IN THE MATTER OF THE INCORPORATION OF COMPANIES IN CANADA.

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*Feb. 24-28.
*Oct. 14.

REFERENCE BY THE GOVERNOR GENERAL IN COUNCIL.

Constitutional law — Incorporation of companies — "Provincial objects"—Limitation—Doing business beyond the province—Insurance company—"Insurance Act, 1910"; 9 & 10 *Edw. VII. c.* 32, *s.* 3, *s.-s.* 3—*Enlargement of company's powers—Federal company—Provincial licence—Trading companies.*

By sub-sec. 11, sec. 92 of "The British North America Act, 1867," the legislature of any Province in Canada has exclusive jurisdiction for "The Incorporation of Companies with Provincial Objects."

Held, per Fitzpatrick C.J. and Davies J., that the limitation defined in the expression "Provincial Objects" is territorial and also has regard to the character of the powers which may be conferred on companies locally incorporated.

Held, per Idington, Anglin and Brodeur JJ., that such limitation is not territorial but has regard to the character of the powers only.

Per Duff J.—Provincial objects means "objects" which are "provincial" in reference to the incorporating province. Whether the "objects" of a particular company as defined by its constitution are or are not "provincial" in this sense is a question to be determined on the facts of each particular case substantially as a question of fact.

Held, per Fitzpatrick C.J. and Davies J., that a company incorporated by a Provincial legislature has no power or capacity to do business outside of the limits of the incorporating Province but it may contract with parties residing outside those limits as to matters ancillary to the exercise of its powers.

Per Idington and Brodeur JJ.—Such company has, inherently, unless prohibited by its charter, the capacity to carry on the business for which it was created, in any foreign state or province whose laws permit it to do so.

Per Duff J.—A provincial company may conduct its operations outside the limits of the Province creating it so long as its busi-

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*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff, Anglin and Brodeur JJ.

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ness as a whole remains provincial with reference to its province of origin.

Per Anglin J.—Such a company has, inherently, unless prohibited by its charter, the capacity to accept the authorization of any foreign state or province to carry on, within its territory, the business for which it was created.

Held, per Fitzpatrick C.J. and Davies J., that a corporation constituted by a provincial legislature with power to carry on a fire insurance business with no express limitation as to locality has no power or capacity to make and execute contracts for insurance outside of the incorporating province or for insuring property situate outside thereof.,

Per Idington, Anglin and Brodeur JJ.—Such a company has power to insure property situate within or without the incorporating province and to make contracts within or without the same to effect any such insurance. In respect to all such contracts it is not material whether the owner of the property insured is or is not a citizen or resident of the incorporating Province.

Per Duff J.—It is not necessarily incompatible with the provincial character of the "objects" of a provincial insurance company that it should have power to enter into outside the province contracts insuring property outside the province.

Held, per Fitzpatrick C.J. and Davies J.—A provincial fire insurance company cannot make contracts and insure property throughout Canada by availing itself of the provisions of sec. 3, sub-sec. 3, of 9 & 10 Edw. VII. ch. 32 ("The Insurance Act, 1910").

Per Fitzpatrick C.J. and Davies J.—That such enactment is *ultra vires* so far as provincial companies are affected.

Per Brodeur J.—Such enactment is *ultra vires* of Parliament.

Per Idington J.—Part of said sub-section may be *intra vires*, but the last part providing for a Dominion licence to local companies is not.

Per Anglin J.—The said enactment is *ultra vires* except in so far as it deals with companies incorporated by or under Acts of the legislature of the late Province of Canada.

Held, that the powers of a company incorporated by a provincial legislature cannot be enlarged either as to locality or objects, by the Dominion Parliament nor by the legislature of another Province.

Held, per Fitzpatrick C.J. and Davies J.—The legislature of a province has no power to prohibit companies incorporated by the Parliament of Canada from carrying on business within the province without obtaining a licence so to do from the provincial authorities and paying fees therefor unless such licence is imposed in exercise of the taxing power of the province. And only in the same way can the legislature restrict a company incor-

porated for the purpose of trading throughout the Dominion in the exercise of its special trading powers or limit the exercise of such powers within the province. Brodeur J. *contra*.

Per Idington J.—A company incorporated by the Dominion Parliament in carrying out any of the enumerated powers contained in sec. 91 cannot be prohibited by a provincial legislature from carrying on business, or restricted in the exercise of its powers, within the province though subject to exercise of the exclusive jurisdiction to make laws in relation to "direct taxation within the province." But a company incorporated under the general powers of Parliament must conform to all the duly enacted laws of a province in which it seeks to do business.

Per Duff J.—A company incorporated under the residuary legislative power of the Dominion is not in any province where it carries on business subject to the legislative authority of the province in relation to matters falling within the subject "incorporation of companies"; but as regards all other matters falling within the enumerated subjects of section 92 it is subject to such legislative jurisdiction just as a natural person or an unincorporated association would be in like circumstances. The enactments of sections 139, 152, 167 and 168 of the British Columbia "Companies Act" are valid.

Per Anglin J.—The provincial legislature may impose a licence and exact fees from any Dominion company if the object be the raising of revenue, or obtaining of information, "for provincial, local or municipal purposes" but not if it is to require the company to obtain provincial sanction or authority for the exercise of its corporate powers. And the legislature cannot restrict a company incorporated for the purpose of trading throughout the Dominion in the exercise of its special powers nor limit the exercise of such powers within the province, nor subject such company to legislation limiting the nature or kind of business which corporations not incorporated by it may carry on or the powers which they may exercise within the province.

REFERENCE by the Governor General in Council of questions respecting the incorporation of companies to the Supreme Court of Canada for hearing and consideration.

The questions so referred to the court were the following:—

IN THE MATTER of a Reference by His Excellency the Governor General in Council to the Supreme

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Court of Canada pursuant to section 60 of the "Supreme Court Act" of certain questions for hearing and consideration as to the respective legislative powers under the "British North America Acts" of the Dominion of Canada and the Provinces of Canada in relation to the incorporation of companies and as to the other particulars therein stated.

A report of the Committee of the Privy Council, approved by His Excellency the Governor General on the 9th May, 1910.

"The Committee of the Privy Council have had under consideration a report, dated 2nd May, 1910, from the Minister of Justice, stating that important questions of law have arisen as to the respective legislative powers under the "British North America Acts" of the Dominion of Canada and the Provinces of Canada in relation to the incorporation of companies and as to the other particulars hereinafter stated, and it is expedient that these questions should be judicially determined.

"The Minister accordingly recommends that under the authority of section 60 of the "Supreme Court Act," Revised Statutes of Canada, 1906, chapter 139, the following questions be referred by Your Excellency in Council to the Supreme Court of Canada for hearing and consideration, namely:—

"1. What limitation exists under the 'British North America Act, 1867,' upon the power of the provincial legislatures to incorporate companies ?

"What is the meaning of the expression 'with provincial objects' in section 92, article 11, 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 upon 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, article 11, of the 'British North America Act, 1867,' 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 by a provincial legislature 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 corporation 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 situate 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,

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(*a*), (*b*) and (*c*), the answer be negative, would the corporation have throughout Canada the power or capacity mentioned in any and which of the said cases, on availing itself of the 'Insurance Act,' Revised Statutes of Canada, 1906, chapter 34, as provided by section 4, sub-section 3 ?

"Is the said enactment, Revised Statutes of Canada, 1906, chapter 34, section 4, sub-section 3, *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

"(*a*) the Dominion Parliament ?

"(*b*) 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 a licence 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 licences ?

"For examples of such provincial legislation, see Ontario, 63 Vict. ch. 24; New Brunswick, Cons. Sts., 1903, ch. 18; British Columbia, 5 Edw. VII. ch. 11.

"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 trading company* subject to or governed by the legislation of a province in which it carries out or proposes to carry out 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, of 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 ?

"The Committee submit the same for approval.

"F. K. BENNETTS,

"Asst. Clerk of the Privy Council."

P.C. 1069.

A report of the Committee of the Privy Council, approved by His Excellency the Governor General on the 30th May, 1910.

"The Committee of the Privy Council, on the recommendation of the Minister of Justice, advise that the order in Council of the 9th May, 1910, referring certain questions to the Supreme Court of Canada for hearing and consideration, be amended by substituting for the fourth of the said questions the following:—

"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 power or capacity mentioned in any and which of the said cases on availing itself of the 'Insurance Act, 1910,' 9 and 10 Edw. VII. ch. 32, sec. 3, sub-sec. 3 ?

"Is the said enactment, the 'Insurance Act, 1910,'

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ch. 32, sec. 23, sub-sec. 3, *intra vires* of the Parliament of Canada ?

"F. K. BENNETTS,
"Asst. Clerk of the Privy Council."

A report of the Committee of the Privy Council, approved by His Excellency the Governor General on the 26th September, 1910.

"On a memorandum dated 23rd September, 1910, from the Minister of Justice, submitting — with reference to the Order in Council of 30th May, 1910, amending an Order in Council of 9th May, 1910, referring certain questions to the Supreme Court of Canada for hearing and consideration — that a clerical error has occurred in the concluding sentence of the question stated by the said Order in Council of 30th May, 1910, in that section 3 is erroneously described as section 23. The said concluding sentence should read as follows: 'Is the said enactment, the "Insurance Act, 1910," ch. 32, sec. 3, sub-sec. 3, *intra vires* of the Parliament of Canada ?'

"The Minister, therefore, recommends that the said Order in Council of 30th May, 1910, be amended accordingly."

The Committee submit the same for approval.

F. K. BENNETTS,
Asst. Clerk of the Privy Council.

The following counsel appeared.

Newcombe K.C. and *Atwater K.C.* for the Attorney General of Canada.

Nesbitt K.C., Lafleur K.C., Aimé Geoffrion K.C. and *Christopher C. Robinson* for the Provinces of On-

tario, Quebec, Nova Scotia, New Brunswick, Prince Edward Island and Manitoba.

S. B. Woods K.C. for Alberta and Saskatchewan.

Chrysler K.C. for the Manufacturers' Association of Canada.

ANSWERS OF THE JUDGES.

THE CHIEF JUSTICE.—The first two questions in this reference can be dealt with together, and this has been done by counsel in argument.

To those two questions my general answer is: The words "Provincial objects" in section 92 (11) are intended to be restrictive; they have reference to the matters over which legislative jurisdiction is conferred by that section, *i.e.*, matters "which are, from a provincial point of view, of a local or private nature" (Lord Watson, *Prohibition Case*(1)).

The Parliament of Canada can alone constitute a corporation with capacity to carry on its business in more than one province. Companies incorporated by local legislatures are limited in their operations to the territorial area over which the incorporating legislature has jurisdiction. Comity cannot enlarge the capacity of a company where that capacity is deficient by reason of the limitations of its charter or of the constituting power. Comity, whatever may be the legal meaning of the word in international relations, cannot operate between the provinces so as to affect the distribution of legislative power between the Do-

(1) [1896] A.C. 348, at p. 359.

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minion and the provinces under the "British North America Act."

This does not imply that a provincial company may not, in the transaction of its business, contract with parties or corporations residing outside of the province in matters which are ancillary to the exercise of its substantive powers. I use the terms "substantive" and "ancillary" as descriptive of the two classes of powers inherent in the company, as these are used in the judgment of the Judicial Committee in *City of Toronto* v. *Canadian Pacific Railway Co.*(1).

It was contended on behalf of the provinces that a distinction must be drawn between trading companies or companies which simply buy or sell commodities, and companies such as manufacturing industries, the incorporation of which contemplates a physical existence within the province; but if the view above expressed as to the capacity of the provincial company is correct, no distinction can be made. In both cases, the substantive functions of the company must be confined to the incorporating province; but as incidental or ancillary thereto such provincial company would not be precluded from entering into contracts with persons or corporations beyond the province, or suing or being sued in another province.

The answer to the *third* and *fourth* inquiries respecting insurance companies is covered by the opinions expressed by me in the *Ottawa Fire Insurance Co.* v. *Canadian Pacific Railway Co.*(2).

The Parliament of Canada alone can constitute a corporation with powers to carry on its business throughout the Dominion; *Colonial Building Co.* v.

(1) [1908] A.C. p. 54. (2) 39 Can. S.C.R. 405.

Attorney-General of Quebec(1); and two or more provinces by joint action, whether by comity or otherwise, cannot extend the powers of a provincial corporation so as to cover the field assigned by the "British North America Act" to the Dominion.

Question 5. Answer: Distinguishing between comity and capacity it follows from the view above expressed of the limited capacity which the province can confer that neither another province nor the Dominion can enlarge by consent or comity the capacity which a company has received from the incorporating province.

Questions 6 and 7. Answer: The right of the province to restrict the operations of the Dominion companies by the imposition of a licence fee was based upon the decisions of *Bank of Toronto* v. *Lambe*(2); *Brewers' and Maltsters' Association* v. *Attorney-General for Ontario*(3), and the *Manitoba Licence Holders' Case*(4), and these cases are undoubtedly authority for the exercise of the licensing power where the licence is a *bonâ fide* exercise of the taxing power of the province; but it was clearly established by the case of *La Cie. Hydraulique de St. François* v. *Continental Heat and Light Co.*(5), that a province cannot exclude a Dominion company from its territory and it cannot do indirectly what it is precluded from doing directly, and to require a licence to be obtained not for revenue purposes, but in reality to shut out the operations of such corporation, is not within the power of the provincial Parliament. The province might well require that foreign corpora-

(1) 9 App. Cas. 157.
(2) 12 App. Cas. 575.
(3) [1897] A.C. 231, at p. 236.
(4) [1902] A.C. 73.
(5) [1909] A.C. 194.

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tions should be registered and file evidence of their corporate powers, names of officers and other details respecting the internal affairs of the company for registration purposes, and impose penalties for non-compliance with such legislation by way of fine; but such legitimate exercise of its powers is quite a different thing from legislation which, under the disguise of a licence requirement, is intended to prevent, or has the effect of preventing, the operation of foreign companies within the territory of the province.

DAVIES J. — This reference for the opinion of the judges of this court on the questions submitted involves a consideration and determination of the meaning of Canada's Constitutional Act and especially of sub-sec. 11 of sec. 92, "The Incorporation of Companies with Provincial Objects." We are asked whether there is any, and if any, what limitation expressed in this sub-section and as to the meaning of the words "provincial objects" together with a number of subsidiary questions to which I will later refer. The vital and substantial question, however, before us is as to the meaning of the words "with provincial objects." Is it necessarily a limitation ? If so, is the limitation a territorial and provincial one or is it a limitation of a legislative character only covering all such subject-matters as are assigned in sec. 92 to the exclusive jurisdiction of the provincial legislatures but without regard to area ?

