

Privy Council Appeal No. 89 of 1913.

The John Deere Plow Company, Limited - *Appellants,*

v.

Theodore F. Wharton - - - *Respondent.*

Same - - - *Appellants,*

v.

Garnet W. Duck - - - *Respondent.*

AND

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

The Attorney-General for the Province of

British Columbia - - - *Intervenants.*

(Consolidated Appeals)

FROM

THE SUPREME COURT OF BRITISH COLUMBIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 2ND NOVEMBER, 1914.

Present at the Hearing.

THE LORD CHANCELLOR.

SIR CHARLES FITZPATRICK.

LORD MOULTON.

SIR JOSHUA WILLIAMS.

LORD SUMNER.

[Delivered by THE LORD CHANCELLOR.]

These are consolidated appeals from judgments of the Supreme Court of British Columbia. The Attorney-General for the Dominion and the Attorney-General for the Province have intervened.

By the first of the judgments the appellant company was restrained at the suit of the respondent Wharton from carrying on business

in the Province until the company should have become licensed under Part VI of the British Columbia Companies Act. By the second judgment the appellant's action against the respondent Duck for goods sold and delivered was dismissed. The real question in both cases is one of importance. It concerns the distribution between the Dominion and the Provincial Legislatures of powers as regards incorporated companies.

The appellant is a company incorporated in 1907 by Letters Patent issued by the Secretary of State for Canada under the Companies Act of the Dominion. The Letters Patent purported to authorise it to carry on throughout Canada the business of a dealer in agricultural implements. It has been held by the Court below that certain provisions of the British Columbia Companies Act have been validly enacted by the Provincial Legislature. These provisions prohibit companies which have not been incorporated under the law of the Province from taking proceedings in the Courts of the Province in respect of contracts made within the Province in the course of their business, unless licensed under the Provincial Companies Act. They also impose penalties on a company and its agents if, not having obtained a license, it or they carry on the company's business in the Province. The appellant was refused a license by the Registrar. It was said that there was already a company registered in the Province under the same name, and s. 16 of the Provincial Statute prohibits the grant of a license in such a case. The question which has to be determined is whether the legislation of the Province which imposed these prohibitions was valid under the British North America Act.

The Companies Act of the Dominion provides by s. 5 that the Secretary of State may, by Letters Patent, grant a charter to any number of persons not less than five, constituting them and others who have become subscribers to a memorandum of agreement a body corporate and politic for any of the purposes or objects to which the legislative authority of the Parliament of Canada extends, with certain exceptions which do not affect the present case. The Interpretation Act of 1906, by s. 30, provides among other things, that words making any association or number of persons a corporation shall vest in such corporation power to sue and be sued, to contract by their corporate name, and to acquire and hold personal property for the purposes for which the corporation is created, and shall exempt individual members of the corporation from personal liability for its debts, obligations, or acts, if they do not violate the provisions of the Act incorporating them.

S. 10 of the Companies Act makes it a condition of the issue of the Letters Patent that the applicants shall satisfy the Secretary of State that the proposed name of the company is not the name of another known incorporated or unincorporated company, or one likely to be confounded with any such name, and s. 12 gives him large powers of interference as regards the corporate name. S. 29 provides that on incorporation the company is to be vested with, among other things, all the powers, privileges, and immunities requisite or incidental to the carrying on of its undertaking, as if it were incorporated by Act of Parliament. S. 30 enacts that the company shall have an office in the city or town in which its chief place of business in Canada is situate, which

shall be the legal domicile of the company in Canada, and that the company may establish such other offices and agencies elsewhere as it deems expedient. By s. 32 it is provided that the contract of an agent of the company made within his authority is to be binding on the company, and that no person acting as such agent shall be thereby subjected to individual liability.

Turning to the relevant provisions of the British Columbia Companies Act, these may be summarised as follows :—An extra-provincial company means any duly incorporated company other than a company incorporated under the laws of the Province or the former colonies of British Columbia and Vancouver Island (s. 2). Every such extra-provincial company having gain for its object must be licensed or registered under the law of the Province, and no agent is to carry on its business until this has been done (s. 139). Such licence or registration enables it to sue and to hold land in the Province (s. 141). An extra-provincial company, if duly incorporated by the laws of, among other authorities, the Dominion, and if 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 Provincial Legislature extends, may obtain from the Registrar a license to carry on business within the Province on complying with the provisions of the Act and paying the proper fees (s. 152). If such a company carries on business without a license it is liable to penalties (s. 167), and the agents who act for it are similarly made liable, and the company cannot sue in the courts of the Province in respect of contracts made within the Province (s. 168). The registrar may refuse a licence

when the name of the company is identical with or resembling that by which a company, society, or firm in existence is carrying on business, or has been incorporated, licensed, or registered, or when the Registrar is of opinion that the name is calculated to deceive, or disapproves of it for any other reason (s 18).

