

In the Privy Council.

Fos. 30.

ON APPEAL

FROM THE SUPREME COURT OF 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

GARNET W. DUCK (Defendant) *Respondent*,
(Consolidated by Order)

Case

ON BEHALF OF THE ATTORNEY-GENERAL OF CANADA

1. These are Appeals by special leave from the Judgments of the Supreme Court of British Columbia, dated the 26th day of May, 1913, and the 28th day of May, 1913, pronounced in these suits respectively, and which appeals were by the Order giving leave to appeal directed to be consolidated and heard together. The Order giving leave to appeal directed that a copy should be

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served upon the Attorney-General of Canada, and leave was thereby granted to him to intervene in the said Appeals and to lodge a printed case should he desire so to do.

2. The Attorney-General of Canada intervenes on the representation that a constitutional question may be involved in these cases touching the power of the Legislature of British Columbia to enact certain provisions of the Companies Act of the Province of British Columbia, being Chapter 39 of the Revised Statutes of British Columbia, 1911, as amended.

3. The Attorney-General of Canada has no other interest in, 10 or knowledge of the suits in question. No reasons for the judgments under appeal were handed down by the Supreme Court of British Columbia.

4. Part 6 of the said Companies Act of British Columbia deals with the licensing and registration of Extra Provincial Companies, and provides, section 139, that

“ 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 20
 “ 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
 “ the Province until such Extra Provincial Company
 “ shall have been licensed or registered as aforesaid.”

5. Section 152 of the same Act provides that any of the Companies therein specified which include Companies incorporated by the Parliament of Canada

“ May obtain a license from the Registrar authorising it 30

“to carry on business within the Province on
 “compliance with the provisions of this Act, and on
 “payment” (of the 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 same powers and
 “privileges in the Province as if incorporated under
 “this Act.”

6. Section 18 of the said Act provides in sub-sections 1 and 2
 10 as amended by section 6 of Chapter 3 of the Acts of 1912 that

20 “A company or society may not be incorporated nor
 “may an extra-provincial company be licensed or
 “registered by a name identical with that by
 “which a company or society or firm in existence is
 “carrying on business or has been incorporated,
 “licensed, or registered, or so nearly resembling that
 “name as in the opinion of the Registrar to be
 “calculated to deceive, or by a name of which the
 “Registrar shall for any other reason disapprove,
 “except where such company or society or firm in
 “existence is in the course of being dissolved or has
 “ceased to carry on business and signifies its consent
 “by resolution duly passed and filed with the
 “Registrar.

30 “2. Any company or society that has, through inad-
 “vertence or otherwise, become incorporated, licensed,
 “or registered by a name identical with that by which
 “a company or society or firm has been incorporated,
 “licensed, or registered, or has been carrying on
 “business prior to the incorporation, licensing, or
 “registration of such first-mentioned company or
 “society, or so nearly resembling that name as

“ to be calculated to deceive, shall change its
 “ name in manner provided by this section ; Provided
 “ that this amendment shall not affect litigation now
 “ pending in regard to the name of any company.”

7. The Attorney-General is informed, although the fact does not appear in the record, that the appellant, which is a company incorporated by Letters Patent under the Companies Act of the Dominion of Canada, applied for a license under the Companies Act of British Columbia, but that the same was refused on the ground that there was already in existence another Company of the 10 same name.

8. The British North America Act 1867, provides in sections 91 and 92 for the distribution of legislative powers between the Parliament and the Provincial Legislatures.

9. Section 91 provides that

“ 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 govern-
 “ ment of Canada in relation to all matters not coming
 “ within the classes of subjects by this Act assigned 20
 “ 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,” among which are “ (2) The Regula-
 “ tion of Trade and Commerce ” ;

and it is moreover enacted by the said section that 30
 “ any matter coming within any of the classes of

“ subjects enumerated in this section shall not be
 “ deemed to come within the class of matters of a local
 “ or private nature comprised in the enumeration of the
 “ classes of subjects by this Act assigned exclusively
 “ to the Legislatures of the Province.”