Among the "classes of subjects" assigned to the exclusive jurisdiction of the Parliament of Canada "the incorporation of companies" is not expressly mentioned except in sub-sec. 15, "Banking, Incorporation of Banks, and the Issue of Paper Money." It is

not, however, denied that the Parliament of Canada has under the residuum of power assigned to it the power to incorporate companies to carry on throughout Canada the objects for which they are incorporated. If any possible doubt at any time existed on the point after the decision in the case of *Citizens Ins. Co.* v. *Parsons*(1), it seems to have been set at rest by the judgment of the Judicial Committee delivered by Lord Chancellor Loreburn in the case of *Attorney-General of Ontario* v. *Attorney-General for Canada*(2). In dealing with cases where the text of what he calls a completely self-governing constitution founded upon a written organic instrument such as the "British North America Act" says nothing expressly, he says, p. 583:—

> It is not to be presumed that the constitution withholds the powers altogether. On the contrary it is to be taken for granted that the power is bestowed in some quarter unless it be extraneous to the statute itself (as for example a power to make laws for some part of His Majesty's dominions outside of Canada) or otherwise is clearly repugnant to its sense. For whatever belongs to self government in Canada belongs to the Dominion or the provinces within the limits of the "British North America Act."

The respective powers of the Dominion Parliament and the provincial legislature to incorporate companies has received some consideration by the Judicial Committee in the cases of *The Citizens Ins. Co.* v. *Parsons*(1), above referred to, and *Colonial Building and Investment Association* v. *Attorney-General of Quebec*(3). In the former case Sir Montague Smith speaking for their Lordships says at p. 116, with respect to the Dominion's enumerated power to legislate in respect to trade and commerce:—

(1) 7 App. Cas. 96. (2) [1912] A.C. 571.
(3) 9 App. Cas. 157.

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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.

In the *Colonial Building Case*(1), Sir Montague Smith who again delivered the judgment of the Judicial Committee after affirming their Lordships' adherence to the view expressed by them in the *Citizens Insurance Co. of Canada* v. *Parsons*(2) as to the respective powers of the Dominion and provincial legislatures in regard to the incorporation of companies, goes on to say, at p. 165:—

> The Company was incorporated with powers to carry on its business consisting of various kinds throughout the Dominion. *The Parliament of Canada could alone constitute* a corporation with these powers.

And again, at p. 166:—

> What the Act of incorporation has done is to create a legal and artificial person with capacity to carry on certain kinds of business, which are defined, within a defined area, viz., throughout the Dominion. Among other things, it has given to the association power to deal in land and buildings, but the capacity so given only enables it to acquire and hold land in any province consistently with the laws of that province relating to the acquisition and tenure of land. If the company can acquire and hold it, the Act of incorporation gives it capacity to do so.

"Capacity" and "powers" are here used as synonymous and the conclusion I draw from a careful study of these two judgments is that the Judicial Committee intended to affirm the proposition that the Parliament of Canada alone could confer a capacity upon a com-

(1) 9 App. Cas. 157. (2) 7 App. Cas. 96.

pany exercisable in more than one of the Dominion's provinces.

In a later case which came before their Lordships, *La Compagnie Hydraulique de St. François* v. *Continental Heat and Light Co.*(1), their Lordships held that the respondent company incorporated by the Dominion Parliament could not be restrained from operating under its statutory powers at the suit of the appellant company which under later Quebec statutes had the exclusive power of so operating in the locality chosen by the respondent.

The judgment was based upon the broad ground that several decisions of the Board had established

> that where a given field of legislation is within the competence both of the Dominion and Provincial legislatures, and both have legislated the Dominion enactment must prevail over that of the province if the two are in conflict as they clearly are in the present case.

No distinction is here made between legislation by the Dominion Parliament under its general powers and legislation by it under some one of its enumerated powers. When legislating under these latter it is clear that Dominion legislation is paramount. I have not understood it to be so when legislating under its general power unless when exercised with reference to a subject matter which had attained national importance. Mr. Lafleur suggested that in this appeal the Judicial Committee were dealing with a company incorporated under the exception to sub-sec. 10 of sec. 92, which formed part of the enumerated powers of the Dominion Parliament under sub-sec. 29 of sec. 91, and that this would explain the language of the judgment. But so far as the report of the case goes there

(1) [1909] A.C. 194.

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does not seem any ground for the suggestion. On the contrary the judgment seems to assume that it was merely formulating propositions which had already been approved of and acted upon by the Judicial Committee. The decisions on which their Lordships rely are not expressly given but I assume that they had in mind amongst others the Prohibition Case of *Attorney-General for Ontario* v. *Attorney-General for the Dominion*(1), where their Lordships upheld the validity of the "Canada Temperance Act, 1886," enacted by the Dominion Parliament, and held that although it was not legislation within the enumerated powers of that Parliament, but was enacted under the general power to legislate for the peace, order and good government of Canada still it was *paramount* legislation because it was on a subject matter unquestionably of national interest and importance and which had attained such dimensions as to affect the body politic of the Dominion, and further that in so far as the provisions of any provincial statute came into collision with the "Canada Temperance Act"

> the Provincial must yield to Dominion legislation and must remain in abeyance until the "Dominion Act" was repealed by the Parliament which passed it.

Unexplained and accepted as reported simply this *Hydraulic Company Case*(2) would conclude and settle the difficulties as between Dominion and Provincial legislation, as to which the vital questions on this reference are asked. In the late case of *The City of Montreal* v. *Montreal Street Railway Co.*(3), Lord

(1) [1896] A.C. 348. (2) [1909] A.C. 194.
(3) [1912] A.C. 333.

Atkinson speaking for their Lordships of the Judicial Committee, at p. 343, sums up the result of the various decisions of the Judicial Committee on the meaning of these two important sections 91 and 92 of our Constitutional Act, and seems clearly (pp. 343-4) to adopt the view that it is only Dominion legislation enacted under some one of the enumerated powers of section 91, or which is necessarily incidental to the powers conferred therein which can encroach upon or invade any class of subjects which are exclusively assigned to the provincial legislatures. I do not think, however, that their Lordships intended to reverse or overrule their previous decision with respect to the constitutionality of the "Canada Temperance Act" or to question the construction put in that decision upon the general powers of the Dominion to legislate upon matters not enumerated in the 91st section, but which unquestionably had attained national interest and importance, or to determine that the Dominion in legislating under these general powers upon such matters of national interest and importance must not trench upon any of the enumerated subjects in section 92, assigned to the provincial legislatures. If their Lordships did so intend then it would seem to me that the result would be tantamount to a declaration that the "Canada Temperance Act" was *ultra vires* of the Parliament of Canada. I venture to think that if their Lordships intended to deny the power of the Dominion Parliament when legislating under its general powers on matters unquestionably of national interest and importance, which have attained dimensions affecting the body politic of the Dominion to trench upon any of the enumerated powers of the Provincial legislatures they

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would have used different language from that which they have used. Such a construction of the Act would practically deny to the Dominion Parliament power to grapple effectively with any great national evil or condition quite beyond the powers of the legislatures to deal with because the prohibition against trenching upon provincial powers would be fatal. I have no doubt that this was one of the grounds on which their Lordships in the *Prohibition Case*(1), upheld the Dominion legislation as *intra vires*. That the "Canada Temperance Act," 1886, did trench upon "Property, and Civil Rights" seems beyond argument, and still as I understand it, the legislation was upheld because its subject matter had attained national importance and such dimensions as affected the body politic of the Dominion. Lord Watson did not find that it was legislation within any of the Dominion's enumerated powers, but accepted the previous decision of the Judicial Committee in *Russell* v. *The Queen*(2), as authority

> that the restrictive provisions of the Act of 1886, when they have been duly brought into operation in any provincial area within the Dominion must receive effect as valid enactments relating to the peace, order and good government of Canada.

Lord Watson went on to say further that their Lordships were unable to regard the prohibitive enactments of the Canadian statute of 1886 as "Regulations of Trade and Commerce" for the reason that the object of the Act was not to regulate but to abolish all retail transactions between those who trade in liquor and their customers within every area where the Act is brought into operation.

The validity of the Act was therefore maintained

(1) [1896] A.C. 348. (2) 7 App. Cas. 829.

solely under the Dominion's general powers to legislate for the peace, order and good government of Canada, although it directly affected property and civil rights in provincial areas and was in conflict with provincial legislation on the same subject-matter of legislation. And the ground on which its validity was upheld was that the subject-matter was one of national importance affecting the body politic of the Dominion. My understanding of the decision is that such legislation forms an exception to the general rule that legislation under the peace, order and good government clause must not trench upon the enumerated powers of section 92. The result would be that while Dominion legislation generally under the peace, order and good government power might be good if it only affected incidentally the enumerated powers of the provincial legislatures under section 92, it could only directly affect and overrule legislation under those enumerated powers when enacted on such subject-matters of unquestioned national interest and importance as had attained dimensions affecting the body politic of the Dominion.

If the observations and decisions of the Judicial Committee in the several cases I have referred to as to the powers conferred upon the provincial legislatures with respect to the incorporation of companies are not conclusive as to the nature, character and extent of these powers and we construe sections 91 and 92 of our Constitutional Act broadly and generally and apart from authority we cannot fail to observe what care was apparently taken to assign to the provinces exclusive jurisdiction over all matters or subjects of a purely provincial or local or private nature while assigning to the Dominion jurisdiction over all

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other matters or subjects relating to the peace, order and good government of Canada as a whole. Bearing this in view and reading with critical care the 16 sub-sections of section 92 in which these exclusive powers are expressed, one fails to find anything to support an argument by which the exercise of any of them could have been intended to have a direct extra-provincial object or purpose. Words of provincial limitation of some sort or character are to be found in each one of the 16 sub-sections. These words vary, naturally, as the subject-matter requires; but whether the words or phrases used are "for provincial purposes," or "for provincial, local or municipal purposes," or "of the province," or "in the province," or "in or for the province," or "with provincial objects," they one and all indicate a consistent and uniform purpose of limiting the constitutional powers conferred to matters and subjects purely provincial or merely local or private as distinguished from those which were either Dominion wide in their extent or related to or affected more than one of the provinces.

The special words of limitation as to the meaning of which we are asked are found in the 11th sub-section. "The incorporation of companies with provincial objects." The power given is an exclusive one. The words "with provincial objects" are clearly words of limitation. The addition of the word "only" or the words "and no others" would not alter or change the nature or extent of the limitation. In my opinion the limitation is as to area, the area is that of the province. The company to be incorporated is one with an object or functional purpose to be carried out within the province as distinguished from one with a more general object or purpose, that is one extending to

two or more provinces or to the Dominion at large. The limitation has doubtless reference not only to the area within which the companies are to operate but to the subject-matters over which exclusive legislative jurisdiction is conferred on the provinces by section 92. The argument for the provinces was that it related only to these subject-matters and had no reference to area. I cannot so read it. As was said by the Judicial Committee in the case *Colonial Building and Investment Association* v. *Attorney-General of Quebec*(1), before referred to, the Parliament of Canada can *alone* constitute a corporation with power to carry on its business throughout the Dominion. If the provincial argument is sound that the limitation was not intended to have a reference to area but solely to the subject-matters assigned exclusively to the provinces to legislate upon it is strange that the draftsmen and framers of the Act should have used such inapt language to express their intention as is to be found in sub-section 11. The phrase "classes of subjects" is used many times over in the Act and if the intention was to add a limitation to the power to incorporate companies which would have no reference to area but should apply only to the subject matters assigned to the exclusive legislative powers of the provinces one would imagine that the draftsman would have continued the use of his favourite phrase and made the sub-section to read "The Incorporation of Companies upon or for any of the classes of subjects assigned exclusively to the provincial legislatures."

The result of the acceptance of the provincial contention would be that the provincially incorporated

(1) 9 App. Cas. 157, at p. 165.

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companies would have equal capacity with Dominion incorporated companies to carry on their business throughout Canada. The only difference would be that the provincial companies would do so by virtue of the comity or permission of the provinces other than the one incorporating the company which might be withheld or withdrawn while the Dominion companies would do so by virtue of the inherent powers they derived from their Acts or letters of incorporation.

Such a result would seem to me not only to violate the cardinal principles adopted in the distribution of legislative powers between the Dominion and the provinces of confining the exclusive powers of the provincial legislatures to the province alone and assigning the residuum of legislative power to the Dominion Parliament but is at variance with the rule of construction many times adopted with respect to legislation alike Dominion and provincial of prohibiting that being done indirectly which cannot be done directly.

In the view, however, which I take of the character of the limitation contained in the provincial power to incorporate companies this question of the company carrying on its business beyond the area of the province which created it does not arise. If I am right that the limitation on the power of a province to incorporate companies is a territorial one and limited to the province as distinguished from the Dominion at large then it is plain that every charter granted by statute, or letters patent under the "Companies Act," by the province must have that constitutional limitation read into it and I cannot understand how any doctrine of the comity of nations could

avail either to enlarge the limited constituent powers of a company or the limited area within which the exercise of unlimited powers of a company were constitutionally confined.

The argument of inconvenience arising from the construction of the Act I have reached was pressed very strongly and it was said at Bar that many companies with millions of capital had been incorporated by the provinces and would be seriously hampered if they were not allowed to carry on their business throughout the Dominion in all the provinces which did not expressly prohibit their doing so. In the first place the constitutional limitation upon the exercise by these provincial companies of their powers while preventing them from carrying on their business or exercising their functional powers outside of the province would not prevent them doing everything within or without the province incidentally necessary to the carrying out of any of these functional powers.

A provincial company incorporated for the manufacture and sale of any article while confined to the province creating it so far as the manufacture and sale of the article was concerned could doubtless purchase outside of the province the machinery and raw material necessary to enable it to carry out the purposes for which it was brought into existence and so while confined to the province in carrying on its business of selling its manufactured products could do so to any one willing to buy from any other province so long as it did not attempt to carry on its business in such other province. But I cannot see, unless my construction of our constitutional Act is entirely wrong, how a company incorporated for mining, or fishing, or lumbering, or milling, or manufacturing,

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say in Nova Scotia, could carry on the business of mining, fishing, lumbering, milling or manufacturing in, say the Province of British Columbia, or in any other province than Nova Scotia. To say that with regard to trading companies it is almost impossible for them effectively to carry on their business within the limits of a province, except with great inconvenience and possibly loss is merely to say that they should get a Dominion and not a provincial charter. But while I think the inconveniences and difficulties were greatly exaggerated at Bar I do not see in them any justification at all for adopting an improper construction of our Canadian Constitutional Act with respect to the division of legislative powers.

