

may perhaps be a little more concise than what I have said. I submit that a provincial company is not inherently capable of entering into any transactions whatever outside the province. The restriction as to objects does not preclude extra-provincial transactions not inconsistent with the provincial nature of the objects, regarded as a whole. Might I call your Lordships' attention on that point to the judgment of Mr. Justice Duff in the Bonanza case, where he says that you must look at the objects of the company as a whole, and, from what you see there, decide whether it is provincial or not, and my submission is that in so deciding you may, at least, regard the territorial factor.

Now, my Lords, just one word as to the universality of the practice of incorporating companies in the colonies to trade throughout the Dominion. If I were to state my view of the facts on that basis as fully and emphatically as I believe them it would be ungracious to my learned friends who appear for the province. There was not until the close of the premiership of Sir Oliver Mowat the slightest pretence on the part of the province of Ontario to incorporate companies with objects other than provincial. MR. NESBITT: If my friend will take the trouble to look at the incorporation of the Niagara Power Company, which was incorporated directly under the eye of Sir Oliver Mowat, he will find it goes the full length.

THE LORD CHANCELLOR: I do not see myself that it matters. It cannot affect the question of construction. MR. WEGENAST: No, my Lord, but I should like to reinforce what I have stated by calling your Lordships' attention to the fact that the Companies Act of Ontario, until 1897, required the company in terms to state the place within the province of Ontario where the objects were to be carried out, and until a few years before that—I cannot remember the precise date, I think 1883—the fact that the company's objects were to be carried out within the province of Ontario was recited in the charter.

LORD PARKER: That may be because they chose to limit the powers of their Governor-General for incorporating companies. MR. WEGENAST: I quite appreciate that.

LORD PARKER: That is no reason why they should not afterwards repent of it and annul the powers. MR. WEGENAST: That is so, and in the other provinces (I have taken the trouble to examine this matter rather carefully) the rule was the same except for some occasional incorporations by memoranda of association under general Acts, which memoranda the Dominion could not disallow, but, as I understand, the Dominion regularly disallowed any attempt at legislation on the part of the province to incorporate with powers extending beyond the province. That, my Lords, is all I have to say on this branch of the case. I should like to say this, that our chief interest, as your Lordships will appreciate, is in questions 6 and 7 of the reference, which point the way to the solution of this extremely difficult, one might say intolerable situation, in which trading companies find themselves. The legislation which has already been passed since the John Deere Plow decision evinces a construction by the provinces of that decision which, on my submission, is absolutely untenable.

VISCOUNT HALDANE: In the John Deere Plow case we had questions 6 and 7 before us. MR. WEGENAST: The difficulty in which we find ourselves (I do not suggest for a moment that it is a final reason why your Lordships should go into these questions 6 and 7) is that several of the provinces have already legislated in such a way as to show that their interpretation of the John Deere Plow decision means anything than what my learned friends for the provinces now admit to start with, that is, that the Dominion has the right to go into any province and I cannot, in justice to my clients, lose the opportunity of saying that it is that feature of the reference in which they are most directly and most vitally interested.

THE LORD CHANCELLOR: Your clients who represent the Dominion companies. MR. WEGENAST: Yes, my Lord.

THE LORD CHANCELLOR: I am not sure that the others took the same view, but it does not matter. SIR ROBERT FINLAY: I have very little to say.

THE LORD CHANCELLOR: You are appearing for the intervenants. SIR ROBERT FINLAY: Yes, my Lord.