

WEGENAST: Yes, my Lord, I am here to ask your Lordships not to say that that provincial company has capacity to do all those things outside the province.

LORD PARKER: The question may arise if they do one thing will that be enough? MR. WEGENAST: That will arise later.

LORD PARKER: Or 2 or 3.

THE LORD CHANCELLOR: You cannot answer me No. 2, I will not be too hard on you. Let us take (3): "Has a corporation constituted by a Provincial Legislature with power to carry on a fire insurance business, there being no stated limitation as to the locality within which the business may be carried on, power or capacity to make and execute contracts—(a) within the incorporating province insuring property outside of the province." What do you say to that? MR. WEGENAST: Well, if I were in a position to decide rather than argue—

THE LORD CHANCELLOR: No, but you have to come and argue one side of these questions, that is perfectly clear. MR. WEGENAST: I am quite willing to, my Lord.

LORD PARKER: I understand you would say that if they began by working in their province, and every now and again, took one outside, it would not matter? MR. WEGENAST: Yes, my Lord.

LORD PARKER: If they go on taking them outside and the bulk of their business is outside a time would come when they would be transgressing their charter? MR. WEGENAST: Perhaps transgressing their charter. I did not finish what I want to say on that point, I should like to complete that. There may come a time, and this I submit is the test, when a shareholder would be entitled to bring an action to restrain the company from going beyond the limits of its chartered power. Take a company incorporated for the purpose of manufacturing we will say at Toronto: can that company without any limitation, as a matter of capacity from its shareholders, as a matter of the authority given to the directors by the shareholders, have unlimited capacity to open branches in every province of the Dominion? That puts my question. I submit not, I submit there must be a place at which the character of that undertaking ceases to be provincial, and a stage at which an individual shareholder would be entitled to bring an action to restrain a company from embarking its funds in an undertaking—

LORD PARKER: Suppose you lay the boundary say between 500 and 600 transactions outside the province, so that a shareholder could come if there were 600, but could not come if there were 500, supposing the extra 100 was the thing which gave the company its profits, you would be preventing the company from carrying on business at a profit. MR. WEGENAST: I think that is not putting quite precisely my submission. It is not perhaps the volume of transactions that is the determining factor. There may be a number of factors entering into it; the geographical factor may not be the only one. My submission merely is this; and your Lordships will sympathize with me in my reluctance to decide on the specific illustration—It would be too much for your Lordships to say that a provincial company is inherently capable, acquires its capacity by virtue of its provincial incorporation, of going into every province of Canada.

LORD SUMNER: The proposition is that a company incorporated with provincial objects transcends its powers by undertaking extra-provincial activities. MR. WEGENAST: I am quite prepared to agree with that.

LORD SUMNER: You say a little does not matter, but if it has done very much it is *ultra vires* and it must be decided in each case how much. MR. WEGENAST: I should agree with that. You must see on the particular facts.

THE LORD CHANCELLOR: What you invite us to do is to say it is quite impossible to answer these questions because they are dependant upon special facts. I do not think anybody else has suggested that.

VISCOUNT HALDANE: We have to interpret section 92. MR. WEGENAST: Yes, my Lord, and the only point with which we are concerned is that there shall not be set up, by virtue of a decision of this Board, this dual system of incorporation by which a provincial company shall be considered as having the same capacity as a Dominion company. Apart from that I am simply in your Lordships' hands on this aspect of the question to assist your Lordships by answering any questions which I can. May I put what I have to say in the form of a proposition, which