The foregoing observations and conclusions reached by me contain my answer to the first question submitted which is that the limitation contained in the words "with provincial objects" is a territorial one and also one controlled as to subject matters by the ambit of the legislative powers of the province as defined in section 92 of the Act. They also embody my answer to question two (2) which answer is in the negative, except with regard to such incidental business as may be necessary to carry out the functional powers conferred upon the companies.

The third question reads as follows:—

Has a corporation constituted by a provincial legislature 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 situ-

ate 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?

To each and all of these questions my answer is in the negative.

The fourth and fifth questions read as follows:—

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 power or capacity mentioned in any and which of the said cases, on availing itself of the "Insurance Act," 1910, 9 & 10 Edw. VII. chapter 32, section 3, sub-sec. 3?

Is the said enactment, "The Insurance Act," 1910, chapter 32, section 3, sub-sec. 3, *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—

(*a*) the Dominion Parliament?

(*b*) the legislature of another province?

I answer these questions in the negative. I feel I need hardly enlarge on what I have already said on this branch of the subject. The Imperial Parliament has assigned to the legislatures of the several provinces exclusive jurisdiction over "the incorporation of companies with provincial objects." My construction of the limitation in this assignment of powers is that it is a territorial one and confined to the subject matters exclusively assigned to the provinces by section 92; that provincial objects mean provincial as distinguished from Dominion and that the *class* of companies it can incorporate is only limited by the exclusion of those companies which may be incorporated by the Dominion Parliament under its enumerated powers. I am quite unable to see how the Dominion Parliament could invade the exclusive power assigned to the provinces and either alter, extend or

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abridge a provincial charter, or how a provincial legislature could on the other hand alter, extend or abridge powers with which the Dominion Parliament invested a company of its creation. The powers of the Provincial legislatures are exclusive though when they clash with legislation of the Dominion under any of its enumerated powers or with legislation under its general powers on subject matters which have attained national importance and affect the body politic of the Dominion at large they must give way to the Dominion legislation which is paramount. But once these limitations upon the exclusive powers of the provincial legislatures are reached and the powers themselves defined, nothing short of another Imperial Act can avail to change or alter that which an Imperial Act has already fixed. The Dominion Parliament certainly cannot even with the consent of all the provincial legislatures amend the Imperial Act and they cannot, therefore, add to the powers or objects of a provincial company which have been defined and circumscribed by Imperial legislation. Nor can a legislature of one province with its limited and defined powers of incorporating companies add to or enlarge the powers of a company incorporated by another province. I answer 4 and 5 in the negative.

The 6th and 7th questions read:—

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 a licence 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 license ?

For example, of such provincial legislation see Ontario, 63 Vict. Ch. 24 New Brunswick, Cons. Sts., 1903, Ch. 18; British Columbia, 5 Edw. VII. Ch. 11.

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 trading company subject to or governed by the legislation of a province in which it carries out or proposes to carry out 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 is difficult if not impossible, to answer these questions categorically. Much necessarily depends upon the form of the enactment passed by the local legislature. "Direct taxation within the province in order to the raising of a revenue for provincial purposes" is one of the enumerated powers assigned provincial legislatures. Legislation, therefore, the *bonâ fide* object of which is such direct taxation within the province would of course be *intra vires* even when laid upon Dominion companies. In the cases of *Bank of Toronto* v. *Lambe*(1), and *Brewers' and Maltsters' Association* v. *Attorney-General for Ontario*(2), the Judicial Committee have laid down the principles which should govern in cases where provincial legislation attempts to lay taxes upon Dominion companies, and I do not see how I can usefully add on a reference such as this, anything to what their Lordships have already said on that subject. My present opinion is that local taxation of a Dominion company otherwise valid, would not be rendered invalid merely by a provision requiring the payment of the tax as

(1) 12 App. Cas. 575. (2) [1897] A.C. 231.

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the condition of the company carrying on its business in the province.

My formal answer indicates the nature, character and extent of the restrictions, if they may be so called, which the local legislatures may, in my opinion, put upon the exercise by the Dominion companies of their powers within provincial areas.

IDINGTON J.—We have here submitted seven interrogative paragraphs, each containing a principal question and a number of subsidiary questions. The answers, however brief, must involve the survey of a wide field of constitutional law.

The Judicial Committee of the Privy Council referring to the nature of these questions and the difficulty of answering them "exhaustively and accurately without so many qualifications and reservations as to make the answers of little value" has said herein:—

> The Supreme Court itself can, however, either point out in its answer these or other considerations of a like kind, or can make the necessary representations to the Governor General in Council, when it thinks right so to treat any question that may be put. And the Parliament of Canada can control the action of the executive.

Opinions of this court, or that higher up, in answer to such questions have been declared by the same judgment to be "advisory * * * and of no more effect than the opinions of law officers."

To answer all these questions, a man might write a large volume, without departing from the lines of thought they suggest, and then leave unanswered a good many of them.

I most respectfully submit, for my part, in line with the foregoing suggestion, that problems such as

are raised by these questions can only be properly solved by the march of events, political and judicial.

The main issues raised by the present inquiry are relative either to the assumption by provincial incorporations of power which it is alleged they have not, or to the enactment by provincial legislatures of statutes claimed to be *ultra vires,* in so far as bearing upon corporations of Dominion creation.

There are legal methods available to attorneys-general of either the Dominion or the provinces, by which the assumption by corporate bodies of powers they have not, and the validity of provincial legislation, can be tested and judicially determined by due process of law.

A single decision on a single point wherein any undue assumption of such like powers has been challenged, would be worth more as a guide to future action than all the answers that can ever be got herein. The growth of judicial decision in concrete cases can alone settle the law. That may be obtained either by the prompt and proper method I have suggested, or by the slower method of awaiting the results of private litigation. In any case it can only be reached in a satisfactory manner, step by step.

When one point has been thus decided it furnishes a safe guide to the decision of the next.

This method of solution by getting mere advisory opinions binding no one upon a group of questions can settle nothing but may mar much. Radical error in any one point and the answer it brings may vitiate the entire results got in such an unusual sort of submission as this. Experience, intelligence and understanding, however serviceable if starting rightly and progressing step by step as each point has been settled,

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may be wasted, or worse, for want of the first thing having been finally decided and used as a guide.

Those who have given most attention to, and brought to bear upon the problems involved the greatest learning and deepest thought, will be those who will have the most profound appreciation of what I have just said, and the need of saying it here.

If I have not made clear the impossibility of a satisfactory solution by this method, perhaps what follows may help to illustrate the soundness of these submissions which I in discharging my duty respectfully make.

Passing to the task of answering the questions I will treat them in their order, taking questions one and two together.

The substantial part of the first question submitted was before this court in the concrete case of the *Canadian Pacific Railway Co.* v. *Ottawa Fire Insurance Co.*(1), when the diversity of opinion in this court relative to the meaning of the phrase "The incorporation of companies with provincial objects" as used in sub-section 11 of section 92 of the "British North America Act," illustrated the worthlessness of advisory opinion and need of a binding decision.

It is difficult to understand the exact position of the counsel for the Dominion in regard to the first question. Their factum puts the matter thus:—that "a provincial company may not it is submitted exercise any of its functional capacities beyond the limits of the incorporating province," though it may be forced by circumstances to go beyond its province to institute an action.

(1) 39 Can. S.C.R. 405.

Yet in deference to what transpired in argument relative to the corporate journalist with subscribers in many provinces, Mr. Newcombe seemed to me to concede much more than he thus desired or intended to argue for.

And Mr. Atwater, going for a time far beyond this position in the factum as the reporter's notes shew, said:—

JUDGE DUFF.—Well, carrying on any mercantile business, whatever is understood by a mercantile business, which consists in making a profit by buying and selling.

Mr. Atwater.—If it was incorporated for the purpose of buying and selling in the City of Montreal, I don't know—I would perhaps hesitate to say it could not import into Montreal the classes of goods which came within its capacities which it was entitled to deal in and do business in, and which could not be obtained in Montreal.

* * * * * *

Mr. Atwater.—Well, if your lordship asks me for my own opinion, for what it may be worth on that point, I don't know that it would be doing business, I don't know that the mere taking of orders by a traveller would constitute doing business.

I understand the term "functional capacities" to cover the daily activities of business within the corporate capacity and that the argument of the factum was intended to deny the power of contracting, for the purpose of such activities, in any place beyond the limits of the province, save incidentally to the necessity of following property or rights for which the possible remedy of recovery had accidentally been removed beyond the limits of the province.

There is, I admit, a difficulty in adhering strictly to such a proposition in face of the concrete facts existent at the door of our court house. There the middle of a stream separates two provinces, and two cities, which the stranger looking at the busy scene would, until told otherwise, say were one. Much if not the

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greater part of the vast business done there is the product of provincial companies acting in utter defiance of such a doctrine. The difficulty of arguing for such a proposition is enhanced when we know that such a growth of provincial authority has taken place under the shadow of the parliament buildings and unchallenged till now by the legislators assembled there.

That, however, is no reason for casting discredit on the work of the dead statesmen who framed the scheme and used the language of which so much has been made. They possessed at least ordinary Canadian intelligence, and knew that corporate companies in Canada had as matter of business necessity to cross the interprovincial and international boundary lines, and that to give them only such limited powers as it is now contended were given, would be a solemn mockery.

Counsel making this contention referred to the historical record in Mr. Pope's book in support thereof.

We find therefrom, that it was only when Mr. (afterwards Sir) Oliver Mowat had moved the adoption of the sixteen subjects to be assigned the provinces, that some one moved in amendment to add:—

> 17. The incorporation of private or local companies, except such as relate to matters assigned to the Federal Legislature.

That found its place later as item 14, then placed next after the item of "Local Works and Undertakings" and the words "Federal Legislature" were changed to "General Parliament." So amended in 1864 the item stood throughout the remaining negotiations for Confederation, the adoption of the scheme by the Canadian Parliament and the London Confer-

ence in 1866, until the draft bill of the "British North America Act" was submitted.

Then it appears the draftsman made it read (11) "The incorporation of companies with exclusively provincial objects"; which stood till the 4th draft of the bill when it was made to read (11) "The incorporation of companies," which was changed at the final draft to what it now reads.

Surely this was a singular struggle for such men seeking apt words to express such a purpose as that of restricting the business operations of such companies within the territorial limits of each province creating them. Such a failure in power of expression is remarkable if that was their purpose, or if such an absurd idea ever entered the mind of any one.

Clearly the sole difficulty was, if the subject were touched upon at all, to avoid invading the Dominion's exclusive and enumerated share of legislative authority, and to define something in contradistinction thereto, but in no way to alter the inherent character of an ordinary corporate company as understood in Canada and England at that time.

The references to debates and proceedings anterior to an Act are generally not permitted in argument as guides to its interpretation. But counsel for the provinces need not complain of this illuminating piece of history which is introduced by their opponents and if allowed any weight destroys any pretension that the private or local companies, or whatever they may be called, were to be crippled creations of a new order unknown in the business world.

We were also referred by counsel for the Dominion to the despatches and opinions of past Ministers of Justice in discharging their duties relative to the veto

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power. If we must accept them as authority, why are we asked? If we need not, and differ therefrom, how much advanced is the solution?

A striking commentary upon the citation of such authority are the facts that the late Sir Oliver Mowat, who is thus cited and relied upon to support the proposition that provincial corporations cannot transact business beyond the respective limits of the province creating them, was long Attorney-General of Ontario, and longer premier of that province, was quite as conversant with the legal conditions under which the provincial corporations operated as any one could be, and as much likely as any one to be alive to the dangers of such corporations transacting business beyond the province if in doing so, as is now contended, they were acting *ultra vires* and had not the inherent power to do so, yet he never instituted proceedings against one of them to restrain this alleged abuse. Those who knew the man, know he was the last man to tolerate such a state of things if he believed it to be illegal. The conclusion to be drawn is that he in common with others held that such corporations had the inherent power, when once created without restriction, to go abroad for such purposes of business as they had been incorporated to carry on, yet that it would be unwise to express such purpose in the charter.

Whether or not a legislature may from time to time have in its enactments so reached out as to appear to be doing what was *ultra vires* its power is one thing. Whether without so reaching out by express language to assert the power that power is inherent in each provincial corporation to avail itself of the comity of nations, is quite another thing.

The Minister of Justice looking to the develop-

ments of the future and possible need, in order to subserve the purposes of the Dominion, of restricting the power of the provinces by means of the exercise of the veto power over provincial legislation, might well desire to avoid giving any apparent sanction for such express reaching out as in fact sometimes existed. In other cases pursuant thereto and to the traditions and policy of his office any such minister may have pushed his argument too far.

The arguments maintaining such authority are only good for some or one of such purposes, and prove nothing herein.

The fact that not a single Minister of Justice or Attorney-General of any province has taken the argument so seriously as to invoke the judicial authority to enforce it, is perhaps the best answer of all to this sort of argument.

Surely all those dealing with the matter of framing this new constitution intended these corporations to be what the ordinary business man supposed a business corporation to mean.

He looks upon it, as these framers acting for him no doubt did, no matter what the philosophers or mystics may say, as simply a convenient method of forming a combination of men having a common business purpose, under a common name with limited or unlimited liability, and such powers of expressing a common will and purpose suitable to the business in hand and restricted in all that within the limits of their articles of association, but by no national boundary line if the foreign country beyond will permit it to go so far.

If such a man had been asked to join an Ontario milling company and did so, he would never have im-

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agined such a thing as that his company could not buy wheat in Chicago, grind it in Toronto and carry the flour to Liverpool, or Constantinople if it chose. If its Chicago office or broker had, for example, got enough of wheat to load a boat, or line of boats, but early frost had closed navigation on the lakes so that it would be more profitable to grind the wheat in Chicago and ship the flour by rail to New York to catch the earliest steamer for Liverpool, and he were then told his company could not save itself that way, what would he say? I imagine that if he were told then, under such circumstances, that if he had got a Dominion charter instead of a provincial one, neither power having any more right to confer power or right to go abroad than the other, he would be tempted to say that the superstition of the days of the big medicine man had passed away. Such is my expansion of the sub-question put in question number two, and the view I hold in answer thereto.