10. Section 92 provides that in each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next thereafter enumerated, among which are

- 10 “ (2) Direct taxation within the Province in order to the
 “ raising of a revenue for Provincial purposes;
 “ (9) Shop, saloon, tavern, auctioneer and other
 “ licenses in order to the raising of a revenue for
 “ Provincial, Local or Municipal purposes; (11) The
 “ incorporation of Companies with Provincial objects;
 “ (13) Property and civil rights in the Province;
 “ (16) Generally all matters of a merely local or
 “ private nature in the Province.”

11. It is submitted by the Attorney-General of Canada that
 20 the licensing provisions of the Companies Act of British Columbia which prevent or hinder a Company duly incorporated under authority of Parliament, and otherwise competent to carry on business in the Province of British Columbia, from so carrying on business are *ultra vires* of the Legislature of that Province for the following among other

REASONS:

1. The appellant company is a trading company incorporated under the authority of the Parliament of Canada and authorised to trade throughout the
 30 Dominion in the execution of the second enumerated power of section 91 of the British North America

Act, 1867, "The Regulation of Trade and Commerce," and it is expressly declared that "any matter coming within any of the classes of subjects enumerated in this section (91) shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces."

2. But even if the authority of the Parliament of Canada to incorporate the appellant company does not rest 10 upon the specific power to regulate trade and commerce, the authority belongs to the Parliament by its general power over all matters not coming within the classes of subjects assigned exclusively to the Legislatures of the Provinces, and since the Parliament alone can constitute a corporation with powers to carry on its business throughout the Dominion, the exercise of the corporate power or capacity so conferred cannot be prevented or regulated by local legislation. 20
3. The licensing provisions of the British Columbia Companies Act depend upon the power conferred upon Provincial Legislatures by the 9th enumeration of section 92 of the British North America Act, 1867, "Shop, saloon, tavern, auctioneer, and other Licenses, in order to the raising of a revenue for Provincial, Local or Municipal Purposes," and the license by section 139 of the British Columbia Companies Act required of a Dominion Company as a condition to the carrying on of its business within the 30 Province is not a shop, saloon, tavern, auctioneer or other license within the meaning of the said enumeration.

4. The legislative power which the Provinces have with respect to licenses is conferred "in order to the raising of a revenue for Provincial, Local or Municipal purposes," and therefore cannot be executed for the purposes of regulating, controlling or prohibiting the business of Dominion companies, which are objects of the licensing requirements of the British Columbia Companies Act.
- 10 5. The said licensing provisions are *ultra vires* because as the context of the Act shows they are not enacted "in order to the raising of a revenue for Provincial, Local or Municipal purposes."
6. A Provincial Legislature has no authority, directly or indirectly, to prohibit a Dominion company from carrying on business in the Province because the name of the Dominion company is unsatisfactory to the local authorities, or for any other reason.
- 20 7. The said Part VI. and section 18 of the British Columbia Companies Act purporting to provide for the licensing and registration of extra-provincial companies are not really licensing or taxing provisions, but the apparent object of the said Part VI and Section 18 is to subject extra-provincial companies to the provisions of the local Act and to the terms and conditions of special licenses issued by the local authorities.
- 30 8. The appellant company was incorporated and authorised to carry on its business throughout the Dominion by sanction of the Parliament of Canada in the execution of its exclusive powers conferred by section 91 of the British North America Act, 1867, and there is no power, legislative or other, vested in the Provinces to

limit, control or make in anywise conditional the exercise of the corporate powers so conferred by Parliament.

9. The licensing authority of the local legislatures can have no application to prohibit the execution of any project competently authorised by the Dominion Parliament, and the power to authorise a corporation to trade throughout the Dominion is an exclusive Dominion power.
10. Part VI and section 18 of the British Columbia Companies Act are *ultra vires* of the Legislature of British Columbia because they do not strictly have relation to any of the matters coming within the classes of subjects enumerated in section 92 of the British North America Act, 1867.
11. Part VI and section 18 of the British Columbia Companies Act are *ultra vires* of the Legislature of British Columbia because they conflict with the exclusive powers of legislation conferred upon the Parliament of Canada by section 91 of the British North America Act, 1867.

E. L. NEWCOMBE.

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ON BEHALF OF THE ATTORNEY-
GENERAL OF CANADA.

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STRAND, W.C.

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