

J. C.
1914

JOHN DEERE
FLOW
COMPANY,
LIMITED
v.
WHARTON.

rights" in particular cases. An abstract logical definition of their scope is not only, having regard to the context of ss. 91 and 92 of the Act, impracticable, but is certain, if attempted, to cause embarrassment and possible injustice in future cases. It must be borne in mind in construing the two sections that matters which in a special aspect and for a particular purpose may fall within one of them may in a different aspect and for a different purpose fall within the other. In such cases the nature and scope of the legislative attempt of the Dominion or the Province, as the case may be, have to be examined with reference to the actual facts if it is to be possible to determine under which set of powers it falls in substance and in reality. This may not be difficult to determine in actual and concrete cases. But it may well be impossible to give abstract answers to general questions as to the meaning of the words, or to lay down any interpretation based on their literal scope apart from their context.

[1915] A. C.
p. 340.

Turning to the appeal before them, the first observation which their Lordships desire to make is that the power of the provincial Legislature to make laws in relation to matters coming within the class of subjects forming No. 11 of s. 92, the incorporation of companies with provincial objects, cannot extend to a company such as the appellant company, the objects of which are not provincial. Nor is this defect of power aided by the power given by No. 13, Property and Civil Rights. Unless these two heads are read disjunctively the limitation in No. 11 would be nugatory. The expression "civil rights in the Province" is a very wide one, extending, if interpreted literally, to much of the field of the other heads of s. 92 and also to much of the field of s. 91. But the expression cannot be so interpreted, and it must be regarded as excluding cases expressly dealt with elsewhere in the two sections, notwithstanding the generality of the words. If this be so, then the power of legislating with reference to the incorporation of companies with other than provincial objects must belong exclusively to the Dominion Parliament, for the matter is one "not coming within the classes of subjects" "assigned exclusively to the Legislatures of the Provinces," within the meaning of the initial words of s. 91, and may be properly regarded as a matter affecting the Dominion generally and covered by the expression "the peace, order, and good government of Canada."

Their Lordships find themselves in agreement with the interpretation put by the Judicial Committee in *Citizens Insurance Co. v. Parsons* (1) on head 2 of s. 91, which confers exclusive power on the Dominion Parliament to make laws regulating trade. This head

(1) 7 App. Cas. 96, at pp. 112, 113.