
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

10 THE JOHN DEERE PLOW COMPANY LIMITED
(Plaintiff) - - - - - *Appellant*

AND

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

AND

THE ATTORNEY-GENERAL FOR THE
DOMINION OF CANADA

AND

20 THE ATTORNEY-GENERAL FOR THE PROVINCE
OF BRITISH COLUMBIA - - - *Intervenants.*

Case

FOR THE ATTORNEY-GENERAL FOR THE PROVINCE OF
BRITISH COLUMBIA.

1. These are consolidated appeals by special leave *per saltum* from two judgments of the Supreme Court of British Columbia dated the 26th and 28th of May 1913 respectively. By the judgment dated the 26th of May 1913, the Appellant Company was restrained at the suit of the Respondent

RECORD.
pp. 5 & 11

Wharton from carrying on business in the Province of British Columbia until it should have become licensed in pursuance of Part VI. of the British Columbia Companies Act (R.S.B.C. 1911 c. 39), and by the judgment dated the 28th of May 1913 the Appellant Company's action against the Respondent Duck for goods sold and delivered was dismissed.

2. The question which the Appellant Company desires to raise is that the British Columbia Companies Act is *ultra vires* of the Provincial Legislature in so far as it affects companies incorporated by the Parliament of Canada.

Part VI. of the British Columbia Companies Act provides *inter alia* 10 that a company duly incorporated under the laws of the Dominion of Canada and duly authorised by its Charter and Regulations to carry out any of the purposes or objects to which the legislative authority of the Legislature of British Columbia extends must obtain a licence from the British Columbia Registrar of Joint Stock Companies authorising it to carry on business within the province

For convenience copies of the British Columbia Companies Act are deposited with this Case.

3. The Appellant Company is a company incorporated by letters patent under the Dominion Companies Act (R.S.C. 1906 c. 79) on the 4th of December 1907 having its head office in the City of Winnipeg in the Province of Manitoba. 20

4. On the 29th of March 1911, application was made on behalf of the Appellant Company to the Registrar of Joint Stock Companies for British Columbia for a licence under the British Columbia Companies Act.

5. It is submitted that it is *intra vires* of the Legislature of British Columbia to require a licence for the purpose of ensuring that no company should carry on business under a name already used by another company already carrying on business in the province or for any other reason connected with property and civil rights in the province, direct taxation within 30 the province or licensing in order to the raising of a revenue for provincial, local or municipal purposes.

Section 18 of the British Columbia Companies Act as amended by the Companies Act Amendment Act 1911, is so far as material as follows :—

4. Sub-sections (1) and (2) of Section 18 of the said Act are hereby repealed, and the following substituted therefor :—

“ 18 (1) 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, 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.

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“ (2) Any company or society that has through inadvertence
 “ 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.”

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An inspection of the documents in the office of the registrar of Joint Stock Companies for British Columbia will show that the reason for his refusal to license the Appellant Company was that to have done so would have been an infraction of the above section. These documents do not appear upon the Record but they have been filed and are official documents, and it is submitted that reference may be made to them on the hearing of this appeal.

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6. On the 16th of May 1913, the Respondent Wharton brought the first of the two actions out of which this appeal arises, alleging that he was a shareholder in the Appellant Company and that the Appellant Company was not licensed under the British Columbia Companies Act, but was notwithstanding carrying on business in the Province of British Columbia and was liable to certain penalties for so doing and claiming an injunction to restrain the Appellant Company from continuing so to carry on business. p. 2

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7. The Appellant Company by its defence set up that it was duly authorised under the provisions of the letters patent incorporating it, and under the provisions of the Companies Act of Canada to carry on business throughout Canada that it had applied for a licence under the British Columbia Companies Act, but its application had been refused and that the provisions of Part VI. of the British Columbia Companies Act in so far as they purported to prevent it from carrying on business in the province in accordance with its letters patent and the Companies Act of Canada were *ultra vires* of the British Columbia Legislature. p. 3, No. 3.

pp. 6—8

8. On the 20th of May 1913, the Appellant Company brought the second of the two actions out of which this appeal arises against the Respondent Garnet W. Duck for goods sold and delivered.

p. 9

9. By his defence dated the 21st of May 1913, the Respondent Duck set up among other defences that the Appellant Company was carrying on business in the Province of British Columbia without being licensed under the British Columbia Companies Act and was precluded by Section 168 of the said Act from maintaining the action.

p. 10

10. The Appellant Company in its reply alleged *inter alia* that the provisions of Part VI. of the British Columbia Companies Act were *ultra vires* in so far as they purported to prevent the Appellant Company from carrying on business in the province and from maintaining the action. 10

p. 5.

