

In the Privy Council.

On Appeal from the Supreme Court of British
Columbia.

BETWEEN

THE JOHN DEERE PLOW COMPANY,
LIMITED (Defendant) Appellant,

AND

THEODORE F. WHARTON (Plaintiff) Respondent,

10 AND BETWEEN

THE JOHN DEERE PLOW COMPANY,
LIMITED (Plaintiff) Appellant,

AND

GARNET W. DUCK (Defendant) Respondent.

(Consolidated by Order.)

Case for the Respondents.

RECORD

1. The Appellant in each case, the John Deere Plow Company, Limited, is a Company incorporated by letters patent issued by the Secretary of State for Canada under the authority of the Companies Act of Canada (Revised Statutes of Canada (1906), Cap. 79).
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p. 2, l. 11.
p. 3, l. 21.

2. The Respondent, Theodore F. Wharton, the Plaintiff in the action first above referred to, is a resident of Moline, in the State of Illinois, one of United States of America, and is a shareholder in the Respondent Company.

p. 2, l. 14.

3. The Defendant, Garnet W. Duck, in the action secondly above referred to, is a resident of the City of Vancouver, in the Province of British Columbia.

p. 7, l. 14.

RESPONDENTS' CASE.

RECORD

p. 3, l. 1-5. 4. The action firstly above referred to is brought by the Respondent Wharton, as a shareholder of the Appellant Company, claiming that the Appellant Company be restrained from carrying on business in the Province of British Columbia without having obtained a license pursuant to Part 6 of the Companies Act of British Columbia (R.S.B.C. (1911), Cap. 39).

p. 8, l. 10-20. 5. The Appellant Company brings the action, secondly above referred to, for payment of Ten hundred and thirty-six dollars and twenty-nine cents (\$1,036.29), the amount of a cheque given by the Respondent Duck on account of goods ordered by him from the Appellant, together with the costs of protest and interest, and for the balance of the purchase price of the said goods, Thirty-one hundred and forty-five dollars and sixteen cents (\$3,145.16), or in the alternative, for judgment for fifty-one hundred and eighty-four dollars (\$5,184) damages for breach of contract to accept delivery of the said goods. 10

p. 2, l. 15-33.
p. 9, l. 22-37. 6. The Respondents in both cases set up the provisions of Part 6 of the Companies Act of British Columbia (R.S.B.C. (1911), Cap. 39).

p. 4, l. 4-9.
p. 10, l. 32-40. In both actions the Appellant claims that the said Part 6 of the said Companies Act of British Columbia is *ultra vires* of the Legislature of that Province. 20

p. 5. 7. The action firstly above referred to came on for trial on motion for final judgment before the Honourable Mr. Justice Gregory on the 26th May, 1913, and judgment was pronounced on that day to restrain the Appellant Company from carrying on its business in the Province of British Columbia, and from expending moneys in connection with its business so carried on within the said Province until the Appellant Company should have become licensed in pursuance of Part 6 of the Companies Act of British Columbia (R.S.B.C. (1911), Cap. 39). 30

No opinion or reasons for judgment were handed down by the learned trial Judge.

8. The action secondly above mentioned came on by way of motion for final judgment upon a point of law raised by the Defendant, namely, the validity of Part 6 of the Companies Act of British Columbia, before the Honourable Mr. Justice Gregory, on the 28th May, 1913, and at the conclusion of the hearing His Lordship gave judgment dismissing the action with costs.

9. If this Appeal should be allowed, the Respondent Duck is entitled to a trial of the action on other questions raised in the pleadings, no trial on the merits of the case having yet been had.

10. The Judicial Committee of the Privy Council was applied to for leave to appeal direct from both of the judgments above referred to, and on the 12th August, 1913, an Order in Council was made granting leave and consolidating these two Appeals.

11. The question for decision upon these two Appeals is whether or not Part 6 of the Companies Act of British Columbia (R.S.B.C. (1911), Cap. 39) is *ultra vires* of the Legislature of that Province as regards the Appellant Company.