The interests of these provincial incorporations and their creditors have grown to be so vast that to cut away by a stroke of a pen, as counsel for the Dominion Attorney-General urges, the foundation upon which they have proceeded and destroy as *ultra vires* the contracts made on faith thereof, would create financial disaster of such magnitude as to appal any but those heedless of others' rights and reasonable expectations.

Destroy such contracts and under our system Parliament could not so deal with these provincial corporate creations as to enable justice to be done. Parliament has no right to meddle with these provincial corporations or the civil rights which exist in the province creating them. Save in the possible case of local

works and undertakings which it can declare to be for the general benefit of Canada, it would be absolutely powerless to avert the disastrous results sure to follow a final determination such as seems to be sought herein.

Those possible consequences of long years of interpretation, must in such a case be heeded herein and I submit are a bar to publications or invitations thereto of advisory opinion productive, if acted upon, of such results.

It is not our province to deal with the political or economic results, but yet our duty to point out clearly the legal consequences involved in the departure sought.

It never was, in my opinion, intended by the phrase "provincial objects" to restrict the business operations of such a corporation within the province creating it.

In *Canadian Pacific Railway Co.* v. *Ottawa Fire Ins. Co.*(1), I dealt with the question at length and touched upon the chief phases of it, and may be permitted to refer those caring for the details of the argument to pages 436 to 454 of the report of that case. I remain of the opinion there expressed and am quite sure that opinion was and is in accord with what has been acted upon by those provincial authorities creating corporations and of those accepting such corporate powers.

Briefly put, however, it is that the provinces had always had prior to Confederation the power of incorporation of companies having power to do business either at home or abroad; that there is no reason to suppose they ever were intended to have less effec-

(1) 39 Can. S.C.R. 405.

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tive powers, in that regard, when acting within the limits of the subjects over which they were assigned exclusive control; that the assignment of that exclusive control implied the power of incorporation whenever such an expedient could advantageously be resorted to; that no power was given to incorporate municipal institutions or schools, yet no one could pretend that the power to do so did not exist, or that such corporations were restricted from going beyond the province if they saw fit for any purpose of borrowing money or acquiring supplies; that the asylums, hospitals, charities and eleemosynary institutions in and for the respective provinces were in the like position in relation to incorporation and going beyond the province for supplies; that if it had properly been implied that incorporation of all these various institutions could be affected, it should also be as clearly implied that the exclusive power given over property and civil rights implied the power of incorporation, so far as necessary to give efficacious operation to any of such civil rights, and that there was nothing in sub-section 11 to restrict that power save in the case and sense I am about to refer to.

I there also tried to shew that "provincial objects" could not be held to refer to any of the purposes of government which in a sense are the only "provincial objects" most appropriately covered by such a term.

Item number 11 being placed next after that relative to the local works and undertakings might suggest that it may have been in relation to government works that the term was used.

The later item, number 13, of "property and civil rights" being thus left unrestricted, the power of creation of any corporation should follow as a necessary part thereof or implication therein.

However that may be, I thought then and still think and take the liberty of repeating here what I said then in regard to the question of "provincial objects":—

> I have shewn that the phrase "provincial objects" cannot relate to or be confined within what its strict literal meaning might require.
>
> It seems difficult and I would have said impossible, but for the contention here set up and heed given to it, to extract from such a phrase any restrictive meaning save that involved in distinguishing the subjects exclusively assigned to the provinces, from those assigned to the Dominion as the line of incorporating power given. That restriction may reasonably be found in the phrase. It may even have been one of the purposes of using it, to save possibility of conflict with or embarrassment, in that regard, in the Dominion's exercise of the power of incorporating.
>
> In view of the civil rights and property (which are the essential elements to be controlled in creating any company) within the provinces being *exclusively* assigned to the provinces it might have been but for sub-section 11 said that the Dominion had to look to the provinces for incorporating power to subserve its exercise of its powers.
>
> The exclusive legislative control over property and civil rights in the province is of such a sweeping and comprehensive character that even the final part of section 91 might not have sufficed for its restrictive purposes unless the incorporating power of section 92 were thus restricted by something to indicate that when the province undertook to incorporate it should keep to that field that was provincial in its character.
>
> But how does that affect the question of the quality of power inherent in a corporation? Sub-section 11 clearly was pointed at something in the nature of a partition of the sovereign legislative powers between the Dominion and the provinces.
>
> But how could that help in regard to a power that neither of them possessed, neither of them could acquire, neither of them modify, but which either of them might without consulting the other exclude from their corporate creatures the right to exercise? I refer to the power to enjoy rights given by virtue of the comity of nations which I refer to hereafter.

I use this extract because it shews not only the argument I wish to adopt here but as it seemed to me fitted to the necessities of a concrete case where definite legal results had to be attained.

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The notion that men may get a charter in one province in order to abandon its use there and take the seat of business of the company, if it ever had one, to another or a foreign country, yet carry on no business in the province of its creation, implies men may resort to such an absurd impropriety to accomplish by such roundabout methods, what in these days of easy incorporation can so easily be reached by acting directly.

Public opinion and the coercive measures it may demand and which lie within the power of the legislatures of other provinces as well as possibly in some extreme cases in the Dominion Parliament, can no doubt check such abuses. A company incorporated expressly to carry on mining or farming or fishing in another province, might well find itself in such conflict with the legislation of that province as to be made speedily aware of such impropriety.

There is an instructive line of American authorities which shews that corporations may be held to have, as inherent in their creation, the power of going beyond the bounds of the parent state to make such contracts as they are capable of, yet when it comes to a question of doing anything for which the special sanction of the company's shareholders is requisite, such business must be done at the company's seat or within the parent state. Some of such cases also seem to say the like rule should be observed where the sanction of the directors is needed. These cases are instructive as illustrations of what is supposed to form part of the inherent power and the inherent limitation which may be implied.

To sum up what I have said and furnish such answers, qualified and limited, as that so said, indicates,

the best reply I can give to these questions is as follows:—That a provincial legislature cannot incorporate a company to do any of the things which lie within the exclusive power of Parliament, and hence cannot be provincial objects, (though possibly Parliament may use such companies acting within their capacity for executing any of its purposes) but its corporate creations have each inherently in it unless specifically restricted by the conditions of the instrument creating it, the power to go beyond the limits of the province for such purposes and transactions as are needed to give due effect to the business operations of the company so far as within the scope of what they were created for. And if they be formed for the purpose of buying and selling grain, they can do so in any place where their business will carry them, and the comity of nations permit them. And those formed to grind grain can, subject to the like limitations, grind it where deemed desirable.

I submit that I have substantially answered all the riddles in questions 1 and 2, yet the subject has no clear limitations that my limited range of vision can reach and outline.

As to question 3 and its subsidiary divisions, I answer each of the latter in the affirmative, always provided, however, that there has been no restriction placed by the charter of the company upon its doing so, and no prohibition in the foreign state or province where contracting invalidating such contracts, and that the company has a home or seat of business in the creating province to which the authorization of such transactions must be attributed. The company's own by-laws or regulations empowering its agents to act abroad, can and must define the details to be ob-

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served in the execution of such contracts and the transaction of such business as done there.

And as to the last subsidiary question, I think it can make no difference what the citizenship may be unless such condition has been imposed by the charter of the company, or some rule of the foreign state concerned.

Of course, in relation to all these questions, we must never lose sight of the possibilities that lie in sub-section 25 of section 91, giving Parliament exclusive power over the subject of "naturalization and aliens," but I do not apprehend anything relative thereto is implied in the questions as put.

In answer to the amended or substituted question, number 4, I, having answered No. 3 in the affirmative, need not answer here save as to the sub-question relative to the power of Parliament to enact sub-section 3, of section 3, of chapter 32, of the "Insurance Act," 1910.

I have dealt so fully in answering the shorter catechism directed recently as to the power of Parliament relative to some provisions of the "Insurance Act," that I respectfully refer thereto for the reasons which govern me in answering this part of the longer catechism.

I cannot say that this sub-section is entirely *ultra vires,* for it may possibly for some purposes be read as part of concurrent legislation dependent upon and to become operative along with and dependent upon such provincial legislation. But as it stands the last part of it must be held *ultra vires,* for the power does not extend to the enabling corporations to do anything beyond the power given by their respective creators.

The insurance companies incorporated by the late Province of Canada are quite independent of anything Parliament may enact unless something falling within the twenty-nine enumerated powers of section 91, such as bankruptcy for example.

They may have had express powers given them to do business anywhere in the world. They may have had such powers made dependent upon any competent legislative authority and got it. Whatever they had they are entitled to hold and to act upon unless duly taken away.

Their case illustrates perhaps more strongly than the case of the provincial companies of any of the present provinces can do, the futility of such legislation as involved in this sub-section.

In the absence of any such companies and those directly concerned, it would seem to me improper to deal further with this inquiry or in any way cast a doubt on the validity of their transactions. The chances are they have done just what they were entitled to do without the proffered licence and the matter is thus reduced to insignificance.

There may be, for aught I know, or have heard, facts furnishing reasons analogous to those upon which the judgment in the case of *Dobie* v. *The Temporalities Board*(1), proceeded, which may enable legislation relative to the companies incorporated by the legislature of the late Province of Canada to be upheld.

In answer to question number 5, I do not think it is competent for any legislature save that creating a corporation to so meddle with the corporation's

(1) 7 App. Cas. 136.

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powers and capacities as to add to or diminish them, unless by the unanimous consent of all concerned, or in special cases, such, for example, as those over which Parliament has a potential power of control by declaring the works which they manage or control to be for the general advantage of Canada.

As to question No. 6, at first blush this seems an enormous question. Counsel for the Dominion, however, graciously intimated it was not expected we should investigate and pass upon the constitutionality of the several statutes cited therein.

The question embraces all companies incorporated by Parliament, as if all stood upon the same footing. This groundless assumption, so often made, lies at the root of nearly all the trouble in which the Dominion and provinces are involved over the subject of their respective powers relative to incorporated companies.

It is as clear as anything can be that it never was intended that Parliament should by any act of incorporation resting merely upon its residual power, be enabled to override or control the legislative powers of the provinces or deal with any of the subject matters exclusively assigned to the provinces.

The great importance to be attached to a clear comprehension of this matter and its bearing upon the entire arguments of this submission must be my apology for a repetition of what I have said so elaborately elsewhere.

In the first place all companies incorporated by Parliament acting within its exclusive legislative authority over the twenty-nine enumerated subjects of section 91 of the "British North America Act," which is an authority that takes precedence of all else in the Act, cannot be prohibited from doing anything, or going anywhere that Parliament wills they should.

They require no licence and pay no fees therefor, though liable to direct taxation by a province.

Those companies that are not incorporated by virtue of such exclusive legislative authority, but by virtue of the residual legislative authority resting in the general power of Parliament for the peace, order and good government of Canada, must stand before the provincial legislatures on the same footing as all other companies and persons subject to the powers of such legislature in regard to licensing, to taxation and to property and civil rights or other legislation over or incidental to any of the sixteen enumerated subjects in section 92 of said "British North America Act."

How has such confusion of thought as the question indicates ever entered the mind of any one? I can only account for it as flowing from the result of men seeing the large field of commercial activity occupied by the corporations created under the exclusive authority of Parliament, and their failing to discriminate. There cannot be anything clearer or more comprehensive than the authority given each provincial legislature by section 92, sub-section 13, over "Property and Civil Rights in the Province."

It is, however, made expressly subservient to the full exercise by Parliament of the enumerated powers assigned to it in section 91.

The final sentence of said section, reads 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.

This sentence read in light of the introductory part of the section, comprehends all that there is in

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the "British North America Act" derogatory of the absolute and exclusive legislative authority of the provincial legislatures over sixteen enumerated subject matters assigned to them; save some general enactments giving Parliament, as in regard to the subject of education, for example, certain specific powers, and saving the veto power to which I will presently refer.

That sentence and all it implies coupled with section 92, ought to settle the matter so far as questions like this number 6 submitted to us, are concerned.

Section 92 is as follows:—

92. 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:—

The last sentence of section 91 and this section 92 make it clear that the enumerated powers in section 91 are paramount, and all else that falls within the scope of the enumerated powers in section 92, must be and remain exclusively within the legislative authority of the provincial legislatures. What possible right then can the Dominion Parliament have to interfere by virtue of its residual powers with any enactment duly made by a provincial legislature relative to the civil rights or property of any one, either individual or corporate, seeking entrance into such province and contracting there?

The right to do so has sometimes been rested upon sub-section 2 of section 91, enabling Parliament to enact relative to the "Regulation of Trade and Commerce."

That obviously enough relates to what may or may not be done in connection with, or in relation to, the external trade and commerce of the Dominion as a whole and all incidental thereto.

The adjustment of the tariff, for example, is not otherwise provided for. Legislation within section 132 of the "British North America Act" to carry out conventions relative to trade with foreign countries forms another subject which in some of the incidental consequences thereof might possibly require legislation to fall within this item and rest therein as well as upon that section.

The attempt, so often made, to make this cover mere details of business and the laws relative thereto, was not pressed in argument herein as it was in the *Insurance Case*(1).

When it is attempted to bring within its range some branch or mere detail of business connected with or incidental to trade and commerce, one is confronted with the many instances wherein the section specifically provides for separate items equally related to trade and commerce, as, for example, navigation and shipping, currency and coinage, banking, savings banks, weights and measures, bills of exchange and promissory notes, and bankruptcy and insolvency, as well as others which might all be covered by the generic term "trade and commerce," as well as these many other things now and again sought to be brought under its wing. Why should these specific assignments of power relative to matters falling within what the term "trade and commerce" in the widest sense it is capable of, have been made if it ever was intended to cover such as it is now contended it does ?

To attempt to stretch the power so as to enable Parliament to override the local laws duly enacted relative to property and civil rights or aught else as-

(1) 48 Can. S.C.R. 260.

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signed to the exclusive legislative powers of the legislatures is dangerous. Indeed, it seems to me that if such attempts were upheld and followed to their logical consequences they would be destructive of the federal system.

Where can one draw the line if not where I have indicated ?

The vast body of property and civil rights is in a sense almost entirely the offspring of trade and commerce.

The family relation, education and municipal institutions are specifically provided for. What then of property and civil rights would remain to the provinces to be dealt with by them if the phrase "trade and commerce" is to be given the extensive meaning urged ?

It is attempted to distinguish what is involved herein as interprovincial trade and commerce, and thus justify interference.

Let us in answer thereto consider the situation at Confederation, and in connection therewith, section 121 of the Act, which provides as follows:—

> 121. All Articles of the Growth, Produce, or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces.

