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THE INSURANCE DECISIONS.

As the decision of the Judicial Committee of the Privy Council in the cases of The Queen Insurance Co. v. Parsons, and the Citizens' Insurance Co. v. Parsons, (referred to at p. 1 of this volume), is of great interest, and will probably not appear in any Canadian series of reports, we reproduce the text. In the present issue we give the portion devoted to an examination of the subject generally. The particular reference to the cases decided will appear in our next issue. We may refer the reader to the fourth volume of Supreme Court Reports, p. 215, for the decisions of the Supreme Court of Canada from which the appeals were taken.

THE LATE VICE-CHANCELLOR MALINS.

The retirement of Vice-Chancellor Malins, about two months ago, has been speedily followed by the announcement of his decease. Richard Malins was born in 1805, educated at Cambridge, admitted to the bar at the Inner Temple in 1830, became a Q.C. and a Bencher of Lincoln's Inn in 1849, sat in Parliament for Wallingford from 1852 to 1865, and was appointed a Vice-Chancellor in 1866. He is represented as having made his way at the bar by immense perseverance and industry. Heavy cases with a profusion of detail were usually intrusted to him, and his practice was very large. As a Judge, his decisions, it is said, were directed to the substantial merits of the case before him, and were generally based upon considerations of equity rather upon a rigid adherence to precedent.

A MANUAL OF THE LAW OF CORPORATIONS; by Charles T. Boone, LL.B. San Francisco: Sumner Whitney & Co.

This little volume is a manual of the law applicable to corporations generally; "including "also general rules of law peculiar to banks, "railroads, religious societies, municipal bodies "and voluntary associations, as determined by "the leading Courts of England and the United "States." Though the work is printed and published in San Francisco, the author dates his preface from Johnstown, N.Y. It must be admitted that the effort to be brief has been very successful. The number of decisions cited and embodied in the text is extraordinary. Within 552 pages of an extremely convenient size the author has given us more matter than is usually contained in a portly octavo. To achieve this the type used for the text is small, and that used for the citations which follow each section is still smaller, but distinctness has not been at all sacrificed, the face of the type being beautifully clear. The chapter headings are Nature of Corporations; Creation of Corporations; Constitution and Organization of body corporate; Corporate powers; By-laws; Meetings and Elections; Corporate Liabilities; Eminent Domain; Ultra vires; Stock and Stockholders; Officers and Agents; Remedies by and against; Executions; Mortgages of corporate property; Consolidation; Visitation; Dissolution; Banks; Railroads; Religious Societies; Municipal Corporations; Associations. We think that this manual will save lawyers a great deal of time in their examination of the decisions on any given point, and be of great assistance in the determination of the questions occurring every day in the complex subject of which it treats.

PROVINCIAL LEGISLATION ON THE SUBJECT OF INSURANCE.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

November 26, 1881.

Present:—SIR BARNES PEACOCK, SIR MONTAGUE SMITH, SIR ROBERT P. COLLIER, SIR RICHARD COUCH, SIR ARTHUR HOBHOUSE.

THE CITIZENS INS. CO. OF CANADA v. PARSONS.
THE QUEEN INSURANCE CO. v. PARSONS.

The Act of the Province of Ontario, 38 Vict. c. 24, enacting that contracts of insurance made within the Province shall be subject to certain conditions, is valid.

PER CURIAM. The questions in these Appeals arise in two actions brought by the same Plaintiff (the Respondent) upon contracts of insurance against fire of buildings situate in the Province of Ontario, in the Dominion of Canada.

The most important question in both appeals is one of those, already numerous, which have

arisen upon the provisions of the British North America Act, 1867, relating to the distribution of legislative powers between the Parliament of Canada and the Legislatures of the Provinces, and, owing to the very general language in which some of these powers are described, the question is one of considerable difficulty. Their Lordships propose to deal with it before approaching the facts on which the particular questions in the actions depend. It will only be necessary to premise that "The Citizens Insurance Company of Canada," the defendants in the first action, were originally incorporated by an Act of the late Province of Canada, 19 and 20 Vict., c. 124, by the name of "The Canada Marine Insurance Company." By another Act of the late Province, 27 and 28 Vict., c. 98, further powers, including the power of effecting contracts of insurance against fire, were conferred on the company, and its name changed to "The Citizens Insurance and Investment Company;" and, finally, by an Act of the Dominion Parliament, its name was again changed to the present title, and it was enacted that, by its new name, it should enjoy all the franchises, privileges, and rights, and be subject to all the liabilities of the company under its former name.

