

The petition was verified by affidavit, as required by the Code, and thereupon an order for a writ of summons against the Company was issued by a judge.

The petition also alleges that it was presented at the solicitation of John Fletcher, a shareholder of the Company, who had become security for costs. It appears that Fletcher was in default in payment of his calls, but in the view their Lordships take of the case any further reference to this relator becomes immaterial.

The broad objection taken by the Attorney General in the petition is, that the Association was not legally incorporated, the statute incorporating it being *ultra vires* of the Parliament of the Dominion.

The judgment of the Superior Court, given by Mr. Justice Caron, distinctly overruled this objection. Mr. Justice Tessier is the only Judge of the Court of Queen's Bench who affirmed it. Chief Justice Dorion, in a judgment which received the concurrence of two other Judges, acknowledged that having regard to the observations of this Board in the case of *The Citizens Insurance Company of Canada v. Parsons* (L. R., 7 Appeal Cases, 96), it could not be held that the incorporation of the Association was beyond the powers of the Dominion Parliament, and illegal; and the majority of the Court gave judgment upon the assumption, as their Lordships understand the reasons of the Judges, that the Association was lawfully incorporated. The conclusion of the formal judgment of the Court is as follows:—

“That the said Company, Respondents, had and have no right to act as a corporation for or in respect of any of the said operations of buying, leasing, or selling of landed property, buildings, and appurtenances thereof, or the purchase of building materials to construct villas, homesteads, cottages, or other buildings and premises, or the selling or letting of the same, or the establishment of a building or subscription fund for investment or building purposes, or the acting as agents in connection with such operations as the aforesaid, or any like affairs, or any matter of property or civil rights, or any objects of a purely local or provincial nature in any manner or way within the said Province of Quebec, and doth prohibit the said Company Respondents, from acting as a Corporation within the said Province of Quebec for any of the ends or the purposes aforesaid.”

Mr. Justice Monk, in a short but clear

judgment, dissented from his colleagues, and agreed with Mr. Justice Caron's judgment.

Their Lordships cannot doubt that the majority of the Court was right in refusing to hold that the Association was not lawfully incorporated. Although the observations of this Board in the *Citizens Insurance Company v. Parsons*, referred to by the Chief Justice, put a hypothetical case by way of illustration only, and cannot be regarded as a decision on the case there supposed, their Lordships adhere to the view then entertained by them as to the respective powers of the Dominion and Provincial Legislatures in regard to the incorporation of Companies.

It is asserted in the petition, and was argued in the Courts below, and at this bar, that inasmuch as the Association had confined its operations to the Province of Quebec, and its business had been of a local and private nature, it followed that its objects were local and provincial, and consequently that its incorporation belonged exclusively to the Provincial Legislature. But surely the fact that the Association has hitherto thought fit to confine the exercise of its powers to one province cannot affect its status or capacity as a Corporation, if the Act incorporating the Association was originally within the legislative power of the Dominion Parliament. The Company was incorporated with powers to carry on its business, consisting of various kinds, throughout the Dominion. The Parliament of Canada could alone constitute a Corporation with these powers; and the fact that the exercise of them has not been co-extensive with the grant cannot operate to repeal the Act of Incorporation, nor warrant the judgment prayed for, viz., that the Company be declared to be illegally constituted.

It is unnecessary to consider what remedy, if any, could be resorted to if the incorporation had been obtained from Parliament with a fraudulent object, for the only evidence given in the case discloses no ground for suggesting fraud in obtaining the Act.

Their Lordships therefore think that the Courts in Canada were right in holding that it was not competent to them to declare, in accordance with the prayer of the petition,