12. Sections 91 and 92 of the British North America Act, 1867, 30 and 31 Vic. Cap. 3, provide :—

“ VI.—DISTRIBUTION OF LEGISLATIVE POWERS.

“ POWERS OF THE PARLIAMENT.

“ 91. It shall be lawful for the Queen, by and with
 “ the advice and consent of the Senate and House of
 “ Commons, to make laws for the peace, order and good
 “ government of Canada, in relation to all matters not
 “ coming within the classes of subjects by this Act assigned
 “ exclusively to the Legislatures of the Provinces ; and for
 “ greater certainty, but not so as to restrict the generality
 “ of the foregoing terms of this section it is hereby declared
 “ that (notwithstanding anything in this Act) the exclusive

“ legislative authority of the Parliament of Canada extends
“ to all matters coming within the classes of subjects next
“ hereinafter enumerated ; that is to say :—

- “ 1. The Public Debt and Property.
- “ 2. The regulation of Trade and Commerce.
- “ 3. The raising of money by any mode or system of
“ Taxation.
- “ 4. The borrowing of money on the public credit.
- “ 5. Postal Service.
- “ 6. The Census and Statistics. 10
- “ 7. Militia, Military and Naval Service, and Defence.
- “ 8. The fixing of and providing for the salaries and
“ allowances of civil and other officers of the
“ Government of Canada.
- “ 9. Beacons, Buoys, Lighthouses, and *Sable Island*.
- “ 10. Navigation and Shipping.
- “ 11. Quarantine and the establishment and mainten-
“ ance of Marine Hospitals.
- “ 12. Sea Coast and Inland Fisheries.
- “ 13. Ferries between a Province and any *British* or 20
“ Foreign country or between two Provinces.
- “ 14. Currency and Coinage.
- “ 15. Banking, incorporation of Banks, and the issue of
“ paper money.
- “ 16. Savings Banks.
- “ 17. Weights and Measures.
- “ 18. Bills of Exchange and Promissory Notes.
- “ 19. Interest.
- “ 20. Legal Tender.
- “ 21. Bankruptcy and Insolvency. 30
- “ 22. Patents of invention and discovery.
- “ 23. Copyrights.

“ 24. *Indians*, and lands reserved for the *Indians*.

“ 25. Naturalization and Aliens.

“ 26. Marriage and Divorce.

“ 27. The Criminal Law, except the constitution of
“ Courts of Criminal Jurisdiction, but including
“ the Procedure in Criminal Matters.

“ 28. The Establishment, Maintenance and Manage-
“ ment of Penitentiaries.

10 “ 29. Such classes of subjects as are expressly excepted
“ in the enumeration of the classes of subjects by
“ this Act assigned exclusively to the Legislatures
“ of the Provinces.

“ And any matter coming within any of the classes of
“ subjects enumerated in this section shall not be deemed
“ to come within the classes of matters of a local or private
“ nature comprised in the enumeration of the classes of
“ subjects by this Act assigned exclusively to the Legis-
“ latures of the Provinces.

“ EXCLUSIVE POWERS OF PROVINCIAL LEGISLATURES.

20 “ 92. In each Province the Legislature may exclu-
“ sively make laws in relation to matters coming within
“ the classes of subjects next hereinafter enumerated ;
“ that is to say :—

“ 1. The Amendment from time to time, notwith-
“ standing anything in this Act, of the Con-
“ stitution of the Province, except as regards the
“ office of Lieutenant-Governor.

“ 2. ~~Direction~~ Taxation within the Province in order to
“ the raising of a Revenue for Provincial purposes.

30 “ 3. The borrowing of money on the sole credit of the
“ Province.

