

Mellish, K.C., for appellant. W. B. A. Ritchie, K.C., for respondent.

Ont.]

[Dec. 13, 1907.

CANADIAN PACIFIC RY. CO. v. OTTAWA FIRE INS. CO.

*Constitutional law—Provincial companies—Powers—Operations beyond province—Insurance against fire—Property insured—Standing timber—Return of premiums—British North America Act, 1867, s. 92(11).*

Held, per Idington, MacLennan and Duff, JJ., Fitzpatrick, C.J., and Davies, J., contra, that a company incorporated by the Legislature of a Province is not capable of carrying on its business beyond the limits of such Province.

Per Fitzpatrick, C.J. and Davies, J., sub-section 11 of section 92, of the British North America Act, 1867, empowering a legislature to incorporate "companies for provincial objects," not only creates a limitation as to the objects of a company so incorporated, but confines its operations within the geographical area of the Province creating it. And the possession by the company of a license from the Dominion Government under 51 Vict. c. 28 (R.S. 1906, c. 34, s. 4), authorizing it to do business throughout Canada is of no avail for the purpose.

Girouard, J., expressed no opinion on this question.

An insurance company incorporated under the laws of Ontario insured a railway company, a part of whose line ran through the State of Maine "against loss or damage caused by locomotives to property located in the State of Maine not including that of the assured." By a statute in that state the railway company is made liable for injury so caused and is given an insurable interest in property along its line for which it is so responsible.

Held, affirming the judgment of the Court of Appeal (11 O.L.R. 465), which maintains the verdict at the trial (9 O.L.R. 493), that the policy did not cover standing timber along the line of railway which the charter of the insurance company did not permit it to insure.

Held, also, Fitzpatrick, C.J., and Davies, J., dissenting, that the policy was not on that account of no effect, as there was other property covered by it on which the railway company had an insurable interest, therefore the latter was not entitled to recover back the premiums they had paid.