

VISCOUNT HALDANE: You have no right to reply according to what was laid down in the John Deere Plow case. MR. HELLMUTH: I have asked my friend Sir Robert to reply for the Bonanza Company.

VISCOUNT HALDANE: In the John Deere Plow case we laid it down expressly that no intervenant had a right to reply.

THE LORD CHANCELLOR: That is in accordance with the practice too.

VISCOUNT HALDANE: But if you say you represent the Bonanza Company, that is another matter. SIR ROBERT FINLAY: I can only say that the learned counsel for the Bonanza Company have asked me to reply. I am briefed for the intervenant. I admit that I have no right to reply, but if you Lordships by comity will allow me I will be very brief. MR. HELLMUTH: I have asked my learned friend Sir Robert to reply for the Bonanza Company.

THE LORD CHANCELLOR: You are seeking to confer upon Sir Robert Finlay a right of reply which he does not possess. However, this will not be used as a precedent.

VISCOUNT HALDANE: We will shut our eyes to any defect there may be in your retainer for the Bonanza Company, Sir Robert. SIR ROBERT FINLAY: If your Lordship please. I shall observe the principle that my friend Mr. Wegenast observed of my reply not attaining any great dimensions. I shall be extremely short. I am not going to repeat anything that has been said, and really I have only a few observations to make with regard to what has been said on the other side. The first thing I wish to say is this. I submit that my friend Mr. Wegenast's argument was extremely instructive because he really demonstrated the impossibility of applying the territorial principle. He had to say that applying the territorial principle it was impossible to say that any rule could be laid down.

THE LORD CHANCELLOR: Impossible to answer the question which had been propounded by the Board. SIR ROBERT FINLAY: Yes, and he went so far as to ask your Lordships to retire defeated from deciding the appeal in the Bonanza case. It must be decided because it is an appeal. I have listened with the greatest interest and the greatest pleasure to my friend's argument, because I submit it very powerfully supports the appeal I make to your Lordships to discard the territorial principle altogether as incapable of application. Of course, in construing the Act one must look at the words of the Act and the surrounding circumstances in which the legislation was passed. You have got this, that by the Act of 1864, and an earlier Act the province of Canada, which comprised Ontario, had exerted to the full the power of providing for legislating for the creating of companies discarding the territorial principle altogether. What I submit to your Lordships is this: If the framers of the British North America Act had intended to put an end to that state of things, would not they have used very different language from that which they have used. All they have said is that they may legislate with regard to "the incorporation of companies with provincial objects." I submit to your Lordships that all that those words mean is, objects which are non-Dominion objects, and that that really solves the whole difficulties which have been alleged to exist with regard to this case, and that interpretation is, not only in harmony with what may be collected from the Act to have been the intention of its framers when you look at the surrounding circumstances which were within their knowledge and for which they were legislating, but it is also, as I submit, entirely in conformity with the language of the Act itself. Section 92 uses the words "for provincial purposes" with regard to the revenue. It cannot be contended that they could expend the revenue only within the province. Agents must be maintained in the mother-country. For instance the provinces have asserted on a magnificent scale, the right of making contributions for the purposes of hospitals for our soldiers and for other purposes in connection with the war.

THE LORD CHANCELLOR: And they have buildings over here for their representatives. SIR ROBERT FINLAY: Yes, my Lord, but, according to my friend's principle all that would be wholly *ultra vires*. You cannot put a different meaning on the words "provincial purposes" in head 2 from the meaning that is given to them under head 11. Then, my Lords, I submit that the key to the section is to be found in the recognition, that as long as the provinces do not trench upon the sphere of the Dominion legislation (I will not go through the heads again) as