The Queen Insurance Company is an English fire and life insurance company incorporated under the provisions of the Joint Stock Companies Act of the Imperial Parliament, 7 & 8 Vict., c. 110. It has its principal office in England, and carries on business in Canada.

The defendant company in each of the actions is the appellant.

The statute impeached by the appellants, as being an excess of legislative power, is an Act of the Legislature of the Province of Ontario (39 Vict., c. 24), intituled "An Act to secure uniform conditions in policies of Fire Insurance."

The preamble of the Act is as follows:—

"Whereas under the provisions of an Act passed in the 38th year of the reign of Her Majesty, intituled 'An Act to amend the laws relating to Fire Insurances,' the Lieutenant Governor issued a commission to certain commissioners therein named, requiring them to consider and report what conditions are just and reasonable conditions to be inserted in fire insurance policies on real or personal propery in this province; And whereas a majority of the said commissioners have, in pursuance of the requirements of the said Act, settled and approved of the conditions set forth in the schedule to this Act; and it is advisable that the same should be expressly adopted by the Legislature as the statutory conditions to be contained in policies of fire insurance entered into or in force in this province:

It enacts as follows:—

"1. The conditions set forth in the schedule to this Act shall, as against the insurers, be deemed to be part of every policy of fire insurance hereafter entered into, or renewed, or otherwise in force in Ontario, with respect to any property therein, and shall be printed on every such policy with the heading 'Statutory Conditions,' and if a company (or other insurer) desire to vary the said conditions, or to omit any of them or to add new conditions, there shall be added in conspicuous type, and in ink of different colour, words to the following effect:—

Variations in Conditions.

"'This policy is issued on the above statutory conditions, with the following variations and additions;—

"'These variations (*or as the case may be*) are, by virtue of the Ontario Statute in that behalf, in force so far as, by the Court or Judge before whom a question is tried relating thereto, they shall be held to be just and reasonable to be exacted by the company.'

"2. Unless the same is distinctly indicated and set forth in the manner or to the effect aforesaid, no such variation, addition, or omission shall be legal and binding on the insured; and no question shall be considered as to whether any such variation, addition, or omission is, under the circumstances, just and reasonable, and on the contrary the policy shall, as against the insurers, be subject to the statutory conditions only, unless the variations, additions, or omissions are distinctly indicated and set forth in the manner or to the effect aforesaid.

"3. A decision of a Court or Judge under this Act shall be subject to review or appeal to the same extent as a decision by such Court or Judge in other cases."

The schedule contains twenty-one conditions under the head "Statutory Conditions." The following of them are material to the particular questions to be decided in the appeals:—

"After application for insurance, it shall be deemed that any policy sent to the assured is intended to be in accordance with the terms of the application, unless the company shall, in writing, point out the particulars wherein the policy differs from the application."

8. "The company is not liable for loss if there is any prior insurance in any other company, unless the company's assent thereto appears therein, or is endorsed thereon, nor if any subsequent insurance is effected in any other company, unless and until the company assent thereto by writing, signed by a duly authorized agent."

"In the event of any other insurance on the property herein described having been assented to as aforesaid, then this company shall, if such other insurance remain in force, on the happening of any loss or damage, only be liable for the payment of a rateable proportion of such loss or damage without reference to the dates of the different policies."

10. "The company is not liable for the losses following, that is to say, among others:—

(g) The company is not liable for loss or damage occurring while petroleum," and various other enumerated substances, "or more than 25 pounds' weight of "gunpowder, are stored or kept in the building in- "sured, or containing the property insured, unless "permission is given in writing by the company."

The distribution of legislative powers is provided for by Sections 91 to 95 of "the British North America Act, 1867;" the most important of these being Section 91, headed "Powers of the Parliament," and section 92, headed "Exclusive Powers of Provincial Legislatures."

Section 91 is as follows:—

"It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order, and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces; and for greater certainty, but not so as to restrict the terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated, that is to say,—"

Then follows an enumeration of 29 classes of subjects.