And then the purpose of the veto power given by section 90 to the Dominion.

There was at Confederation no hindrance by law to any one going from one province to another. No law but those making tariffs thus swept away, prevented any one from dwelling where he saw fit, and doing business in one or all of the provinces. And so far as I can learn, the condition of corporate life and activity was similarly free.

When the tariff barriers were thus removed there was no need for any regulation of the so-called interprovincial trade and commerce. And the enactment of section 121 seems to negative the idea of there being implied any power to take any future action in that regard by Parliament or any other authority. All that could ever be done was to preserve this condition of things. Interprovincial trade and commerce was to flow thereafter as freely as if its right to do so had been declared by an organic law. Such seems clearly to have been the conception of the framers of this instrument. Certainly the draftsman of the Act never could have supposed that a province which was only given a power of direct taxation and a subsidy from the Dominion to help cover its expenses of government, could resort to indirect taxation, even though this section never had existed.

No one seeks to deny the right of Parliament by virtue of its residual powers to incorporate companies. The conflict, so far as it exists, is between Parliament and the provinces relative to the civil rights of these companies thus created.

Now, the condition of things at Confederation, as I have outlined them, permitted those corporations, created thereafter, to go any place within the Dominion, and long years elapsed before any legislation was permitted to interfere therewith.

The Dominion Government was, by section 90 of the Act, given the express power to veto or disallow any Acts whether *intra vires* the powers assigned the provinces or not.

That power alone was all that ever was needed or designed to be exercised by the Dominion in the way of interference with the legislative action of the pro-

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vinces acting within the powers specifically assigned them, and not in conflict with any of the enumerated powers of section 91 given the Dominion, or specific powers given in other sections.

An Act might be *ultra vires* a province and fail by reason thereof before the judgment of the courts without the exercise of the veto power.

But it was never supposed by any one until recent times, that an Act on its face *intra vires* a local legislature, could, after the lapse of time given to veto it, be interfered with by Dominion authority, by virtue of anything resting on its residual power. Yet such is the strange contention that is now set up.

This veto power was given for the express purpose of preserving as matter of expediency or public policy the rights of every one in the Dominion, corporate or individual, to enjoy such rights in as full measure as they existed at Confederation, or might exist thereafter by later legislative development.

The narrow contracted views of a local patriotism, it was felt, might be used by the exercise of the wide powers given the legislatures to the detriment of the Dominion as a whole and of the people thereof outside a province so moved.

It became from the time of Confederation thenceforward the duty of the government of the Dominion to watch local legislation and see that nothing was enacted, even if *intra vires* the powers of a legislature, that would interfere with the prosperity of the Dominion as a whole.

The rich heritage thus to be guarded was that in which every Canadian had a right to share and not that alone of any class of people either as mere provincials or otherwise.

The right to dwell where one saw fit, and there or elsewhere follow his or her avocation, was the common heritage of every Canadian and, for many years, of every Canadian company. If the right has not been well and sufficiently guarded, it must be because the veto power, the only power given by the "British North America Act" to guard it, has not been properly exercised and such rights duly preserved.

It is not that the Acts passed by the provinces are *ultra vires*. It may be that they are *intra vires*. And if a provincial legislature, acting *intra vires,* has duly enacted legislation detrimental to the original rights of persons or companies outside or beyond a province and that has not been duly vetoed there is no help for it in law.

In so far as such enactments may happen to be *ultra vires* they are null. But if *intra vires* they cannot be nullified by any resort on the part of Parliament to its residual power. Such a power is neither expressly nor impliedly given and I venture to say never was thought of by the framers of the "British North America Act."

I am not writing to glorify the veto power, for it also may be capable of great abuse. It seems to have fallen into disuse; perhaps because abused.

Yet, I repeat, it was intended as a beneficent power and is capable of great good service in the class of questions such as raised herein.

To seek to apply it when the proposed legislation can only affect the rights of the people of the province concerned, may be offensive, and in the domain of practical politics be an impossibility. Yet when the legislation proposed would manifestly improperly affect people elsewhere, or corporations created out-

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side the province, such as the Dominion corporations resting upon the residual power of Parliament, or those of other provinces, and thus affect the people of the whole Dominion, surely the exercise of the power in that regard ought to be, and to be held, practicable.

Those who would interpret aright our "British North America Act," and especially the features of it that hinge upon this veto power, must never forget that our Confederation was framed whilst the United States was passing through a civil war for which the want of greater power in the federal government was thought by some to be indirectly responsible.

The nullification ordinances of South Carolina, a generation previously, had formed a prominent feature of much argument.

Our statesmen, profiting by the experience of others, tried to find by anticipation the means of averting such like possible dangers as the result of their work. They found these in the assignment of the residual power to Parliament instead of to the provinces, as it had been left with each of the states in the United States and in the veto power which was in harmony with British legislation and practices in relation to the colonies, which latter in its turn was but part of an early condition of things in the growth of the English Constitution. The residual power given Parliament was as it were a complement of the veto power, but not to be used in substitution therefor. It might operate over that field which the veto power kept open.

Speaking in general terms, what the legislatures seem to have done is to enact that in certain specified contingencies the companies failing to comply with

what has been required of them, shall not be entitled to recover, on contracts they have made in the province, in the courts of the province, which can only exercise such jurisdiction as their parent authority has given them.

It may seem a drastic sort of legislation but not necessarily *ultra vires*. These courts originally were not so restricted. If these restrictions have been detrimental to the rest of the Dominion, that is the fault of those who had the veto power and failed to exercise it.

The consideration, since the argument herein, of the British Columbia legislation in question in the appeal of the *John Deere Plow Company* v. *Agnew* (1), in a case in which the learned trial judge and Court of Appeal for British Columbia, had held a Dominion company, by reason of that legislation on this subject, could not recover, shew many opportunities have occurred and probably may occur again, to apply that remedy to amendments to that particular legislation.

It seems beyond dispute that all such companies carrying on business in a province are subject to direct taxation. See the case of *The Bank of Toronto* v. *Lambe*(2). And at least those companies resting upon the residual power of the Dominion are also liable to the power of a legislature over licensing, if I understand rightly *The Brewers and Maltsters' Association* v. *The Attorney-General of Ontario*(3). The method adopted relative either to taxation or licensing may be objectionable, and the form it takes

(1) 48 Can. S.C.R. 208. (2) 12 App. Cas. 575.
(3) [1897] A.C. 231.

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may be such that on a test thereof the Acts may be found so crudely worded and ill-directed as to render them ineffective.

There are besides other aspects of the matters arising under these exclusive powers of the provinces that are worthy of consideration.

The province within the sphere of action assigned to it occupies the position of an independent state.

Not only is it entitled as a means of protecting its people against improper dealing leading to financial loss at the hands of foreign companies attempting to transact business in the province, to insist upon such information from them as may be reasonably necessary for such protection and for making it readily and locally accessible; but there is also the much wider field of social and economical questions bearing upon the welfare of the people dwelling therein which require the collection of an almost infinite variety of statistical information to lay the foundation for future legislative action to avert, and as occasions may demand to cure the disorders growing from the development of industrial and mercantile pursuits.

Incidentally thereto, for example, the cost of production and rate of profit which people may be entitled to know, from those enjoying benefits at the expense of the public, the modes of business done, or to be done, by these corporate companies, the conditions of those serving them, the conditions under which the service is performed, the housing of such operatives as their mines, factories, or warehouses, may employ, the conditions of the relations of master and servant, and, in a word, the moral and material well-being of those in such service, and those enjoying such service, may each and all absolutely require in-

formation to be given and enlightened legislation to be enacted enforcing needed publicity and bearing upon the respective duties of all concerned.

All these, and many other things, as the result of present and future development, in the operations in which such companies and their relation to others may be concerned, may give rise to a need for local legislation.

We must, if we would in some faint measure realize the magnitude of the task that lies in the path of duty which is before the future legislators of our provinces, grasp the facts that some of these provinces, by reason of their territorial area, vast resources and attractive conditions which they hold out for men to live in and under, at no very distant day will each become the home of many more people than now dwell in the whole Dominion. And resulting therefrom, and their diversities of character and development in industrial pursuits, each will have possibly greater problems of a kind peculiar to itself than we can now readily conceive of to solve, so far as the several exclusive powers given them can enable them to solve or anticipate them.

In short, that field of legislative power which touches most intimately the lives and welfare of the people has been intrusted to such an extent to these local legislatures as to make thoughtful men chary of sweeping their work aside.

Let no one be deceived, for behind the contentions set up herein, there lies if not the set purpose at least the possibility and perhaps hope that as a result to flow from the adoption of these several contentions there may only be Dominion corporate companies and that the only laws any such corporations can be expected to obey are such as Parliament may enact.

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Such a programme is entirely inconsistent with our federal system which has armed the legislatures with the powers I have just adverted to, yet has not disarmed Parliament from enacting the most beneficent legislation restrictive of its corporate creations and their relations to others.

The legislation, however, required in a province whose inhabitants are most largely devoted to mining, would not be so apparent to those inhabitants of another, more largely devoted to fishing and industries related thereto, or legislation required by either be so apparent to the inhabitants of yet another, devoted solely to agricultural pursuits, and *vice versâ*. And hence Parliament might be slow to act when the legislature on the spot might be quickened to action therein by local knowledge.

Such are the conditions which lie at the basis of the federal system, relative to the need for legislation anticipating or curing evils, prompt response to the need, and adequate application of the remedy.

Again the corporate power and its many manifestations of combinations and of encroachment upon the rights and expectation of others, may need the fullest application of these powers in order that right be done and the future well being of all be assured.

I see no reason to fear all such growth if properly watched and checked in regard to such possible abuses which occasionally in modern times are said to reach almost to a something akin to piracy. But I do see that it may need all the watchful care of both Dominion and provinces to furnish the necessary checks upon abuse. Indeed, I suspect the outcome of such development as is progressing, will, if public opinion is well directed, be a scheme requiring concurrent

legislation and united action of both the Dominion and the provinces. The power that alone controls the laws giving and governing property and civil rights and defining the jurisdiction of the courts to enforce them, has the master hand and can neither be ignored nor defied. It alone can apply the most effective weapon against this combination and encroachment, which I have referred to, by withdrawing, and that automatically, as the offence is committed, the right to resort to the courts. Is possible realization thereof to be deleted from our constitution ?

The power of Parliament over criminal law can never be half so effective as this merely provincial power if well directed.

The trouble is the matter has not been dealt with in the way the "British North America Act" provided.

If the Dominion authorities chose they could have vetoed any such legislation as now complained of, if it seemed likely to improperly interfere with the operation of Dominion corporations. They can by watching such local legislation insist on that conforming to what is reasonable under pain of vetoing it. That is the clear method and the only direct method, which the "British North America Act" furnishes. It is likely to be very effective if confined to such like use as involved in the fair and reasonable limitations thereof needed to protect Dominion corporations resting upon the residual power in their legitimate expectations. If this power has not been and is not to be directed by a public opinion sufficiently enlightened and robust to check any evils of a possible kind, nothing any court can do by the way of advisory mixed construction or misconstruction of the Act will help.

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I am not assuming this has not been done. I merely point out, if such legislation as complained of has existed or may hereafter exist and is or may be a source of well founded grievance, where the fault, if any, lies or may lie and the remedy, if one be required.

The prevalent public opinion of the entire people of the Dominion must ultimately determine where and to what extent the exercise of this veto power is to be effectively operated.

That public opinion can be most effectively evoked by the Dominion authority challenging and proposing to veto any obnoxious measure.

If any such changes of an undesirable nature have already been made, they can be rectified by public opinion and self interest being made to operate upon the enacting legislature. The time has passed in such cases for Dominion interference.

I do not find any right in Parliament to override in any direct way as the question seems to imply, the will of the legislature, save, I repeat, in relation to companies and things falling within its exclusive legislative authority already referred to.

Prohibition of a company going into a province is rather an inapt term in this connection. It is conformity with the law of the province that is required. And if we drop the word "company" for a moment and ask what power Parliament has in any way relative to the person, to say he or she is or is not entitled to do business according to forms of contract in a province, not sanctioned by its legislation, and may or may not refuse to conform to the law of the province, we may get a clearer view of how matters stand.

I repeat, the corporate company is but a certain legal combination of men, and in a legal sense no greater than the man, before the legislature.

I may observe that the provincial legislation seemingly questioned is directed against (if such a term is proper) all foreign companies as well as those created by Parliament or other local legislatures. Dominion creations, save those clothed by Parliament by virtue of the exclusive legislative authority with other rights, stand on the same footing in this regard as those of the provincial legislatures or of a foreign state.

There is, however, another feature of the "British North America Act" relative to contracts which I suspect has not been developed as it might be. That is the exclusive control that Parliament has over bills of exchange and promissory notes.

This is part of the law of contracts not necessarily within the item of property and civil rights, as given the provinces. If Parliament should choose to exercise all its power relative thereto in favour of its companies, it might do much to ameliorate the condition of things a province may be disposed to push too far.

The province cannot take away this part of a Dominion company's contractual powers if Parliament says so in an effective manner, and its incidental power relative thereto is to be as liberally construed as it has been in other instances relative to contract. See, for example, the case of the *Grand Trunk Railway Co.* v. *The Attorney-General of Canada*(1).

In view of all these considerations I can see no valid constitutional objections to a reasonable Act providing for registration and information and taxation.

(1) [1907] A.C. 65.

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In regard to question number 7, I am at a loss to find in it anything but what I have covered by the foregoing.

What is meant by a trading company? No one has ventured to tell us or explain the meaning of such language. Is this another attempt to get an opinion on sub-section 2 of section 91? That sub-section, however, was not brought forward as prominently in argument herein as in the case of the Insurance reference. We have, indeed, heard little argument bearing upon this question, save references to the *Telephone Case*(1) and the *Hydraulic Case*(2) which I am about to refer to.

The former was held to fall clearly within another exclusive power of Parliament contained in sub-section 29 of section 91, and the power incidental thereto, and not sub-section 2.

The case of *La Compagnie Hydraulique de St. François* v. *Continental Heat and Light Co.*(2), relied upon, I have dealt with in the Insurance Companies Reference heard before this one, and I need not repeat here what I said there. In addition thereto I may refer to what I said in the case of *In re Alberta Railway Act*(3), at foot of page 27 to top of page 33, relative to the features of the opinion in the *Hydraulic Case*(2) in regard to the respective fields of legislation open to the Dominion and the provinces.