The charter of the appellant company was granted under the seal of the Secretary of State of the Dominion in 1907. It purported, as already stated, to confer power to carry on throughout the Dominion of Canada and elsewhere the business of a dealer in agricultural implements and cognate business, and to acquire real and personal property. It is not in dispute that it was an extra-provincial company having gain for its object. The chief place of business was to be Winnipeg. The Registrar refused, as has been mentioned, to grant a license under the Provincial Act to the appellant company. The power of the Registrar is not challenged, if the sections of the Provincial Statute under which he proceeded were validly enacted.

What their Lordships have to decide is whether it was competent to the Province to legislate so as to interfere with the carrying on of the business in the Province of a Dominion company under the circumstances stated.

The distribution of powers under the British North America Act, the interpretation of which is raised by this appeal, has been often discussed before the Judicial Committee and the tribunals of Canada, and certain principles are now well settled. The general power conferred on the Dominion by s. 91 to make laws for the peace, order, and good government of Canada extends in terms only to matters not

coming within the classes of subjects assigned by the Act exclusively to the Legislatures of the Provinces. But if the subject matter falls within any of the heads of s. 92, it becomes necessary to see whether it also falls within any of the enumerated heads of s. 91, for if so, by the concluding words of that section it is excluded from the powers conferred by s. 92.

Before proceeding to consider the question whether the provisions already referred to of the British Columbia Companies Act, imposing restrictions on the operations of a Dominion company which has failed to obtain a provincial license, are valid, it is necessary to realise the relation to each other of ss. 91 and 92 and the character of the expressions used in them. The language of these sections and of the various heads which they contain obviously cannot be construed as having been intended to embody the exact disjunctions of a perfect logical scheme. The draftsman had to work on the terms of a political agreement, terms which were mainly to be sought for in the resolutions passed at Quebec in October 1864. To these resolutions and the sections founded on them, the remark applies which was made by this board about the Australian Commonwealth Act in a recent case (*Attorney-General for the Commonwealth v. Colonial Sugar Refining Company*, 1914, A.C. 254), that if there is at points obscurity in language, this may be taken to be due, not to uncertainty about general principle, but to that difficulty in obtaining ready agreement about phrases which attends the drafting of legislative measures by large assemblages. It may be added that the form in which provisions in terms overlapping each other have been placed side by side, shows that those who passed the Confederation Act

intended to leave the working out and interpretation of these provisions to practice and to judicial decision.

The structure of ss. 91 and 92, and the degree to which the connotation of the expressions used overlaps render it, in their Lordships' opinion, unwise on this or any other occasion to attempt exhaustive definitions of the meaning and scope of these expressions. Such definitions, in the case of language used under the conditions in which a constitution such as that under consideration was framed, must almost certainly miscarry. It is in many cases only by confining decisions to concrete questions which have actually arisen in circumstances the whole of which are before the tribunal that injustice to future suitors can be avoided. Their Lordships adhere to what was said by Sir Montague Smith in delivering the judgment of the Judicial Committee in *Citizens Insurance Company v. Parsons* (7 A.C., at p. 109) to the effect that in discharging the difficult duty of arriving at a reasonable and practical construction of the language of the sections, so as to reconcile the respective powers they contain and give effect to them all, it is the wise course to decide each case which arises without entering more largely upon an interpretation of the Statute than is necessary for the decision of the particular question in hand. The wisdom of adhering to this rule appears to their Lordships to be of especial importance when putting a construction on the scope of the words "civil rights" in particular cases. An abstract logical definition of their scope is not only, having regard to the context of the 91st and 92nd sections of the Act, impracticable, but is certain, if attempted, to cause embarrassment and possible injustice in future cases. It must be borne

in mind in construing the two sections that matters which in a special aspect and for a particular purpose may fall within one of them, may in a different aspect and for a different purpose fall within the other. In such cases the nature and scope of the legislative attempt of the Dominion or the Province, as the case may be, have to be examined with reference to the actual facts if it is to be possible to determine under which set of powers it falls in substance and in reality. This may not be difficult to determine in actual and concrete cases. But it may well be impossible to give abstract answers to general questions as to the meaning of the words, or to lay down any interpretation based on their literal scope apart from their context.