The section concludes as follows:—

"And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces."

Section 92 is as follows:—

"In each province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say,—"

Then follows an enumeration of 16 classes of subjects.

The scheme of this legislation, as expressed in the first branch of Section 91, is to give to the Dominion Parliament authority to make laws for the good government of Canada in all matters *not coming* within the classes of subjects assigned exclusively to the provincial legislature. If the 91st section had stopped here, and if the classes of subjects enumerated in Section 92 had been altogether distinct and different from those in Section 91, no conflict of legislative authority could have arisen. The provincial legislatures would have had exclusive legislative power over the 16 classes of subjects assigned to them, and the Dominion Parliament exclusive power over all other matters relating to the good government of Canada. But it must have been foreseen that this sharp and definite distinction had not been and could not be attained, and that some of the classes of subjects assigned to the provincial legislatures unavoidably ran into and were embraced by some of the enumerated classes of subjects in Section 91; hence an endeavour appears to have been made to provide for cases of apparent conflict; and it would seem that with this object it was declared in the second branch of the 91st section, "for greater certainty, but not so as to re- "strict the generality of the foregoing terms of "this section" that (notwithstanding anything in the Act) the exclusive legislative authority of the Parliament of Canada should extend to all matters coming within the classes of subjects enumerated in that section. With the same object, apparently, the paragraph at the end of Section 91 was introduced, though it may be observed that this paragraph applies in its grammatical construction only to No. 16 of Section 92.

Notwithstanding this endeavour to give pre-eminence to the Dominion Parliament in cases of a conflict of powers, it is obvious that in some cases where this apparent conflict exists, the legislature could not have intended that the powers exclusively assigned to the provincial legislature should be absorbed in those given to the Dominion Parliament. Take as one instance the subject "marriage and divorce," contained in the enumeration of subjects in Section 91; it is evident that solemnization of marriage would come within this general description; yet "solemnization of marriage in the Province" is enumerated among the classes of subjects in Section 92, and no one can doubt, notwithstanding the general language of Section 91, that this subject is still within the exclusive authority of the legislatures of the provinces. So "the raising of money by any mode or system of taxation" is enumerated among the classes of subjects in Section 91; but, though the description is sufficiently large and general to include "direct taxation within "the Province, in order to the raising of a reve- "nue for provincial purposes," assigned to the Provincial Legislatures by Section 92, it obviously could not have been intended that, in this instance also, the general power should override the particular one. With regard to

certain classes of subjects therefore, generally described in Section 91, legislative power may reside as to some matters falling within the general description of these subjects in the legislatures of the Provinces. In these cases it is the duty of the Courts, however difficult it may be, to ascertain in what degree, and to what extent, authority to deal with matters falling within these classes of subjects exists in each legislature, and to define in the particular case before them the limits of their respective powers. It could not have been the intention that a conflict should exist; and, in order to prevent such a result, the language of the two sections must be read together, and that of one interpreted, and, where necessary, modified, by that of the other. In this way, it may, in most cases, be found possible to arrive at a reasonable and practical construction of the language of the sections, so as to reconcile the respective powers they contain, and give effect to all of them. In performing this difficult duty, it will be a wise course for those on whom it is thrown to decide each case which arises as best they can, without entering more largely upon an interpretation of the statute than is necessary for the decision of the particular question in hand.

The first question to be decided is, whether the Act impeached in the present appeals falls within any of the classes of subjects enumerated in Section 92, and assigned exclusively to the Legislatures of the Provinces, for if it does not, it can be of no validity, and no other question would then arise. It is only when an Act of the Provincial Legislature *prima facie* falls within one of these classes of subjects that the further questions arise, viz., whether, notwithstanding this is so, the subject of the Act does not also fall within one of the enumerated classes of subjects in Section 91, and whether the power of the Provincial Legislature is or is not thereby overborne.