It seems to me, I respectfully submit, that there may have been in that case a grave misapprehension of the doctrine involved in what has been expressed, sometimes loosely, as entitling the provincial legisla-

(1) [1905] A.C. 52. (2) [1909] A.C. 194.
(3) 48 Can. S.C.R. 9.

ture to occupy a certain field until the Dominion had entered the same field. In truth they never can occupy the same field in the sense which seems to have prevailed in that case, and indeed may have been present to the minds of others elsewhere. My reasons for so holding appear in the passages I refer to in the Alberta case just cited.

I may refer also besides to what I have said in the *Insurance Case*(1), to the language used in the *Citizens Insurance Co.* v. *Parsons*(2), at pages 112 and 113, as to the scope and purpose of sub-section 2 of section 91.

I may add, however, that in my opinion, if the doctrine apparently laid down in the *Hydraulic Case* (3), that the Dominion Parliament can, in matters not resting in its exclusive authority, prevail over the provincial authority, is to stand, then there is not in the Act any restraint upon Parliament such as people for a lifetime have believed there was, and to secure which Confederation was brought about. Where, if followed, would such a doctrine land us ?

The conclusive establishment of such a doctrine, I respectfully submit, would be fraught with danger to the Canadian scheme of federation, if not entirely destructive thereof.

When the A. B. C. of the framework of the "British North America Act" has been duly observed, there need not be so much perplexity in determining its interpretation in any given case as seems so often to have arisen. Such is my excuse for repeating, with perhaps tiresome reiteration that A. B. C.

In conclusion I may add a word as to *Russell* v.

(1) 48 Can. S.C.R. 242. (2) 7 App. Cas. 96.
(3) [1909] A.C. 194.

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The Queen(1), and its bearing upon questions raised herein.

The judgment therein shews an analysis of the Act based upon something like my A. B. C. suggestion and adopts a mode of reasoning upon which the decision rests which expressly finds the question of property and civil rights and the item in the Act regarding same are not involved in the enactment there in question. Hence the decision cannot help an attack such as made herein upon actual or hypothetical provincial legislation expressly dealing therewith and resting thereon.

Whatever may be said of the reasoning in the *Russell Case*(1) it can hardly be said that the propositions involved in these later contentions are necessary corollaries thereof.

Subject to the respective limitations indicated in my foregoing opinion, the questions submitted should be respectively answered as follows:—

I would group questions one and two together, and for answer thereto say:—

A provincial legislature cannot incorporate a company to do any of the things which lie within the exclusive power of Parliament enumerated in section 91 of the "British North America Act," and hence cannot be "provincial objects," but its corporate creations have each inherently in it, unless specifically restricted by the conditions of the instrument creating it, the power to go beyond the limits of the province to do business for such purposes and transactions as are needed to give due effect to the business operations of the company so far as within the scope of what they were created for, and the comity of nations will permit them.

(1) 7 App. Cas. 829.

And if they be formed for the purpose of buying and selling grain, they can do so in any place where their business will carry them, and the comity of nations permit them. And those formed to grind grain, can, subject to the like limitations, grind it where deemed desirable.

As to the question No. 3, I answer in the affirmative; provided no restriction against the corporation doing so has been placed in the company's charter, and no prohibition in the foreign state or province where contracting. Citizenship cannot affect the matter unless by reason of some such restriction, or by reason of Parliament, by virtue of its power over aliens and naturalization, having legislatively intervened for such purpose.

As to question No. 4, my last answer renders it unnecessary to answer it save as to the sub-question, and in answer to that I submit the section may be held to be so completely *ultra vires* as to render it entirely inoperative. It may be, however, that it is capable of being read as a prohibition of alien or foreign companies, which Parliament by virtue of its powers over aliens, desired to prohibit unless when licensed; or it may be operative by virtue of some possible conditions of fact of which we are not informed, relative to pre-confederation companies.

Anything of that nature may involve so many limitations and qualifications as to render any answer worthless; or worse as being possibly prejudicial to companies that may be concerned.

To question No. 5, I answer "No."

As to question No. 6, I answer that as to companies incorporated by the Parliament of Canada, their rights must depend upon whether incorporated

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by virtue of the paramount and exclusive powers of Parliament over the subject-matters enumerated in section 91 of the "British North America Act," or upon the residual powers of Parliament.

If upon the former there can be no prohibition properly so-called though they are subject to direct taxation which may possibly assume a licensing form.

But, if dependent upon the residual powers of Parliament they must conform to the laws of the province which have been duly enacted within the exclusive powers of the provincial legislatures, and not vetoed by the Dominion authorities.

When the veto power has not been exercised in respect of any provincial enactment, *intra vires*, the Dominion must be held to have given its irrevocable sanction thereto so effectually that Parliament by virtue of its residual power cannot override same.

As to question No. 7.

In answer to this question, I know of no corporate bodies which can be distinguished in their legal capacities and powers by any such term as "trading companies." Such corporations as fall within the enumerated powers of Parliament are entitled to the rights it may have given them. All others must conform with the laws of the province duly enacted within the enumerated powers given by section 92 to the exclusive legislature authority of the provinces, and not disallowed by the veto power.

DUFF J.—The first two questions are as follows:—

(1) What limitations exist under the "British North America Act, 1867," upon the power of the provincial legislatures to incorporate companies?

"What is the meaning of the expression 'with provincial objects' in section 92, article 11, 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 upon 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, article 11, of the "British North America Act, 1867," 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 by a provincial legislature 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?"

It will be convenient to consider these questions together. The "companies" referred to in them may be assumed to be companies incorporated for the carrying on of some business for gain to be distributed among the members thereof as private individuals. There are certain kinds of business and certain classes of undertakings which by section 91 are exclusively committed to the control of the Dominion, *e.g.*, banking and works extending beyond limits of a province. I do not intend to consider the exact scope of this exclusive jurisdiction of the Dominion. Such exclusive jurisdiction being vested in the Dominion by force of the enumerated clauses of section 91 cannot be affected by any of the provisions of section 92. It will be understood that what follows has no

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reference to companies to which that jurisdiction extends.

The point to be considered really is: What are the meaning and effect of No. 11 of section 92 ? I think only a very general answer can be given to this question. "Objects" means, I think, *le but organisé* of the company, the business which the company is authorized by its constitution to carry on with a view to the profit which is the ultimate purpose of its members. This business must be such, I think, that it falls within the description "provincial"—the adjective provincial having reference to the incorporating province. The legislature of Ontario, that is to say, is empowered by No. 11 of section 92 to incorporate companies for carrying on any kind of business which fairly falls within the description "Ontario business." The view put forward on behalf of the provinces that "provincial" is used in another sense, that its antithesis is not "extra-provincial" or "non-provincial" but "Dominion," ("Dominion" including those matters which regarded as the objects of a company are exclusively committed to the Dominion by section 91) does not appear to me to be a view which can be reconciled with the decisions in the *Parsons Case*(1), and the *Colonial Building Association's Case*(2), I have given my reason for this in *Canadian Pacific Railway Co.* v. *Ottawa Fire Ins. Co.*(3). Here I will only say this: In *Citizens Ins. Co.* v. *Parsons*(1), at page 117, Sir Montague Smith observed:—

> The incorporation of companies for objects other than provincial falls within the general powers of the Parliament of Canada,

and this proposition is based upon the ground that the

(1) 7 App. Cas. 96. (2) 9 App. Cas. 157.
(3) 39 Can. S.C.R. 405.

only subject assigned exclusively to the legislatures of the provinces "on this head" (incorporation of companies) is "the incorporation of companies with provincial objects." In the subsequent decision above referred to(1), at pages 164 and 165, it is stated that their Lordships adhere to the view expressed by them in the *Parsons Case*(2),

> as to the respective powers of the Dominion and provincial legislatures in regard to the incorporation of companies.

Again, referring to the company in question in that case "the company was incorporated with powers to carry on its business consisting of various kinds throughout the Dominion. The Parliament of Canada could alone constitute a corporation with these powers." Upon this last passage an argument has been based to the effect that their Lordships in these judgments are dealing not with the nature of the capacity which the respective legislatures may confer upon companies incorporated by them, but with the rights with which they may invest them in respect of the carrying on of their business. "Powers to carry on its business" meaning according to this construction the *right* to carry on its business throughout the Dominion. No doubt there may be ambiguity in the word "powers" when taken apart from the context in which it is employed, but in this judgment a reference to the following passage at page 166 seems to me to remove all possible question as to their Lordships' meaning. Their Lordships' opinion as expressed in the judgment, be it observed, was that a certain Act of the Parliament of Canada incorporating the company in question was within the authority of the Dominion because a pro-

(1) 9 App. Cas. 157. (2) 7 App. Cas. 96.

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vincial legislature would have no authority to incorporate a company with such "powers." At page 166 the effect of this Act is stated by their Lordships in the passage referred to.

> What the "Act of Incorporation" has done is to create a legal and artificial person with capacity to carry on certain kinds of business, which are defined, within a defined area, viz., throughout the Dominion. Among other things, it has given to the association power to deal in land and buildings, but the capacity so given only enables it to acquire and hold land in any province consistently with the laws of that province relating to the acquisition and tenure of land. If the company can so acquire and hold it, the Act of Incorporation gives it capacity to do so.

It was an enactment having this effect that in their Lordships' view could not be passed in exercise of the powers of a provincial legislature under section 92.

The limitation above indicated, viz., that the business is to be a "provincial" business in the sense mentioned is the only limitation, I think, which can be derived from the Act. In the cases just referred to their Lordships are of course dealing only with companies carrying on business for the private profit of their members; but it is arguable that the characteristic marked by the word "provincial" may consist in some relation between the company and the province as a political entity. One may instance a company formed by a province exclusively for some purpose connected with the Government of the province; but, as I have already said such companies are outside the range of the present discussion. I mention them here because I do not wish to be understood as expressing a positive opinion that the characteristic expressed by the word "provincial" as used in No. 11 can only consist in some relation between the business of the company and the province as a geographical area.

The cases just mentioned decide that as a rule the territorial relation must as regards companies formed in the usual way for the profit of their members furnish the test; but I am not sure that these decisions oblige us to hold that this is the single exclusive test for the application of No. 11.

One can, however, say with confidence, that where the business as authorized by the constitution of the company is so related to the territory of the incorporating province that the business can be said to be "provincial" in the territorial sense, then it is clear that the company comes within the class of companies to which No. 11 applies. Whether a particular business does or does not fall within that description must be a question to be determined in each case substantially, it seems to me, as matter of fact. It seems very clear that the business of working a coal mine in Cape Breton must be a provincial business in relation to Nova Scotia and equally clear that the business of working coal mines in Nova Scotia, Alberta and Vancouver Island is not a provincial business in relation to Nova Scotia, Alberta or British Columbia. Coming to the concrete instances mentioned in the questions I think the business of working mills for grinding grain in a single province is as to that province a "provincial" business. The business of working mills for grinding grain in more provinces than one is not as to any one of those provinces a "provincial" business. The case of a mercantile business presents perhaps more difficulty. I think the decision of the Privy Council in the *Colonial Building Association's Case* (1) requires me to hold that the business of a grain merchant carried on in such a way that there

(1) 9 App. Cas. 157.

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are places of business in different provinces of Canada is not a "provincial" business within the meaning of that word as used in No. 11. On the other hand, I have not been able to convince myself that the business of a grain merchant carried on by means of places of business confined to one province cannot fairly be described as a "provincial" business in reference to that province, merely because it is a part of the business so carried on, that grain is bought outside the province and sold outside the province. I think there is nothing in the decision or the language of the judgment in the *Colonial Building Association's Case*(1) inconsistent with that view. The judgment ought to be read *secundum subjectam materiam*. The Act of Incorporation which was there in question and was held to be beyond the powers of a province authorized the company to carry on its business anywhere in Canada and to establish branch offices in London, New York and in any city or town in the Dominion. The company was enabled, indeed, to carry on as much or as little of its business as the directors might see fit in any province of Canada subject to the single restriction that the general office was to be in Montreal. In applying the rule stated in their Lordships' judgment that the incorporation of a company empowered to carry on its business throughout the Dominion is beyond the powers of a provincial legislature one ought, I think, to construe the phrase "carry on business" in the light of these provisions of the Act then before their Lordships. Their Lordships had not before them any question, and I think one is entitled to say that their Lordships did not intend to lay down any binding rule for determining just how

(1) 9 App. Cas. 157.

far a company incorporated by a province might be authorized by the provincial legislature to enter into business transactions beyond the limits of its province of origin. The decision unquestionably establishes, in my judgment, as I have already said, that the capacity to carry on business throughout the Dominion in the unlimited way provided for in the Colonial Building Association's Act of Incorporation is a capacity which a provincial legislature could not confer upon a company incorporated by it. I do not think that the authority of the decision can fairly be said to extend beyond that so far as this point is concerned.

I think you may find the characteristic "provincial" for the purposes of No. 11 in the fact that the business is carried on by means of places of business situated in one province alone. It appears to me that you must look at the business as a whole and that such a business (as the business of an incorporated company) is *primâ facie* "provincial."

What I have just said will indicate the extent to which I think the question relating to the capacity of provincial companies to carry on business outside the province can be answered. I think a province can confer upon its companies the capacity to acquire rights and exercise their powers (in respect of matters relating to the business of the company), outside the province, so long as the business when looked at as a whole as that of an incorporated company (in connection, that is to say, with the capacities and powers of the company so exercisable beyond the limits of the province) is still a "provincial" business. Whether in any particular case that is or is not so is a question to be determined according to the circumstances of that case.

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There is one observation which I think ought to be added in view of an argument presented by Mr. Nesbitt to the effect that the opinions above indicated as to the construction of No. 11 of section 92 are views which are novel in this country and which, if accepted, would throw the business of the country into confusion. As to the practical effect of this construction I do not feel satisfied that one has before one the material necessary to enable one to form a judgment upon that point. As to the view being a novel view I think I may properly call attention to some observations made by Sir Oliver Mowat in 1897 in the report made by him as Minister of Justice upon an enactment of the Legislature of Nova Scotia. The report so far as material is as follows:—

> The only authority conferred upon a provincial legislature to incorporate companies is for "the incorporation of companies with provincial objects." The undersigned construes this authority to mean *objects provincial as to the province creating the corporation.* In the case of the *Colonial Building and Investment Association* v. *The Attorney-General of Quebec*(1), the appellant company had been incorporated by the Parliament of Canada with power throughout the Dominion to acquire and hold lands, construct houses, sell and dispose of such property, lend money upon mortgages, and deal in public securities. There can be no doubt that a provincial legislature could have incorporated a company with authority to exercise the same powers within the limits of the province, yet in delivering the judgment of their Lordships of the Judicial Committee, Sir Montague E. Smith held that inasmuch as the company was incorporated to carry on its business throughout the Dominion, the Parliament of Canada could alone constitute a company with these powers.
>
> It would seem to follow that the statute in question which confers upon the company authority to acquire, cultivate, improve and sell lands not only in the Province of Nova Scotia, but also in the Province of New Brunswick and elsewhere, is not limited to provincial objects in the sense in which that expression is used in the "British North America Act," and, therefore, that the enactment is *ultra vires.*

(1) 9 App. Cas. 157.

