

the security of special assessments therefor, form no part of the general debt of such municipality, provides that it shall not be necessary to recite the amount of such local improvement debt in any by-law for borrowing money on the credit of the municipality, but that "it shall be sufficient to state in any such by-law, that the amount of the general debt of the municipality as therein set forth" (pursuant to sec. 384 (10)) "is exclusive of local improvement debts secured by special Acts, rates or assessments."

*Held*, that this concluding clause is directory only, and the omission to observe it will not alone invalidate the by-law.

*Bicknell*, for the plaintiff. *German*, Q.C., for the defendants.

Boyd, C.]      ONTARIO MINING CO. v. SEYBOLD.      [Dec. 2, 1899.  
*Indians and land reserved for Indians—Surrender of Indian lands—Constitutional law—Crown title—Precious metals—B.N.A. Act, s. 109.*

By the North-West Angle Treaty, No. 3, whereby certain Indian territory was surrendered to the Dominion Government in 1873, certain lesser reserves in the surrendered lands were to be defined and set aside, and thereafter to be administered and dealt with by the Dominion for the benefit of the Indians making the surrender. It was also provided that lesser reserves might be sold, leased or otherwise disposed of by the Dominion for the use of the Indians, their consent being first obtained. One of such lesser reserves so set apart was known as 38 B., and in 1886, some 600 acres of it were surrendered to the Queen under the Dominion Indian Act of 1880, in trust to sell the same upon such terms as the Dominion Government might deem most conducive to the welfare of the Indians, and to hold the proceeds in trust for the Indians. Part of this 600 acres, being the lands in question, the Dominion Government patented to the plaintiff. But the defendants asserted title in fee simple to the same land by virtue of a provincial patent granted in 1899. Moreover, in negotiating the treaty in 1873, the Dominion commissioners represented to the Indians that they would be entitled to the benefit of any minerals that might be discovered on any of the lesser reserves to be there after delimited.

*Held*, that the effect of the surrender in 1886 was to leave the sole proprietary and present ownership in the Crown as represented by the Ontario Government, and from it alone could an estate in fee simple be obtained; and although the title of the Crown to the precious metals is distinct from its title to the land, and rests on the royal prerogative, still the beneficial interest therein being vested in the province of Canada at confederation, by virtue of 9 Vict., c. 114 (C.), passed by s. 106 of the B.N.A. Act to Ontario. With these royal mines the Indians had no concern; nor could the Dominion Government make any valid stipulation with them in 1873, which could affect the rights of Ontario.

Plaintiffs' action dismissed with costs, and the Dominion patent held invalid.