The main contention on the part of the Respondent was that the Ontario Act in question had relation to matters coming within the class of subjects described in No. 13 of Section 92, viz., "Property and Civil Rights in the Province." The Act deals with policies of insurance entered into or in force in the Province of Ontario for insuring property situate therein against fire, and prescribes certain conditions which are to form part of such contracts. These contracts, and the rights arising from them, it was argued, came legitimately within the class of subject, "Property and Civil Rights." The Appellants, on the other hand, contended that civil rights meant only such rights as flowed from the law, and gave as an instance the *status* of persons. Their Lordships cannot think that the latter construction is the correct one. They find no sufficient reason in the language itself, nor in the other parts of the Act, for giving so narrow an interpretation to the words "civil rights." The words are sufficiently large to embrace in their fair and ordinary meaning, rights arising from contract, and such rights are not included in any of the enumerated classes of subjects in Section 91.

It becomes obvious, as soon as an attempt is made to construe the general terms in which the classes of subjects in Sections 91 and 92 are described, that both sections and the other parts of the Act must be looked at to ascertain whether language of a general nature must not by necessary implication or reasonable intendment be modified and limited. In looking at Section 91 it will be found not only that there is no class including, generally, contracts and the rights arising from them, but that one class of contracts is mentioned and enumerated, viz., "18, bills of exchange and promissory notes," which it would have been unnecessary to specify if authority over all contracts and the rights arising from them had belonged to the Dominion Parliament.

The provision found in Section 94 of the British North America Act, which is one of the sections relating to the distribution of legislative powers, was referred to by the learned Counsel on both sides as throwing light upon the sense in which the words "property and civil rights" are used. By that section the Parliament of Canada is empowered to make provision for the uniformity of any laws relative to "property and civil rights" in Ontario, Nova Scotia and New Brunswick, and to the procedure of the Courts in these three provinces, if the provincial legislatures choose to adopt the provision so made. The Province of Quebec is omitted from this section for the obvious reason tha the law which governs property and civil rights in Quebec is in the main the French law, as it existed at the time of the cession of Canada,

and not the English law which prevails in the other provinces. The words "property and civil rights" are, obviously, used in the same sense in this section as in No. 13 of Section 92, and there seems no reason for presuming that contracts and the rights arising from them were not intended to be included in this provision for uniformity. If, however, the narrow construction of the words "civil rights," contended for by the Appellants, were to prevail, the Dominion Parliament could, under its general power, legislate in regard to contracts in all and each of the provinces, and, as a consequence of this, the Province of Quebec, though now governed by its own Civil Code, founded on the French law, as regards contracts and their incidents, would be subject to have its law on that subject altered by the Dominion Legislature, and brought into uniformity with the English law prevailing in the other three provinces, notwithstanding that Quebec has been carefully left out of the uniformity section of the Act.

It is to be observed that the same words, "civil rights," are employed in the Act of 14 George III., c. 83, which made provision for the government of the Province of Quebec. Section 8 of that Act enacted that His Majesty's Canadian subjects within the Province of Quebec should enjoy their property, usages, and other civil rights, as they had before done, and that in all matters of controversy relative to property and civil rights, resort should be had to the laws of Canada, and be determined agreeably to the said laws. In this Statute the words "property" and "civil rights" are plainly used in their largest sense; and there is no reason for holding that in the Statute under discussion they are used in a different and narrower one.

The next question for consideration is whether, assuming the Ontario Act to relate to the subject of property and civil rights, its enactments and provisions come within any of the classes of subjects enumerated in Section 91. The only one which the Appellants suggested as expressly including the subject of the Ontario Act is No. 2, "the regulation of trade and commerce."

A question was raised which led to much discussion in the Courts below and at this bar, viz., whether the business of insuring buildings against fire was a trade. This business, when carried on for the sake of profit, may, no doubt, in some sense of the word, be called a trade. But contracts of indemnity made by insurers can scarcely be considered trading contracts, nor were insurers who made them held to be "traders" under the English bankruptcy laws; they have been made subject to those laws by special description. Whether the business of fire insurance properly falls within the description of "a trade" must, in their Lordships' view, depend upon the sense in which that word is used in the particular Statute to be construed; but in the present case their Lordships do not find it necessary to rest their decision on the narrow ground that the business of insurance is not a trade.

