

IMPORTANT PRIVY COUNCIL DECISION

Case Regarding Federal and Provincial Incorporation in Canada, Decided in Favor of Former

A Canadian Associated Press despatch from London, dated October 26, says:—An important judgment involving company law in Canada was delivered by the Privy Council to-day in the consolidated appeals from the British Columbia Supreme Court in *John Deere Plow Company vs. Theodore Wharton and Garnet Duck*, with the Attorney-General for the province and the Dominion intervening. The appellant company was incorporated in 1907 by letters patent issued under the Companies Act of the Dominion. The letters patent purported to authorize it to carry on throughout Canada the business of dealer in agricultural implements.

Held by the Court.

It was held by the court below that certain provisions of the British Columbia Companies Act had 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 course of their business; unless licensed under the Provincial Companies Act; they also impose penalties on the company and its agents if not having obtained 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. The question which has to be determined is whether the legislation of province which imposed these prohibitions was valid under the British North America Act.

Interfere with Business.

Their lordships had to decide whether it was competent to the province to legislate so as to interfere with carrying on of business in the province of a Dominion company under circumstances stated. The distribution of powers under the British North America Act, said the Privy Council, interpretation of which is raised by this appeal, has been often discussed before judicial committees and the tribunals of Canada, and certain principles are now well settled.

The general power is conferred on the Dominion by section 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 section 92, it becomes necessary to see whether it also falls within any of the enumerated heads of section 91, for if so, by the concluding words of that section, it is excluded from the powers conferred by section 92.

Expression "Civil Rights."

Turning to the appeal before them, the first observation their lordships make is that the power of the provincial legislature to make laws in relation to matters coming within the classes of subjects forming No. 11 of section 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, relating to property and civil rights; unless these two heads are read disjunctively the limitation in No. 11 would be nugatory.

The expression "civil rights" in a province is a very wide one, extending if interpreted literally, to much of the field of other heads of section 92 and also to much of the field of section 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 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 section 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."

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 provincial license of the kind about which controversy

has arisen or to be registered in province as condition of exercising its powers or of suing in courts, are inoperative for these purposes. The question is not one of the enactment of laws affecting general public in the province and relating to civil rights or taxation or 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 this question must be answered in the negative.

They think the legislation in question really strikes at the capacities which are the natural and logical consequences of the incorporation by the Dominion government of companies with other than provincial objects. These appeals are allowed and judgment entered for the appellant company in the action of Wharton vs. John Deere Plow Company with costs of the action by the company against respondent Duck must, unless 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 Attorney-General of the province, there will be no order as regards costs. Respondents Wharton and Duck must pay the costs of appellant company's appeal, excepting so far as those increased by the interventions.

COMPANIES LICENSED

The following companies have been licensed to do business in British Columbia: Metals, Limited, of Calgary. Mannesman Tube Company, Limited, of Montreal. Victoria Acreage (Canada), Limited, of Calgary.

The following company has been licensed to do business in Ontario: The Anglo-French Exploration Company, Limited, of Great Britain; capital, \$200,000.

COMPANIES INCREASING CAPITAL

The following company in Saskatchewan has increased its capital stock: The Glenside Rural Telephone Company, Limited, from \$2,050 to \$3,000.

The following company in Alberta has increased its capital stock: Universal Drilling and Contracting Company, Limited, from \$1,000,000 to \$4,000,000.

The following company with a Dominion charter has increased its capital stock: A. E. Rea Company, Limited, from \$2,000,000 to \$2,500,000.

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Tenders will be received by the undersigned until 4 o'clock p.m. of Monday, November 2nd, 1914, for the purchase of any part or all of the following securities, namely—

16 shares fully-paid permanent stock of the Dominion Permanent Loan Company; par value, \$100.00 each.

470 shares of the Colonial Investment and Loan Company's stock; par value, \$10.00 each.

Dominion Permanent Loan Company debentures: \$500, maturing 1st December, 1916; interest, 5½ per cent. \$1,000, maturing 1st July, 1916; interest, 5½ per cent. \$1,000, maturing 1st July, 1915; interest, 5 per cent.

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