Provincial Power Upheld in Supreme Court

Companies' Acts of Manitoba and of Saskatchewan Held to Be Within Legislative Powers of Provinces — Manufacturers Will Probably Appeal to Privy Council

ON May 10th a decision was handed out by the Supreme Court of Canada regarding the validity of provincial statutes requiring Dominion companies to be registered or licensed as a condition of carrying on business in the province. The cases in question were the *Great West Saddlery Company* v. *the King, John Deere Plow Company* v. *the King,* and the *A. Macdonald Company* v. *Harmer,* in appeal from the Court of Appeal for Saskatchewan, and the *Great West Saddlery Company* v. *Davidson,* in appeal from the Court of Appeal for Manitoba. These cases were, with the consent of the parties, argued jointly in October, 1917. The province of Ontario was, as well as Manitoba and Saskatchewan, represented by counsel, and the appellant companies' case was presented by F. W. Wegenast, of Toronto. The sections of the acts in question were those requiring all companies to take out a license to do business and to renew such license annually. The decision of the justices regarding the cases under the Saskatchewan Act was unanimous, but in the Manitoba case Chief Justice Idington and Justice Mignault each presented dissenting judgments.

A similar case on the Ontario Act was decided by the Appellate Division of the Supreme Court of Ontario some time ago, but was not appealed to the Supreme Court of Canada. The cases were brought at the instance of the Canadian Manufacturers' Association to secure a ruling as to whether the decision of the Privy Council in *John Deere Plow Company* v. *Wharton,* on the British Columbia Act, was applicable to the acts of the other provinces. In this case it was decided that a Dominion company could not be compelled to take out a license under the British Columbia Act before carrying on business or maintaining actions in the province. Some of the provinces, as a result of this decision, made alterations in their acts. The question in the Great West Saddlery cases was whether the John Deere Plow Company case was intended to lay down as a general principle that a Dominion company could not be compelled to take out a provincial company license. The Supreme Court of Canada decides this question in the negative and distinguishes the acts of Saskatchewan and Manitoba from that of British Columbia. The decision on the Manitoba case would govern in Ontario because the provisions of the Ontario and Manitoba Acts are almost identical.

The Appellate Division in Ontario had decided that the Ontario Act was valid, making an exception, however, of the provision which prevented unlicensed Dominion companies from maintaining actions in the Courts. The Supreme Court of Canada makes no such exception.

Mr. F. W. Wegenast, counsel for the Canadian Manufacturers Association, at whose instance the cases had been instituted, while hesitating to express an opinion, admitted that the situation was rather serious for Dominion companies. "It will make a Dominion company practically an outlaw the moment it is incorporated. The company will depend, for all its corporate rights upon provincial company law and all its transactions will be illegal and invalid except so far as authorized by the province. The issue is not as to the power of the provinces to tax a Dominion company. It is conceded that a Dominion company, like every other company and every other citizen, must pay its taxes and obey provincial laws competently enacted. The provincial acts in question are not directed to taxation. Their real purpose is to deter companies from going to the Dominion for their charters. If the decision of the Supreme Court is maintained a provincial charter will be more effective than a Dominion charter because it will give to a company the right to carry on business in at least one province."

It has not been decided whether an appeal is to be taken from the decision of the Supreme Court, but it has been suggested that a number of Dominion companies may join in carrying the case to the Privy Council.

The judgment of Chief Justice Idington, applicable to all the cases, reads as follows:—

"These appeals were by consent re-argued together, and they ought to be decided upon the same single neat point of law, whether or not a local legislature can tax an incorporated business company deriving its incorporation from the Dominion Parliament.

"All the other issues attempted in argument to be dragged into the case seem entirely irrelevant. If the tax is paid the other issues become of no consequence for the purposes of the disposition of the litigation respectively involved in each case.

"The issuing of any more interrogatories on merely abstract points of law by the Dominion Government to this Court for purposes of information or of testing the limits of the powers of local legislatures in regard to some supposed assertion or possible assertion of power seems for the present to have reached the bounds of its toleration; yet that does not seem to have exhausted the resources of ingenuity on the part of others, for we are invited to answer in some of the cases questions needless to answer if the power of taxation in question exists.

"The legislature of Saskatchewan, having due and proper regard to the fate which rightly befell some extremely unjustifiable British Columbia legislation in the case of *John Deere Plow Company* v. *Wharton,* 1915, A. C. 330, decided to conform so far as it could to the decision in that case; repealed its old statutes bearing upon the like questions (of which some are not involved herein) and enacting a new Companies Act, wherein it incorporated a provision for registration and licensing of all corporate business companies, and subjected all, whether of local organization under the Act, or of Dominion or of foreign origin, to an initiative and annual license fee of the same graduated scale, fixing the amount to be paid in proportion to capital. It clearly did this by way of taxation, which the appellants seek to escape.

"I know of no reason why they should not be subjected thereto, or why the place of origin should be a ground for freeing them from the common burden all should bear in support of the government of the province—where they choose to carry on business—and seek the protection it gives. Nor do I see any imperative reason for confining the exercise of the taxing power to some statute ear-marked as a taxing Act.

"The questions of choice of subjects for taxation and equality of burden to be borne thereby, and best modes of enforcing payment thereof, have never yet been scientifically settled in a way satisfactory to those who have paid the greatest attention to such questions.

"What we have primarily to deal with is the single issue of whether the annual tax, for the non-payment of which one of these companies has been penalized, falls within what is referred to in the B.N.A. Act as "direct taxation."

"It seems to fall well within the decisions in the cases of *Bank of Toronto* v. *Lambe,* 12 A.C. 575, and the *Brewers' and Malsters' Association* v. *Attorney General of Ontario,* 1897, A.C. 231, as being direct taxation. Indeed, no question was raised in argument founded upon any doubt as to this tax being direct taxation. In the graduated scale as a basis for its application I cannot distinguish it from the former, and in the licensing fee as a mode of its imposition it seems to fall within the latter case.

"I cannot, where the power seems so clear, entertain as a valid argument, in answer to the judgment in the two firstly-named cases enforcing the penalties, the objection that there are provisions in the act claimed to be *ultra vires.*