The words "regulation of trade and commerce," in their unlimited sense, are sufficiently wide, if uncontrolled by the context and other parts of the Act, to include every regulation of trade ranging from political arrangements in regard to trade with foreign Governments, requiring the sanction of Parliament, down to minute rules for regulating particular trades. But a consideration of the Act shows that the words were not used in this unlimited sense. In the first place, the collocation of No. 2 with classes of subjects of national and general concern affords an indication that regulations referring to general trade and commerce were in the mind of the Legislature, when conferring this power on the Dominion Parliament. If the words had been intended to have the full scope of which in their literal meaning they are susceptible, the specific mention of several of the other classes of subjects enumerated in Section 91 would have been unnecessary; as, 15, banking; 17, weights and measures; 18, bills of exchange and promissory notes; 19, interest; and even 21, bankruptcy and insolvency.

"Regulations of trade and commerce" may have been used in some such sense as the words "regulations of trade" in the Act of Union between England and Scotland (6 Anne, c. 11), and as these words have been used in other Acts of State. Article V. of the Act of Union enacted that all the subjects of the United Kingdom should have "full freedom and intercourse of trade and navigation" to and from all places in the United Kingdom and the Colonies: and Article VI. enacted that all parts of the

United Kingdom from and after the Union should be under the *same* "prohibitions, restrictions, and *regulations of trade*." Parliament has at various times since the Union passed laws affecting and regulating specific trades in one part of the United Kingdom only, without its being supposed that it thereby infringed the Articles of Union. Thus the Acts for regulating the sale of intoxicating liquors notoriously vary in the two kingdoms. So with regard to Acts relating to bankruptcy, and various other matters.

Construing therefore the words "regulation of trade and commerce" by the various aids to their interpretation above suggested, they would include political arrangements in regard to trade requiring the sanction of Parliament, regulation of trade in matters of inter-provincial concern, and it may be that they would include general regulation of trade affecting the whole Dominion. Their Lordships abstain on the present occasion from any attempt to define the limits of the authority of the Dominion Parliament in this direction. It is enough for the decision of the present case to say that, in their view, its authority to legislate for the regulation of trade and commerce does not comprehend the power to regulate by legislation the contracts of a particular business or trade, such as the business of fire insurance, in a single province, and therefore that its legislative authority does not in the present case conflict or compete with the power over property and civil rights assigned to the Legislature of Ontario by No. 13 of Section 92.

Having taken this view of the present case, it becomes unnecessary to consider the question how far the general power to make regulations of trade and commerce, when competently exercised by the Dominion Parliament, might legally modify or affect property and civil rights in the provinces, or the legislative power of the Provincial Legislatures in relation to those subjects; questions of this kind, it may be observed, arose and were treated of by this Board in the cases of *L'Union St. Jacques de Montréal* v. *Belisle*, L. R. 6 P. C. 31, and *Cushing* v. *Dupuy*, L. R. 5 Appeal cases 409.

It was contended in the case of the Citizens Insurance Company of Canada, that the Company having been originally incorporated by the Parliament of the late Province of Canada, and having had its incorporation and corporate rights confirmed by the Dominion Parliament, could not be affected by an Act of the Ontario Legislature. But the latter Act does not assume to interfere with the constitution or status of corporations. It deals with all insurers alike, including corporations and companies, whatever may be their origin, whether incorporated by British authority, as in the case of the Queen Insurance Company, or by foreign or colonial authority, and without touching their status, requires that if they choose to make contracts of insurance in Ontario, relating to property in that province, such contracts shall be subject to certain conditions.

It was further urged that the Ontario Act was repugnant to the Act of the late Province of Canada, which empowered the Company to make contracts for assurance against fire "upon such conditions as might be bargained" for and agreed upon between the Company and the assured." But this is, in substance, no more than an expanded description of the business the Company was empowered to transact, viz., to make contracts of assurance against fire, and can scarcely be regarded as inconsistent with the specific legislation regarding such contracts contained in the Act in question.

