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THE NEW PRIVY COUNCIL DECISION.

The decisions of the Privy Council in the litigation between the Dominion Government and the Provinces on the subject of control of incorporations are as yet only available here in the cabled summaries which were published at the close of last week. Regarding the effect of these decisions, there appear to be considerable differences of opinion among lawyers. But so far as the decision regarding insurance companies is concerned, THE CHRONICLE is led to believe that in several respects, it goes some way towards the simplification of the tangle of control in which the insurance companies operating in Canada now find themselves. If for no other reason, the present decision is an important one to insurance companies in that it appears to refer specifically to insurance as being trade and commerce. This decision is in flat contradiction to that of the United States Supreme Court in the famous case of Paul vs. Virginia, and so far as Canada is concerned settles a point, regarding which the insurance companies have been harassed for years past.

The following were the questions regarding jurisdiction over insurance submitted by the Dominion Government to the Supreme Court and subsequently taken to the Privy Council:—

"1. Are Sections 4 and 70 of the Insurance Act, 1910, or any or what part or parts of the said Sections *ultra vires* of the Parliament of Canada?"

"2. Does Section 4 of the Insurance Act, 1910, operate to prohibit an Insurance Company incorporated by a Foreign State from carrying on the business of Insurance within Canada if such Company do not hold a License from the Minister under the said Act, and if such carrying on of the business is confined to a single Province?"

Section 4 of the Act reads as follows:—

"In Canada, except as otherwise provided by this Act, no company or underwriters or other person shall solicit or accept any risk, or issue or deliver any receipt or policy of insurance, or grant any annuity on a life or lives, or collect or receive any premium, or inspect any risk, or adjust any loss, or carry on any business of insurance, or prosecute or maintain any suit, action, or proceeding, or file any claim in insolvency relating to such business, unless it be done by or on behalf of a company or underwriters holding a license from the Minister."

Section 70 imposes certain penalties for offences under Section 4 and otherwise.

The Supreme Court of Canada, by a majority, decided that Sections 4 and 70 were *ultra vires*, and to the second question the majority of the Court replied, "It would do so if *intra vires*." The Privy Council now confirm the opinion of the Supreme Court of Canada that Sections 4 and 70 of the Insurance Act are *ultra vires*; to the second question the reply of the Privy Council is that

the Dominion Government has jurisdiction to impose the suggested restriction by properly framed legislation.

* * *

The Privy Council's judgment can be divided into two parts, the first affecting companies incorporated in Canada; the second, relating to foreign companies which are licensed to transact business in Canada. In regard to Canadian companies, the Privy Council states that where a company is incorporated to carry on the business of insurance throughout Canada, and desires to possess rights and power to that effect, operative apart from further authority, the Dominion Government can incorporate it with such rights and powers to the full extent explained by the decision in the John Deer Plow Company case. But if such company seeks only Provincial rights and powers and is content to trust for extension of these in other Provinces to Governments of those Provinces, it can at least derive capacity to accept such rights and powers in other Provinces from the Province of its incorporation as has been explained in the case of the Bonanza Company's decision.

The effect of this seems to be that a Dominion incorporated insurance company has the right to transact business in any province without being registered or licensed by the province in which it transacts business. That is to say, its Dominion incorporation gives it the full necessary powers to transact business anywhere in Canada. The John Deer Plow decision resulted from an Act passed in British Columbia which required the licensing or registration of extra-provincial corporations carrying on business in the province, under the penalty of a heavy fine and inability to maintain action in the British Columbia courts. The Privy Council condemned this position in 1914, holding that the legislature of a province cannot interfere with the status and corporate capacity of a company created by or under federal law in so far as that status and capacity involves powers conferred by the Canadian Parliament to carry on business in every part of the Dominion. The effect then of this Privy Council decision as regards the Dominion incorporated insurance companies would seem to be to free them from the necessity of being registered or licensed by any province before being able to transact business therein.

With regard to companies incorporated by the Provinces, these, according to the Privy Council are able to accept rights and powers to transact business in other provinces from the governments

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