The undersigned considers that this view should be submitted to the provincial government, and that the statute should be disallowed unless Your Excellency's government is assured that it will be amended within the time limited for disallowance by repealing the authority so far as extra provincial territory is concerned.

This suggestion was accepted by the provincial government and the suggested amendments were made. See Reports of Ministers of Justice on Provincial Legislation, 1896 to 1898, p. 33. Sir Oliver Mowat was, it is perhaps unnecessary to mention, one of the Members of the Quebec Conference, and his long experience in dealing with questions on the "British North America Act" and the weight attaching to his views on such questions make this report a very cogent piece of evidence (if it is not indeed entirely conclusive) against the suggestion put forward by Mr. Nesbitt. The concluding paragraph seems to shew that according to the opinion of Sir Oliver Mowat there was not much room for doubt upon the point. It is difficult to believe if the views expressed by him had been but recently formed (it is impossible to suppose that the subject was a new subject to him) or were considered by him to be opposed to the general current of competent professional opinion that he would have expressed himself so positively on the subject of disallowance.

"(3) Has a corporation 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;

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"(*c*) outside of the incorporating province insuring property outside of the province ?

"Has such a corporation power or capacity to insure property situate 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 ?"

Assuming the business of the company to be *primâ facie* provincial in the sense indicated in the reasons given for the answers to questions 1 and 2, I think it is not necessarily incompatible with that restriction that the company should make and execute contracts of the kinds and in the circumstances indicated in sub-paragraphs (*a*), (*b*) and (*c*).

The answer to the question in the second paragraph is "Yes," and in the third paragraph "No."

Question 4. "If any or all of the above mentioned cases (*a*), (*b*) and (*c*) the answer be negative, would the corporation have throughout Canada the power or capacity mentioned in any and which or the said cases on availing itself of the "Insurance Act, 1910," 9 and 10 Edw. VII. ch. 32, sec. 3, sub-sec. 3 ?

"Is the said enactment, the "Insurance Act, 1910," ch. 32, sec. 3, sub-sec. 3, *intra vires* of the Parliament of Canada ?"

Since my answer to the previous questions is in the affirmative the necessity for answering the question in the first paragraph does not arise. In answer to the question in the second paragraph—Since the main enactments of the "Insurance Act" are *ultra vires* the ancillary provisions fall with them.

Question 5. "Can the powers of a company incor-

porated by a provincial legislature be enlarged and to what extent, either as to locality or objects by

"(*a*) the Dominion Parliament ?

"(*b*) the legislature of another province ?"

My answer to the question in paragraph (*a*) is that the Dominion Parliament cannot do so under its general powers.

The effect of declaring a local work to be a work for the general advantage of Canada upon the jurisdiction of the Dominion Parliament in relation to the powers of a provincial company by which it is owned and worked was not argued, and I express no opinion upon it.

As to paragraph (*b*) my answer is in the negative.

Questions 6 and 7 are as follows:—

"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 a 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 license ?

"For examples of such provincial legislation see Ontario, 63 Vict. ch. 24; New Brunswick, Cons. Sts., 1903, ch. 18; British Columbia, 5 Edw. VII. ch. 11.

"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 trading company subject to or governed by the legislation of a province in which it carries out or proposes to carry out its trading

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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 ?"

As to companies incorporated or exercising powers conferred by the Dominion Parliament under the authority of the enumerated heads of section 91, I do not think I could usefully attempt to answer either of these questions, except in relation to some specific Dominion enactment passed or contemplated.

As to companies incorporated under the general authority of the Dominion to make laws for the peace, order and good government of Canada, and possessing powers conferred in exercise of that authority my answer to the 6th question is "Yes."

As to the 7th question: Referring to the sole concrete point discussed before us in relation to such last mentioned companies it was I think competent to the British Columbia Legislature to enact sections 139, 152, 167 and 168 of the British Columbia "Companies Act" (ch. 39, R.S.B.C.); and that those enactments are operative with respect to trading companies (carrying on business in the province within the meaning of the Act) incorporated under the Dominion "Companies Act" for carrying on any business which if carried on in a single province would not be subject to the exclusive jurisdiction of the Parliament

of Canada by force of one or more of the enumerated heads of section 91.

My reasons for my answer to questions 6 and 7 are as follows.

Are trading companies incorporated by the Dominion (as such) exempt from provincial jurisdiction in relation to matters comprised within the subjects of the enactments referred to in question 6 ?

The discussion was confined to the effect of provincial legislation upon companies incorporated and exercising powers conferred under the authority of the introductory clause of section 91 or under No. 2 of section 91, the regulation of trade and commerce. The argument against the legislation mentioned in the addendum to question 6 assumed that a company empowered by the Dominion under one or other of these provisions to carry on in more than one province a business which would be a branch of "trade" within the last mentioned enactment is in a more favourable position (as regards such legislation as that in question) than companies incorporated for other purposes because it was argued that such trading companies are (as "agencies of inter-provincial trade" I think the phrase is) in a larger degree reserved for the exclusive jurisdiction of the Dominion. It will be sufficient in the view I have to express to consider whether such legislation is effective in its application to this species of companies.

Consider a trading company incorporated by the Dominion under the *general powers* to make laws for the "peace, order and good government" of Canada, conferred by the introductory clause of section 91. In speaking of this power I shall refer to it as the

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"general power" or the power given by the "introductory clause." A typical company of this class would be a company incorporated under the provisions of the Dominion "Companies' Act" to carry on generally throughout the Dominion or elsewhere a mercantile business of a particular description. By section 5 of the "Companies Act"

> 5. The Secretary of State may, by letters patent under his seal of office, grant a charter to any number of persons, not less than five, who apply therefor constituting such persons, and others who have become subscribers to the memorandum of agreement hereinafter mentioned and who thereafter become shareholders in the company thereby created, a body corporate, and politic, for any of the purposes or objects to which the legislative authority of the Parliament of Canada extends, except the construction and working of railways or of telegraph or telephone lines, the business of insurance, the business of a loan company and the business of banking and the issue of paper money.

I shall first consider the provincial legislation on the assumption that there is no Dominion legislation in terms conflicting with it, except in so far as it may be supposed or contended that such provincial legislation is necessarily in conflict with the provision just quoted.

The question of the effect of Dominion legislation professing to confer upon a Dominion company rights or powers exercisable in derogation of such provincial enactments as those under consideration, I will refer to later.

The provincial jurisdiction in relation to the subject of the incorporation of companies of the kind we are concerned with on this reference, viz., companies incorporated for the purpose of carrying on some business for private gain has been held by the highest judicial authority (*Colonial Building and Investment Association* v. *Attorney-General of Quebec*(1); *Parsons*

(1) 9 App. Cas. 157.

v. *Citizens Insurance Co.*(1); *Dobie* v. *The Temporalities Board*(2)) to be exhaustively defined by No. 11 of section 92. Whatever, therefore, belongs strictly to the subject of the "incorporation of companies," as that phrase is to be properly understood in this connection, is a matter which in relation to companies whose objects do not fall within the description "provincial objects" has not been committed to the legislative jurisdiction of the provinces. As regards our typical company, a company having capacity to carry on a mercantile business throughout Canada it is clear that no legislation by a province in relation to the subject "incorporation of companies" can affect it. On the other hand jurisdiction is conferred upon the provinces in relation to taxation, administration of justice, licenses, property and civil rights, matters merely local and private within the province, and such a company is not by reason of the fact that it is exempt from provincial jurisdiction in respect of the subject of the "incorporation of companies," exempt also in any further degree whatsoever, from the jurisdiction of a province in respect of these other subjects. The integrity of the provincial jurisdiction in relation to these subjects is preserved by the express provision in section 91 that the general jurisdiction conferred by the introductory clause (of which the authority respecting "incorporation" is a part) has only relation to "matters not coming within the class of subjects by this Act assigned exclusively to the legislatures of the provinces," and by the provision of section 92 that the jurisdiction conferred thereby upon the provinces is "exclusive."

(1) 7 App. Cas. 96. (2) 7 App. Cas. 136.

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The companies, therefore, which owe their corporate character to this Dominion authority once they receive that character, are not (as such) entities set apart and as a privileged class exempt from the jurisdiction of the provinces in relation to other matters comprised in the subjects assigned exclusively to the provinces.

The authority in relation to "incorporation of companies" assigned to the provinces by No. 11 of section 92 does not and was not intended to confer upon the provinces the power to create corporations exempted from the jurisdiction of the Dominion with regard to any of the matters properly the subjects of legislation by the Dominion under section 91. Just as little reason could there be for asserting that under the general powers (from the scope of which "matters coming within the class of subjects by this Act assigned exclusively to the legislatures of the provinces" are in terms excluded by the Act) the Dominion can create a corporation removed from the legislative jurisdiction of the provinces in respect of the matters thus excluded from Dominion jurisdiction. In each province the Dominion company which as a company is within the provincial territory is (with the reservation indicated above) subject to the provincial jurisdiction and to the Dominion jurisdiction just as other companies and natural persons are.

The division of powers (under the general scheme of the Act) is according to the subject matter of the legislation, not according to the persons to be affected by the legislation. Care was taken to specify those cases in which it was thought necessary that the rights of a particular class of persons as such or a particular class of institutions as such should be ex-

clusively committed to the control of one legislature or of the other. When, therefore, with regard to provincial legislation which deals with matters *primâ facie* falling within the "administration of justice within the province," "property and civil rights within the province," "matters merely local and private within the province," it is contended that such legislation is inoperative as regards a Dominion company merely because the Dominion company is a company incorporated under the authority of the general power conferred by the introductory clause then it rests with those who so contend to shew that such legislation is legislation relating to the "incorporation of companies" and not legislation in regard to the subjects with which it professes to deal. That subject ("incorporation") would include the constitution of the company, the designation of its corporate capacities, the relation of the members of the company to the company itself, the powers of the governing body. How much more it would include may be left to be determined in each concrete case in which the point arises. In every such case the question would be: On a fair construction of such provincial legislation is the matter of it within the subject of "incorporation of companies ?" If it is, it cannot affect a company validly incorporated to carry on trade throughout the Dominion. If it is not and if it relates to matters falling within the subjects enumerated in section 92 then it is not invalid because it applies to such companies. It seems to me to be incontestable that this must be so, even if the legislation did (what the legislation under consideration does not), viz., singled out Dominion companies in general or a Dominion company in particular as the object of its provisions; for the rea-

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son that as I have already said, save only as regards matters which fall within the subject matter of the "incorporation of companies" the Dominion company is subject in the various provinces where it is found to the legislative jurisdiction of the provinces in the same way as any other corporation or natural person, and this jurisdiction is plenary—"as supreme" as that exercised by the provinces before the passing of the "British North America Act": *Liquidators of Maritime Bank* v. *Receiver-General of New Brunswick*(1), at page 441.

In this view it does not appear to me that the legislative provisions in question which were particularly discussed on the argument (sections 139, 152, 167 and 168 of the "British Columbia Companies Act") present any serious difficulty.

Before I come to the consideration of these provisions in detail, however, it is more convenient, I think, that I should deal with certain general assumptions which really constitute the foundation upon which the argument against this legislation rests. The first assumption is that all matters relating to "companies" whose "objects" are not "provincial" are withheld by the terms of section 92 from the jurisdiction of the provinces; the second assumption is that being withheld—in the sense of not having been given—these matters are to be taken to constitute a field of activity "excepted" from the field of provincial jurisdiction; and the third assumption is that such being the case the Dominion jurisdiction in relation to the subject of "companies" other than companies with "provincial objects" stands in the same category as the Dom-

(1) [1892] A.C. 437.

inion jurisdiction in relation to the subjects expressly enumerated in section 91. As to the first of these assumptions it is of course opposed to the express language of the Act. No. 11 of section 92 deals with the subject of "incorporation" and there is no warrant for giving to the words anything other than their natural meaning. They do mean, I agree, that as regards the "incorporation of companies" the provincial jurisdiction relates only to a particular class of "companies," and that (whatever otherwise might have been the effect of No. 13 and No. 16, if No. 11 were not there) on this subject of "incorporation of companies" it must be taken that the provincial jurisdiction is thus limited. But you cannot by any permissible process, infer from the language of No. 11 any limitation upon the jurisdiction of the provinces, in relation to "companies" not within No. 11 in regard to matters which do not fall within the strictly limited subject of "incorporation." With regard to the second assumption it is of very litle consequence whether you say that the subject of the "incorporation of companies" other than those having "provincial objects" is not included in the matters which are excepted from the general jurisdiction, and therefore falls within that jurisdiction; or whether you say that such matters are excepted from the provincial jurisdiction, so long as the exact meaning of your proposition is clearly understood; viz., that the legislative jurisdiction in relation to the "incorporation of companies" with other than "provincial objects" is a jurisdiction which not having been excepted from the general authority of the Dominion under the introductory clause of section 91 remains a part of that authority.

It is important at this point to note that it cannot

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be contended—it certainly was not contended at the bar—that the subject of the "incorporation of companies" with "objects" other than "provincial objects" is a subject "expressly excepted" from the matters assigned to the provinces by section 92 within the meaning of No. 29 of section 91. I do not dwell upon this point; it appears to be obvious that such a conclusion cannot be reached without deleting in effect the word "expressly" from the language of No. 29.