It was further argued on the part of the Appellants that the Ontario Act was inconsistent with the Act of the Dominion Parliament, 38 Vict., c. 20, which requires fire insurance companies to obtain licenses from the Minister of Finance as a condition to their carrying on the business of insurance in the Dominion, and that it was beyond the competency of the Provincial Legislature to subject companies who had obtained such licenses, as the Appellant Companies had done, to the conditions imposed by the Ontario Act. But the legislation does not really conflict or present any inconsistency. The statute of the Dominion Parliament enacts a general law applicable to the whole Dominion, requiring all insurance companies, whether incorporated by foreign, Dominion, or Provincial authority to obtain a license from the Minister of Finance, to be granted only upon compliance with the conditions prescribed by the Act. Assuming this Act to be within the competency of the Dominion Parliament as a general law applicable to foreign and domestic corporations, it in no way

interferes with the authority of the Legislature of the Province of Ontario to legislate in relation to the contracts which corporations may enter into in that province. The Dominion Act contains the following provision, which clearly recognises the right of the Provincial Legislature to incorporate insurance companies for carrying on business within the province itself:—

"But nothing herein contained shall prevent any insurance company incorporated by or under any Act of the Legislature of the late Province of Canada, or of any province of the Dominion of Canada, from carrying on any business of insurance within the limits of the late Province of Canada, or of such province only according to the powers granted to such insurance company within such limits as aforesaid, without such license as hereinafter mentioned."

This recognition is directly opposed to the construction sought to be placed by the Appellants' Counsel on the words "provincial objects" in No. 11 of Section 92,—"the incorporation of companies with provincial objects," by which he sought to limit these words to "public" provincial objects, so as to exclude insurance and commercial companies.

Chief Justice Ritchie refers to an equally explicit recognition of the power of the provinces to incorporate insurance companies contained in an earlier Act of the Dominion Parliament (31 Vict., c. 48) which was passed shortly after the establishment of the Dominion.

The learned Chief Justice also refers to a remarkable section contained in the Act of the Dominion Parliament consolidating certain Acts respecting insurance, 40 Vict., c. 42. Section 28 of that Act is as follows:

"This Act shall not apply to any company within the exclusive legislative control of any one of the provinces of Canada, unless such company so desires; and it shall be lawful for any such company to avail itself of the provisions of this Act, and if it did so avail itself, such company shall then have the power of transacting its business of insurance throughout Canada."

This provision contains a distinct declaration by the Dominion Parliament that each of the provinces had exclusive legislative control over the insurance companies incorporated by it, and therefore is an acknowledgment that such control was not deemed to be an infringement of the power of the Dominon Parliament as to "the regulation of trade and commerce."

The declarations of the Dominion Parliament are not, of course, conclusive upon the construction of the British North America Act; but when the proper construction of the language used in that Act to define the distribution of legislative powers is doubtful, the interpretation put upon it by the Dominion Parliament in its actual legislation may properly be considered.

The opinions of the majority of the Judges in Canada, as summed up by Chief Justice Ritchie, are in favour of the validity of the Ontario Act. In the present action, the Court of Queen's Bench and the Court of Appeal of Ontario unanimously supported its legality: and the Supreme Court of Canada by a majority of three Judges to two, have affirmed the judgment of the Provincial Courts. The opinions of the learned Judges of the Supreme Court of Canada are stated with great fullness and ability, and clearly indicate the opposite views which may be taken of the Act, and the difficulties which surround any construction that may be given to it.

Mr. Justice Taschereau, in the course of his vigorous judgment, sought to place the Plaintiff in the action against the Citizens Company in a dilemma. He thinks that the assertion of the right of the province to legislate with regard to the contracts of insurance companies amounts to a denial of the right of the Dominion Parliament to do so, and that this is, in effect, to deny the right of that Parliament to incorporate the Citizens Company, so that the Plaintiff was sueing a non-existent Defendant. Their Lordships cannot think that this dilemma is established. The learned Judge assumes that the power of the Dominion Parliament to incorporate companies to carry on business in the Dominion is derived from one of the enumerated classes of subjects, viz., "the regulation of trade and commerce," and then argues that if the authority to incorporate companies is given by this clause, the exclusive power of regulating them must also be given by it, so that the denial of one power involves the denial of the other.