Turning to the appeal before them, the first observation which their Lordships desire to make, is that the power of the Provincial Legislature to make laws in relation to matters coming within the class of subjects forming No. 11 of s. 92, the incorporation of companies with provincial objects, cannot extend to a company such as the appellant company, the objects of which are not provincial. Nor is this defect of power aided by the power given by No. 13, Property and Civil Rights. Unless these two heads are read disjunctively the limitation in No. 11 would be nugatory. The expression "Civil rights in the Province" is a very wide one, extending, if interpreted literally, to much of the field of the other heads of s. 92 and also to much of the field of s. 91. But the expression cannot be so interpreted, and it must be regarded as excluding cases expressly dealt with elsewhere in the two sections, notwithstanding the generality of the words. If this be so, then the power of legislating with reference to the incorporation

of companies with other than provincial objects must belong exclusively to the Dominion Parliament, for the matter is one "not coming within the classes of subjects" "assigned exclusively to the Legislatures of the Provinces," within the meaning of the initial words of s. 91, and may be properly regarded as a matter affecting the Dominion generally and covered by the expression "the peace, order, and good government of Canada."

Their Lordships find themselves in agreement with the interpretation put by the Judicial Committee in *Citizens Insurance Company v. Parsons* (7 A.C. at p. 112, 113), on head 2 of section 91, which confers exclusive power on the Dominion Parliament to make laws regulating trade. This head must, like the expression, "Property and Civil Rights in the Province," in s. 92, receive a limited interpretation. But they think that the power to regulate trade and commerce at all events enables the Parliament of Canada to prescribe to what extent the powers of companies the objects of which extend to the entire Dominion should be exercisable, and what limitations should be placed on such powers. For if it be established that the Dominion Parliament can create such companies, then it becomes a question of general interest throughout the Dominion in what fashion they should be permitted to trade. Their Lordships are therefore of opinion that the Parliament of Canada had power to enact the sections relied on in this case in the Dominion Companies Act and the Interpretation Act. They do not desire to be understood as suggesting that because the status of a Dominion company enables it to trade in a Province and thereby confers on it civil rights to some extent, the power to regulate trade and commerce can be

exercised in such a way as to trench, in the case of such companies, on the exclusive jurisdiction of the Provincial Legislatures over civil rights in general. No doubt this jurisdiction would conflict with that of the Province if civil rights were to be read as an expression of unlimited scope. But, as has already been pointed out, the expression must be construed consistently with various powers conferred by ss. 91 and 92, which restrict its literal scope. It is enough for present purposes to say that the Province cannot legislate so as to deprive a Dominion company of its status and powers. This does not mean that these powers can be exercised in contravention of the laws of the Province restricting the rights of the public in the Province generally. What it does mean is that the status and powers of a Dominion company as such cannot be destroyed by provincial legislation. This conclusion appears to their Lordships to be in full harmony with what was laid down by the Board in *Citizens Insurance Company v. Parsons* (7 A.C. 96); *Colonial Building Association v. The Attorney General for Quebec* (9 A.C. 157), and *Bank of Toronto v. Lambe* (12 A.C. 575).

It follows from these premises that those provisions of the Companies Act of British Columbia which are relied on in the present case as compelling the appellant company to obtain a provincial license of the kind about which the controversy has arisen, or to be registered in the Province as a condition of exercising its powers or of suing in the Courts, are inoperative for these purposes. The question is not one of enactment of laws affecting the general public in the Province and relating to civil rights, or taxation, or the administration of justice. It is in reality whether the Province

can interfere with the status and corporate capacity of a Dominion company in so far as that status and capacity carries with it powers conferred by the Parliament of Canada to carry on business in every part of the Dominion. Their Lordships are of opinion that this question must be answered in the negative.

