have arranged terms for their adoption which will it is hoped have the effect of finally settling in a statesmanlike manner all questions between the Governments relating to the Reserves.

Their Lordships will humbly advise His Majesty that the Appeal should be dismissed. The Appellants will pay the Respondents' costs of it but the Interveners will neither pay nor receive costs.

Agreement between Counsel on behalf of the Dominion and Ontario intervening parties upon the appeal to the Judicial Committee of the Privy Council in Ontario Mining Company vs. Seybold et al.

As to all Treaty Indian Reserves in Ontario (including those in the territory covered by the North-West Angle Treaty which are or shall be duly established pursuant to the Statutory Agreement of one thousand eight hundred and ninety-four) and which have been or shall be duly surrendered by the Indians to sell or lease for their benefit Ontario agrees to confirm the titles heretofore made by the Dominion and that the Dominion shall have full power and authority to sell or lease and convey title in fee simple or for any less estate.

The Dominion agrees to hold the proceeds of such lands when or so far as they have been converted into money upon the extinction of the Indian interest therein subject to such rights or Ontario thereto as may exist by law.

As to the Reserves in the Territory covered by the North-West Angle Treaty which may be duly established as aforesaid Ontario agrees that the precious metals shall be considered to form part of the Reserves and may be disposed of by the Dominion for the benefit of the Indians to the same extent and subject