11. On the 26th May 1913, a motion for judgment having come on for hearing before Mr. Justice Gregory in the Supreme Court of British Columbia in the first action in pursuance of an order of the said Court dated the 21st of May 1913 judgment was pronounced restraining the Appellant Company from continuing to carry on business in the province until it should have become licensed in pursuance of Part VI. of the British Columbia Companies Act.

p. 12, No. 12

No reasons were given for the said judgment but it appears from a consent statement that the learned judge in deciding that the British Columbia Companies Act was *intra vires* of the Provincial Legislature followed the decisions of the Supreme Court of British Columbia. Two of the decisions which it is presumed the learned judge followed are *North Western Construction Company v. Young* 1908 13 B.C. R. 297 and *Waterous Empire Works Company v. Okanagan Lumber Company* 1908 14 B.C. R. 238. 20

p. 11

12. On the 28th of May 1913, Mr. Justice Gregory pronounced judgment dismissing the action brought by the Appellant Company against the Respondent Duck, and on the same day gave reasons for his judgment stating that the constitutional question had already been disposed of by the *pro forma* judgment (by which the learned judge appears to have meant the judgment in the first action) and dealing with certain other questions raised which are not now material. 30

13. The Attorney-General for the Province of British Columbia upon whom His Majesty's Order in Council dated the 12th of August 1913 has been served, respectfully submits that the provisions of the British Columbia Companies Act in question are *intra vires* of the Legislature of British Columbia and that this appeal ought to be dismissed for the following among other

REASONS.

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- (1) BECAUSE the provisions of the British Columbia Companies Act are authorised by Enumeration 13 of Section 92 of the British North America Act 1867 which empowers the Legislature of British Columbia to make laws in relation to "property and civil rights in the Province."
- (2) BECAUSE the provisions of the British Columbia Companies Act are authorised by Enumeration 16 of the said section which empowers the Legislature of British Columbia to make laws in relation to "all matters of a merely local or private nature in the Province."
- (3) BECAUSE the licencing provisions of the British Columbia Companies Act are authorised by Enumeration 2 of the said section which empowers the Legislature of British Columbia to make laws in relation to "direct taxation within the Province in order to the raising of a Revenue for Provincial purposes."
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- (4) BECAUSE the licencing provisions of the British Columbia Companies Act are authorised by Enumeration 9 of the said section which empowers the Legislature of British Columbia to make laws in relation to "shop saloon tavern auctioneer and other licences in order to the raising of a Revenue for Provincial Local or Municipal purposes."
- (5) BECAUSE the provisions of the British Columbia Companies Act relating to legal process by and against companies incorporated by the Parliament of Canada are authorised by Enumeration 14 of the said section which empowers the Legislature of British Columbia to make laws in relation to "the administration of Justice in the Province."
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- (6) BECAUSE the provisions of the British Columbia Companies Act relating to penalties are authorised by Enumeration 15 of the said section which empowers the Legislature of British Columbia to make laws in relation to "the imposition of punishment by fine penalty or imprisonment for enforcing any law of the Province made in relation to any of the classes of subjects enumerated in " the said section.
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- (7) BECAUSE the power of the Parliament of Canada to incorporate companies such as the Appellant Company is derived from the general power conferred by Section 91

of the British North America Act, viz., to make laws for the peace, order and good government of Canada and does not override the powers of the Legislature of British Columbia under Section 92.

- (8) BECAUSE the Legislature of British Columbia is competent to refuse to allow any company to carry on business in the province under a name which is likely to deceive the public.
- (9) BECAUSE the judgment of the Court below was right and ought to be affirmed.

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R. B. FINLAY.

GEOFFREY LAWRENCE.

In the Privy Council.

ON APPEAL FROM THE SUPREME
COURT OF BRITISH COLUMBIA.

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(Defendant) *Appellant*

AND

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(Consolidated by Order)

AND

**The Attorney-General for the
Dominion of Canada**

AND

**The Attorney-General for the
Province of British Columbia**
Intervenants.

Case

For the Attorney-General for the Province
of British Columbia.

GARD, ROOK & CO.,
2 Gresham Buildings,
Basinghall Street, E.C.,
Solicitors for Attorney-General for the
Province of British Columbia, Intervenant.