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The Companies' Case

It is matter for satisfaction that what is commonly known as the companies' case, *i.e.*, the reference to the Supreme Court regarding the relative jurisdiction of the federal and provincial authorities in the matter of incorporated companies, is at length in process of argument. It is nearly six years since the Dominion Parliament decided to make this reference, and various events which have occurred during this period, much of which has been occupied by preliminary legal argument, have served to emphasise the necessity for an authoritative decision on the points submitted. What these are is best shown by the actual questions drawn up by the Dominion Government. These read as follows:—

(1) What limitation exists under the British North America Act of 1867 upon the power of the provincial legislatures to incorporate companies? What is the meaning of the expression 'With provincial objects' in article 92 of the said Act? Is the limitation thereby defined territorial, or does it have regard to the character of the powers which may be conferred on companies locally incorporated, or what otherwise is the intention and effect of the said limitation?"

2. Has a company incorporated by a provincial legislature under the powers conferred in that behalf by Section 92, Art. 11 of the "British North America Act," power or capacity to do business outside of the limits of the incorporating province? If so, to what extent and for what purpose? Has a company incorporated for the purpose, for example, of buying and selling or grinding grain, the power or capacity, by virtue of such provincial incorporation, to buy or sell or grind grain outside of the incorporating province?

3. Has a company constituted by a provincial legislature with power to carry on a fire insurance business, there being no stated limitation as to the locality within which the business may be carried on, power or capacity to make and execute contracts—(a) Within the incorporating province insuring property outside of the province; (b) Outside of the incorporating province insuring property within the province; (c) Outside of the incorporating province insuring property outside of the province?

Has such a corporation power or capacity to insure property situated in a foreign country, or to make an insurance contract within a foreign country?

Do the answers to the foregoing inquiries, or any and which of them, depend upon whether or not the

owner of the property or risk insured, is a citizen or resident of the incorporating province?

4. If in any or all of the above-mentioned cases—(a), (b) and (c)—the answer be negative, would the corporation have throughout Canada the capacity or power mentioned in any and which of the said cases, on availing itself of the Insurance Act, Revised Statutes of Canada, 1906, chap. 34, as provided by section 4, sub-section 37? Is the said enactment, Revised Statutes of Canada, 1906, *intra vires* of the Parliament of Canada?

5. Can the powers of a company incorporated by a provincial legislature be enlarged and to what extent, either as to locality or objects, by the Dominion Parliament or by the legislature of another province?

6. Has the legislature of a province power to prohibit companies incorporated by the Parliament of Canada from carrying on business within the province unless or until the companies obtain license so to do from the government of the province or other local authority constituted by the legislature, if fees are required to be paid upon the issue of such licenses?

7. Is it competent to a provincial legislature to restrict a company incorporated by the Parliament of Canada for the purpose of trading throughout the whole Dominion in the exercise of the special trading powers so conferred or to limit the exercise of such powers within the province?

Is such a Dominion company subject to or governed by the legislation of a province in which it carries on or proposes to carry on its trading powers, limiting the nature or kinds of business which corporations not incorporated by the legislature of the province may carry on or the powers which they may exercise within the province or imposing conditions which are to be observed or complied with by such corporations before they can engage in business within the province?

Can such a company so incorporated by the Parliament of Canada be otherwise restricted in the exercise of its corporate powers or capacity, and how? and in what respect by provincial legislation?

It will be seen that these questions are thoroughly comprehensive in character, so that a decision by the highest tribunal should be successful in settling the whole matter once and for all. Under the present uncertain condition of affairs, manufacturers and insurance companies are equally sufferers and it will be an advantage to have the questions settled, to know the best or worst.