In the course of the argument their Lordships gave consideration to the opinions delivered in 1913 by the Judges of the Supreme Court of Canada in response to certain abstract questions on the extent of the powers which exist under the Confederation Act for the incorporation of companies in Canada. Two of these questions bear directly on the topics now under discussion. The sixth question was whether the Legislature of a Province has power to prohibit companies incorporated by the Parliament of Canada from carrying on business within the Province in the absence of a license from its Government, if fees are required to be paid upon the issue of such license. The seventh question was whether the Provincial Legislature could restrict a company so incorporated for the purpose of trading throughout the whole Dominion in the exercise of the special trading powers so conferred, or could limit such exercise within the Province. This question further raised the point whether a Dominion trading company was subject to provincial legislation limiting the business which corporations not incorporated under the legislation of the Province could carry on, or their powers, or imposing conditions on the engaging in business by such corporations, or restricting a Dominion company otherwise in the exercise of its corporate powers or capacity.

Their Lordships have read with care the opinions delivered by the members of the

Supreme Court, and are impressed by the attention and research which the learned Judges brought to bear, in the elaborate judgments given, on the difficult task imposed on them. But the task imposed was, in their Lordships' opinion, an impossible one, owing to the abstract character of the questions put. For the reasons already indicated, it is impracticable to attempt with safety definitious marking out logical disjunctions between the various powers conferred by the 91st and 92nd sections and between their various sub-heads *inter se*. Lines of demarcation have to be drawn in construing the application of the sections to actual concrete cases, as to each of which individually the Courts have to determine on which side of a particular line the facts place them. But while in some cases it has proved, and may hereafter prove, possible to go further and to lay down a principle of general application, it results from what has been said about the language of the Confederation Act, that this cannot be satisfactorily accomplished in the case of general questions such as those referred to. It is true that even when a company has been incorporated by the Dominion Government with powers to trade, it is not the less subject to provincial laws of general application enacted under the powers conferred by s. 92. Thus, notwithstanding that a Dominion company has capacity to hold land, it cannot refuse to obey the Statutes of the Province as to Mortmain (*Colonial Building Association v. Attorney General of Quebec* (9 A.C. 157 at p. 164)); or escape the payment of taxes, even though these may assume the form of requiring, as the method of raising a revenue, a license to trade which affects a Dominion company in common with other companies (*Bank of Toronto v.*

Lambe (12 A.C. 575)). Again, such a company is subject to the powers of the Province relating to property and civil rights under s. 92. for the regulation of contracts generally (Citizens Insurance Company v. Parsons, 7 A.C. 96).

To attempt to define *a priori* the full extent to which Dominion companies may be restrained in the exercise of their powers by the operation of this principle is a task which their Lordships do not attempt. The duty which they have to discharge is to determine whether the provisions of the Provincial Companies Act already referred to can be relied on as justifying the judgments in the Court below. In the opinion of their Lordships it was not within the power of the Provincial Legislature to enact these provisions in their present form. It might have been competent to that Legislature to pass laws applying to companies without distinction, and requiring those that were not incorporated within the Province to register for certain limited purposes, such as the furnishing of information. It might also have been competent to enact that any company which had not an office and assets within the Province should, under a Statute of general application regulating procedure, give security for costs. But their Lordships think that the provisions in question must be taken to be of quite a different character, and to have been directed to interfering with the status of Dominion companies, and to preventing them from exercising the powers conferred on them by the Parliament of Canada, dealing with a matter which was not entrusted under s. 92 to the Provincial Legislature. The analogy of the decision of this Board in *Union Colliery Company v. Bryden* (1899, A.C. 580) therefore applies. They are unable to place the limited construction upon the word

"incorporation " occurring in that section which was contended for by the respondents and by the learned counsel who argued the case for the Province. They think that the legislation in question really strikes at capacities which are the natural and logical consequences of the incorporation by the Dominion Government of companies with other than provincial objects.

They will therefore humbly advise His Majesty that these appeals should be allowed, and that judgment should be entered for the appellant company in the action of Wharton *v.* The John Deere Plow Company with costs. The action by the company against the respondent Duck must, unless the parties come to an agreement, be remitted to the Court below to be disposed of in accordance with the result of this appeal. As to the interveners, the Attorney-General of the Dominion and the Attorney-General of the Province, there will be no order as regards costs. The respondents, Wharton and Duck, must pay the costs of the appellant company of this appeal, excepting so far as these have been increased by the interventions.

In the Privy Council.

THE JOHN DEERE PLOW COMPANY,
LIMITED

v.

WHARTON.

THE SAME

v.

DUCK.

DELIVERED BY

THE LORD CHANCELLOR.

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