- “ 4. The establishment and tenure of Provincial offices
“ and the appointment and payment of Provincial
“ officers.
- “ 5. The management and sale of the Public Lands
“ belonging to the Province and of the timber
“ and wood thereon.
- “ 6. The establishment, maintenance, and manage-
“ ment of public and reformatory prisons in and
“ for the Province.
- “ 7. The establishment, maintenance, and manage- 10
“ ment of hospitals, asylums, charities, and
“ eleemosynary institutions in and for the Pro-
“ vince, other than marine hospitals.
- “ 8. Municipal institutions in the Province.
- “ 9. Shop, saloon, tavern, auctioneer, and other
“ licenses in order to the raising of a revenue for
“ Provincial, local, or municipal purposes.
- “ 10. Local works and undertakings other than such as
“ are of the following classes :—
- “ a. Lines of steam or other ships, railways, 20
“ canals, telegraphs, and other works and under-
“ takings connecting the Province with any other
“ or others of the Provinces, or extending beyond
“ the limits of the Province :
- “ b. Lines of steam ships between the Pro-
“ vince and any *British* or Foreign country :
- “ c. Such works as, although wholly situate
“ within the Province, are before or after their
“ execution declared by the Parliament of *Canada*
“ to be for the general advantage of *Canada* or 30
“ for the advantage of two or more of the
“ Provinces.

- “ 11. The incorporation of companies with Provincial
“ objects.
- “ 12. The solemnization of Marriage in the Province.
- “ 13. Property and civil rights in the Province.
- “ 14. The administration of justice in the Province,
“ including the constitution, maintenance, and
“ organization of Provincial Courts, both of Civil
“ and of Criminal jurisdiction, and including
“ procedure in civil matters in those Courts.
- 10 “ 15. The imposition of punishment by fine, penalty,
“ or imprisonment for enforcing any law of the
“ Province made in relation to any matter coming
“ within any of the classes of subjects enumerated
“ in this section.
- “ 16. Generally all matters of a merely local or private
“ nature in the Province.”

Sections 139, 152, 167 and 168 of the Companies Act of British
Columbia (R.S.B.C. (1911), Cap. 39) read as follows :—

- 20 “ 139. Every extra-provincial company having gain
“ for its purpose and object within the scope of this Act is
“ hereby required to be licensed or registered under this or
“ some former Act, and no company, firm, broker or other
“ person shall, as the representative or agent of or acting
“ in any other capacity for any such extra-provincial
“ company, carry on any of the business of an extra-
“ provincial company within this Province until such extra-
“ provincial company shall have been licensed or registered
“ as aforesaid.

- 30 “ This section shall apply to an extra-provincial
“ company notwithstanding that it was heretofore re-
“ gistered as a foreign company under the provisions of
“ any Act

“ 152. Any extra-provincial company duly incorporated under the laws of :—

“ (a) The United Kingdom ;

“ (b) The Dominion ;

“ (c) The former Province of Canada ;

“ (d) Any of the Provinces of the Dominion ; and

“ (e) Any Insurance Company to which this Act applies

“ duly authorised by its charter and regulations

“ to carry out or effect any of the purposes or

“ objects to which the legislative authority of the 10

“ Legislature extends, may obtain a license from

“ the Registrar authorising it to carry on business

“ within the Province on compliance with the

“ provisions of this Act, and on payment to the

“ Registrar in respect of the several matters

“ mentioned in the Table “ B ” in the First

“ Schedule hereto the several fees therein specified,

“ and shall, subject to the provisions of the

“ charter and regulations of the company, and to

“ the terms of the license, thereupon have the 20

“ same powers and privileges in the Province as

“ if incorporated under this Act (R.S.B.C. (1897),

“ Cap. 44, Sec. 124).

“ 167. If any extra-provincial company other than

“ an insurance company shall, without being licensed or

“ registered pursuant to this or some former Act, carry on

“ in the Province any part of its business, such extra-

“ provincial company shall be liable to a penalty of Fifty

“ dollars for every day upon which it so carries on business.

“ 168. So long as it remains unlicensed or unregistered 30

“ under this or some former Act, it shall not be capable of

“ maintaining any action, suit or other proceeding in any

“ Court in the Province in respect of any contract made in
“ whole or in part within the Province in the course of or
“ in connection with its business, contrary to the require-
“ ments of this part of this Act :

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“ Provided, however, that upon the granting or
“ restoration of the license or the issuance or restoration
“ of the certificate of registration or the removal of any
“ suspension of either the license or the certificate, any
“ action, suit or other proceeding may be maintained as if
“ such license or certificate had been granted or restored
“ or such suspension removed before the institution of any
“ such action, suit or other proceedings.”