But, in the first place, it is not necessary to rest the authority of the Dominion Parliament to incorporate companies on this specific and enumerated power. The authority would belong to it by its general power over all matters not coming within the classes of subjects assigned exclusively to the legislatures of the provinces, and the only subject on this head assigned to the Provincial Legislature being "the incorporation of companies with provincial objects,"

it follows that the incorporation of companies for objects other than provincial falls within the general powers of the Parliament of Canada. But it by no means follows (unless indeed the view of the learned Judge is right as to the scope of the words "the regulation of trade and commerce") that because the Dominion Parliament had alone the right to create a corporation to carry on business throughout the Dominion that it alone has the right to regulate its contracts in each of the provinces. Suppose the Dominion Parliament were to incorporate a company, with power, among other things, to purchase and hold lands throughout Canada in mortmain, it could scarcely be contended if such a company were to carry on business in a province where a law against holding land in mortmain prevailed (each province having exclusive legislative power over "property and civil rights in the province" that it could hold land in that province in contravention of the provincial legislation; and, if a company were incorporated for the sole purpose of purchasing and holding land in the Dominion, it might happen that it could do no business in any part of it, by reason of all the provinces having passed Mortmain Acts, though the corporation would still exist and preserve its status as a corporate body.

On the best consideration they have been able to give to the arguments addressed to them and to the judgments of the learned judges in Canada, their Lordships have come to the conclusion that the Act in question is valid.

Their Lordships have now to consider separately the two appeals.

(Continued on p. 33).

COURT OF REVIEW.

MONTREAL, December 24, 1881.

JOHNSON, RAINVILLE, JETTÉ, JJ.

[From S.C., St. Hyacinthe.

ROY v. PAGÉ et al.

Justice of the Peace—Trespass.

A magistrate acting within the limit of his authority and without malice is not liable to an action of trespass, though he may have given an erroneous judgment.

The judgment under Review was rendered by the Superior Court, St. Hyacinthe, (Sicotte, J.) July 5, 1881.

JOHNSON, J. This was an action of trespass against three magistrates and also against the complainant in a case before them, in which they had convicted the present plaintiff of an assault, and had imposed a fine, and the payment of costs, without fixing in the conviction the term of imprisonment due in case the fine and costs were not paid. Subsequently, the fine not being paid, they awarded imprisonment, and he was incarcerated under their warrant, but got out of prison on a writ of *habeas corpus*, and immediately brought his action against the magistrates, and also against Pagé who had prosecuted him.

It is not necessary here to go into the question of the legality or illegality of the cause of detention expressed in the commitment. Assuming it to be, as was held by the learned judge before whom the writ was returned, insufficient in law, the question would still remain what constitutes a sufficient ground of action against justices of the peace under such circumstances. In the case which gave rise to the present action, they were acting within the limit of their authority; and the utmost contended for against them is that they acted in their magisterial office contrary to law, in issuing a warrant of commitment to prison without the term of imprisonment having been fixed in the conviction. We heard all the plaintiff had to say, and we dispensed with argument for the defendant. Therefore we have nothing to expound upon points that have been discussed; but on the plaintiff's own showing we are all clear that he has no case to bring into court. The general rule of law as to actions of trespass against persons having a limited authority is, that if they do an act beyond the limit of their authority, they thereby subject themselves to an action; but if the act be done within the limit of their authority, although it may be done through an erroneous or mistaken judgment, they are not liable. (See *Dodswell* v. *Impey*, 1 B. & C. 169, and *Lowther* v. *Radnor*, 8 East, 113, and *Mills* v. *Collett*, 6 Bingh. 85.) As to Pagé's liability under any circumstances, it is not easy to see on what principle it can be made to rest except upon an alleged abuse of legal process; and there is no shadow of proof of malice or want of probable cause either in his case, or in that of the justices. The learned judge in the Superior Court held that the magistrate had jurisdiction over the case, and there was no proof of malice whatever. On that point we are here unanimously of the same opinion. As to the legality of the imprisonment, it is not necessary to say anything; but I should wish to be understood, however, as not implying that there was anything illegal, or even irregular, in it under section 43 of the 32 & 33 Vic., c. 20, for the fine and costs have to be paid immediately unless a delay is granted, which was not granted here. Again, I would draw attention to the 71st sec. of c. 31, 32-33 Vic. Under it, *no warrant of commitment is to be held void by reason of any defect therein, if it be alleged therein that the party has been convicted, and if there is a valid conviction.* So that the learned judge was, in my opinion, extremely indulgent in enlarging the prisoner under the *habeas corpus*.

Judgment confirmed.

De la Bruère & Co. for plaintiff.
H. Mercier, Q. C., for defendants.