The Companies Act of Canada (Revised Statutes of Canada
(1906), Vol. 2, Cap. 79) contains Sections 5 and 29, reading as
follows :—

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“ 5. The Secretary of State may, by letters patent
“ under his seal of office, grant a charter to any number of
“ persons, not less than five, who apply therefor, consti-
“ tuting such persons, and others who have become
“ subscribers to the memorandum of agreement herein-
“ after mentioned and who thereafter become shareholders
“ in the company thereby created, a body corporate and
“ politic, for any of the purposes or objects to which the
“ legislative authority of the Parliament of Canada extends,
“ except the construction and working of railways or of
“ telegraph or telephone lines, the business of insurance,
“ the business of a loan company and the business of
“ banking and the issue of paper money.”

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“ 29. (3) The Company shall forthwith upon incor-
“ poration under this Part, become and be vested with all
“ property and rights, real and personal, theretofore held
“ by it or for it under any trust created with a view to its
“ incorporation, and with all the powers, privileges and
“ immunities, requisite or incidental to the carrying on of

“ its undertaking, as if it was incorporated by a special
 “ Act of Parliament, embodying the provisions of this Part
 “ of the letters patent and supplementary letters patent
 “ issued to such company.”

13. The Respondents submit that the power of the Dominion Parliament conferred by Section 91 of the British North America Act to incorporate companies with objects other than provincial, and the provisions of the Companies Act of Canada do not entitle the Appellant Company to carry on business or enforce its rights in the Courts of British Columbia without conforming to the provisions 10 of Part 6 of the Companies Act of that Province (R.S.B.C. (1911), Cap. 39). Further they submit that Dominion legislation purporting to give the Appellant Company such rights is, or would be, *ultra vires* of the Dominion Parliament.

The Respondents submit that the Judgments appealed from are correct and should be sustained for the following amongst other

REASONS.

Because :—

1. Part 6 of the Companies Act (R.S.B.C. (1911), Cap. 39) is *intra vires* of the 20 legislature of British Columbia.
2. Part 6 of the said Companies Act falls within Sub-Section 2 of Section 92 of the British North America Act, 1867 (30 and 31 Vict., Cap. 3).
3. Part 6 of the said Companies Act falls within Sub-Section 9 of Section 92 of the British North America Act, 1867.
4. Part 6 of the said Companies Act falls within Sub-Section 13 of Section 92 of 30 the British North America Act, 1867.

5. Part 6 of the said Companies Act falls within Sub-Section 14 of Section 92 of the British North America Act, 1867.
6. Part 6 of the said Companies Act falls within Sub-Section 15 of Section 92 of the British North America Act, 1867.
7. Part 6 of the said Companies Act falls within Sub-Section 16 of Section 92 of the British North America Act, 1867.
8. The power of the Dominion Parliament to incorporate Companies does not extend beyond incorporation.
9. The Companies Act of Canada (R.S.C. (1), Cap. 79) does not authorise the Appellant to carry on business in British Columbia or to bring actions in the Courts thereof in contravention of the provisions of Part 6 of the said Companies Act of British Columbia.
10. If said Companies Act of Canada authorises to give the Appellant Company the rights referred to in the preceding Reason such legislation is *intra vires* of the Dominion of Canada.
11. Judgments appealed from are right.

E. Lafleur
C. A. MOSS.

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BRITISH COLUMBIA.

BETWEEN

THE JOHN DEERE PLOW COMPANY,
LIMITED
(Defendant) Appellant,

AND

THEODORE F. WHARTON
(Plaintiff) Respondent,

AND BETWEEN

THE JOHN DEERE PLOW COMPANY,
LIMITED
(Plaintiff) Appellant,

AND

ARNOLD W. DUCK
(Defendant) Respondent.

Case for the Respondents.

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