The effect of the third assumption is, of course, to abolish for the purposes of this question the distinction between the general power and the power of the Dominion in relation to subjects enumerated in section 91; with the result first of attracting to the support of the Dominion authority in relation to this particular subject the exception at the end of section 91 (which by its express terms applies only to the enumerated subjects) as well as the primacy conferred by the phrase "notwithstanding anything in the Act" in the early part of the section. These assumptions being made and the net result of them being that the subject of "companies" having objects other than "provincial objects" is one of the enumerated subjects under section 91—it is argued that the legislation in question (which unquestionably is legislation in relation to such "companies" although not legislation in relation to the "incorporation of companies,") is legislation upon a matter, strictly relating to a subject which has been assigned to the Dominion; that while it may be in a sense legislation relating to civil rights, administration of justice, and so on, it still is, when it is looked at carefully, legislation which in reality singles out as its objects corporations which have been exclusively committed to the authority of the Dom-

inion. Given the assumptions stated above, there would unquestionably be not a little force in this contention. Even in the absence of conflicting Dominion legislation (which is the hypothesis upon which I am now proceeding), it may very well be doubted whether such legislation as this could be enacted in respect of corporations included (*e.g.*, Banks) *eo nomine* among the enumerated subjects of section 91. But the assumptions involve, as I have already pointed out, first a misreading of No. 11 of section 92, and secondly, a total misconception of the effect of the introductory clause of section 91.

The argument against the provincial legislation on this head falls to pieces when one brings it into touch with language of the Act.

The contention is really based upon certain decisions and dicta which, for the reasons I shall presently give, appear to me to have been misunderstood. These I think it will be convenient to discuss after I have considered the provincial enactments themselves.

The licensing provisions of the "British Columbia Companies Act."

Coming to the particular provisions which were discussed upon the argument (certain enactments in the "Companies Act of British Columbia"), the first point concerns the authority of a province to require extra-provincial companies including Dominion companies to take out a licence and to pay a licence fee as a condition of carrying on business in the province. There are two points to be noted at the outset: (1), sections 139 and 152, R.S.B.C., 1911, shew clearly enough that the provisions of Part 6 apply only to

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companies "authorized by their charter and regulations to affect some purpose or object to which the legislative authority of the legislature of British Columbia extends," and therefore, can have no application to a bank or to companies incorporated for the purpose of constructing or working a "work or undertaking" extending beyonds the limits of the province or carrying on any business which if confined to one province would be subject to the exclusive jurisdiction of Parliament under one of the enumerated heads of section 91.

(2). The tenor of the license when granted is to authorize the company to carry on business within the province and the Act prohibits the carrying on of any part of the company's business in the absence of such a license; but the construction I draw from the Act as a whole and particularly from secs. 167 to 172 is that the words "carrying on business" in these provisions ought to be read as "carrying on business" in such a way as to bring the company within the penal legislative jurisdiction of the province and generally within the jurisdiction of the courts of the province according to the general principles of law; that is to say, so that the company as a company is present at some place within the province. The provision which forbids any company broker or other person from carrying on any of the business of the company within the province as the representative or agent of the company is very necessary to prevent evasions of the principal enactment, and the penalties imposed by section 170 upon such agents or representatives are, in my judgment, clearly exigible only when in truth and reality the business carried on is the business of the company; and when, of the company, it can be

said in truth by a court in British Columbia in any proceedings against it "they are here" as Lord Halsbury's phrase is. *Compagnie Général Transatlantique* v. *Law*(1).

These preliminary observations being made, it is difficult to say upon what ground it can be seriously argued that the province is acting beyond its powers in requiring the companies to which the Act applies before carrying on any business to which the Act relates, to take out a licence and pay a licence fee. The enactment in this respect, in my judgment, can be supported under either the second or the ninth head of section 92. *Ex hypothesi* the company is within the province. Being there it is subject to the taxing power of the province. It seems clear enough that the fee imposed by these Acts can be supported as a tax. The fact that it is imposed once for all is really no objection. It is a public impost levied by the authority of the Legislature for the purpose of providing a public revenue.

It was argued that under section 92 (2) that is to say, under the authority to "make laws in relation to direct taxation within the province," the province has no power to require the taking out of a licence as a condition of carrying on business, that the authority of the province in other words in respect of licences is limited to that conferred by No. 9. That is certainly not the necessary construction of section 92. It is obvious that a licence fee may be imposed in such a way as to amount to an indirect tax. Even so, the province has authority to impose it if it come within No. 9. In the *Queen Insurance Case*(2), it was held

(1) [1899] A.C. 431. (2) 3 App. Cas. 1090.

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that the pretended "Licence Act" there under consideration was in reality a Stamp Act, in other words, that the pretended licence required by the Act was not a licence within No. 9 and that consequently the duty or fee exacted under the name of a licence fee, which was held to be an indirect tax, could not be supported under that number. The decision does not suggest that a fee which is truly a licence fee and which is at the same time an indirect tax cannot be imposed under No. 9, but on the contrary, the judgment implies the opposite. No. 9, therefore, ought not to be read as limitative of No. 2.

An enactment requiring a licence to be taken out as a condition of carrying on business and the payment of a licence fee as a condition of the right to the licence may, if not otherwise open to objection, be supported as an enactment in relation to the subject of "direct taxation." The point was decided by the Privy Council, in *Brewers' Association* v. *Attorney-General of Ontario* (1). In that case their Lordships had to consider certain provisions of the "Ontario Liquor Licence Act" which required brewers and distillers to take out licences paying therefor a licence fee as a condition of carrying on their business. Lord Herschell in delivering the judgment of the Board stated at p. 235 that the question was whether the fee imposed was direct taxation within the meaning of section 92(2) or if not whether the license was comprised within the term "other licenses" in sub-section 9. The effect of the judgment is that if the fee was "direct taxation," the enactments requiring brewers and distillers first to obtain a licence under the Act in order to sell liquor manufactured

(1) [1897] A.C. 231.

by them was a valid enactment, independently altogether of the question whether the licence could be sustained as a licence under No. 9. Their Lordships in fact held that the fee was "direct taxation," and having stated their Lordships' conclusion upon that point Lord Herschell proceeds to observe that "the view which their Lordships have expressed is sufficient to dispose of this appeal." His Lordship then proceeds to say that their Lordships were not satisfied with the argument of the appellants, that the licence was not a licence within No. 9. But the decision was rested upon the ground that the enactment in question which required a licence to be taken out and a fee to be paid as a condition of carrying on a particular business was "direct taxation" within No. 2.

It appears to me, however, that the enactments in question in so far as they require the payment of a fee as a condition of taking out the licence and the licence as a condition of carrying on business are sustainable under No. 9. I have not been able to satisfy myself that a licence to carry on any business for gain would not fall within the category of "other licences" in No. 9, unless it should be a business which could be held to be exempted from the operation of No. 9 by reason of the provisions of section 91. The considerations bearing upon this last mentioned point may be conveniently postponed until I come to the discussion of the effect of the provincial legislation as regards trading companies incorporated under No. 2 of section 91. The fact that the enactment is framed in general terms could hardly be a ground of objection. If the legislature could validly require licences in respect of any business carried on for gain within the province subject, let us assume, to the overriding

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effect of Dominion legislation, it is difficult to see how the legislation can be objected to because it is framed in general terms and made applicable to all persons or all companies or all partnerships or all unincorporated associations carrying on in the province any business the object of which is gain. In point of fact it is not an uncommon form of legislation on the subject of licences to impose a licence fee of a named amount upon every trade, business or occupation other than certain enumerated ones. It is a clause commonly introduced as a drag-net in order to meet the possibility of the enumeration not having been exhaustive. I have never seen any reason to doubt that such legislation provided it is otherwise unobjectionable is perfectly valid notwithstanding the generality of its terms. The argument presented on behalf of the Manufacturers' Association that the licence in order to be valid must be imposed equally upon all persons, corporations, etc., carrying on any of the kinds of business in respect of which it is imposed is one which perhaps hardly requires discussion. The answer to it of course is that the power conferred upon the province is not the power to impose licences but to "make laws in relation to all matters" coming within the subject which is described by the words of No. 9; and this power is plenary.

I come now to the requirements which must be observed before a licence can be obtained. The regulations broadly speaking are of two classes: first, those designed to give public information regarding the financial position of the company; and second, those requiring the company to place on record in a public office the particulars of its constitution and its regulations, and requiring the appointment of an attorney

for the province, having power to act for and bind the company in judicial proceedings. When one considers the privileges that a limited company enjoys as a limited company these regulations seem to be of no very extraordinary character and moreover to be regulations having direct relation to civil rights and the administration of justice within the province. Such companies carry on their operations, speaking generally, under the protection of the English rule of *ultra vires* and its members enjoy the protection of the principle of limited liability; and as a rule persons dealing with them are deemed to have notice of the limits imposed by the constitution and regulations of the company upon the authority of the governing body and of other officers and agents of the company. It is obvious, of course, that these principles might operate with great injustice in the case of extra-provincial companies in the absence of some such regulations as those in question. In the case of an English company, for example, incorporated under the "English Companies Act," carrying on business in British Columbia the rule affecting persons dealing with the company with notice of the restrictions upon the authority of the company's officers to be found in the articles of association would be little short of an absurdity in the absence of some provision requiring a public record of the companies articles in British Columbia. So with regard to the doctrine of *ultra vires*. Giving full effect to that doctrine it seems reasonable in the interests of those dealing with it that a company should be required in any separate jurisdiction in which it carries on business to make a public record of the instruments defining its constitution. As regards to the appointment of an attorney, for the purpose of

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judicial proceedings, this seems a reasonable measure for ensuring that companies enjoying the protection of the provincial laws as if they were residents of the province and the provisions made for the administration of justice should themselves be amenable to the jurisdiction of the courts. When one considers the difficulties that arise in the course of judicial proceedings in such matters for example, as obtaining discovery where a foreign corporation is concerned, there seems to be nothing extravagant in the regulation referred to as a regulation relating "to the administration of justice." Not one of these regulations can fairly be said to be a regulation relating to the subject of "incorporation" of extra-provincial companies. One may assume for the purpose of the question before us that that subject includes everything embraced in what may be called the "personal law" of the company. But one gets into a different region altogether when one comes to consider the measures required in a particular jurisdiction in which the company is carrying on business for the purpose of protecting the public generally in its dealings with such companies in view of the fact these very matters are under the control of another jurisdiction. There is nothing in these provisions inconsistent with the loyal recognition of the Dominion jurisdiction in all matters falling within the subject of "incorporation."

Contention that these licensing provisions were not passed in bonâ fide exercise of provincial jurisdiction.

On behalf of the Manufacturers' Association the argument was presented that the legislation ought to be declared invalid as not being passed in the *bonâ*

fide exercise of any of the powers conferred by section 92. It is said that the real object of the legislation is to embarrass Dominion corporations in the conduct of their business in the province. Now it is quite true that there is authority for the proposition that if a province professing to legislate in exercise of the powers conferred by section 92 shews by its legislation that it is in reality attempting to exercise some power conferred upon the Dominion, exclusively, then the legislation may be *ultra vires*. *Union Colliery Co.* v. *Bryden*(1), is an instance, which case ought, it may be mentioned, to be read with the subsequent decision *Cunningham* v. *Tomey Homma*(2). But it has never been held and manifestly it would be impossible to hold that the court has any power to effect the nullification of a provincial statute, because of the motives with which the legislation was enacted. In the *Bank of Toronto* v. *Lambe*(3), *at* pages 586-7, it was argued that the tax in question was imposed with some such object as that imputed to the provinces on the present occasion, and the Judicial Committee, speaking through Lord Hobhouse, said this:—

> People who are trusted with the great power of making laws for property and civil rights may well be trusted to levy taxes. There are obvious reasons for confining their power to direct taxes and licenses, because the power of indirect taxation would be felt all over the Dominion. But whatever power falls within the legitimate meaning of classes 2 and 9, is, in their Lordships' judgment, what the Imperial Parliament intended to give; and to place a limit on it because the power may be used unwisely, as all powers may, would be an error, and would lead to insuperable difficulties, in the construction of the "Federation Act."
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> The appellant invokes that principle to support the conclusion that the "Federation Act" must be so construed as to allow no

(1) [1899] A.C. 580. (2) [1903] A.C. 151.
(3) 12 App. Cas. 575.

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power to the provincial legislatures under sec. 92, which may by possibility, and if exercised in some extravagant way, interfere with the objects of the Dominion in exercising their powers under sec. 91. It is quite impossible to argue from the one case to the other. Their Lordships have to construe the express words of an Act of Parliament which makes an elaborate distribution of the whole field of legislative authority between two legislative bodies, and at the same time provides for the federated provinces a carefully balanced constitution, under which no one of the parts can pass laws for itself except under the control of the whole acting through the Governor-General. And the question they have to answer is whether the one body or the other has power to make a given law. If they find that on the due construction of the Act a legislative power falls within sec. 92, it would be quite wrong of them to deny its existence because by some possibility it may be abused, or may limit the range which otherwise would be open to the Dominion Parliament.

Those who were responsible for the scheme of Confederation deliberately rejected the American system of constitutional limitations. So far as provincial legislation is concerned they adopted the safeguard of investing the Governor-in-Council with a power of disallowance.

The argument addressed to us on this occasion seems to be addressed to the wrong authority. It is, moreover, to be observed that legislation of this character has for many years past been the subject of discussion between the provincial and the Dominion Governments. Efforts have repeatedly been made to get such legislation disallowed upon the grounds now put forward as a reason for holding the legislation to be *ultra vires*. The arguments which failed to convince the Governor-General-in-Council that the legislation was passed in bad faith, that it was not an honest exercise of provincial powers are now addressed to us. I may observe that the "British Columbia Act" was the subject of a correspondence when first enacted in 1897. The Minister of Justice, Sir Oliver Mowat, expressed the opinion that the re-

gulations which are now denounced as dishonest were not unfair or unreasonable. Correspondence relating to provincial legislation, 1896-1898, pp. 82 and 83. In point of fact the similar legislation in force in Ontario and Manitoba was only allowed to go into effect after vigorous criticism by the Dominion and after amendments had been made which had been demanded by the Department of Justice. The first and second Manitoba Acts were disallowed on the ground that they unfairly interfered with Dominion interests. In 1903 when the "New Brunswick Act" was passed no objection was taken. The history of the discussion indicates that the legislation as it now stands appeared to the various Ministers of Justice who had to consider it to be not fairly open to objection as interfering with Dominion interests. In these circumstances it is, I confess, a little difficult to treat this contention seriously. The truth is that one circumstance which, among many others, led to this legislation was the habitual abuse of the Dominion power of incorporating companies. As the provincial governments have pointed out from time to time when legislation of this character was the subject of discussion a Dominion charter of incorporation under the Dominion "Companies Act" is given to those who seek it without any inquiry whether the intention is to carry on business in more than one province or not. It is within the knowledge of every experienced lawyer that numbers of companies are incorporated under the Dominion "Companies Act" (with no expectation on the part of anybody of carrying on any but a strictly local business) with the hope of escaping regulations governing provincial companies framed for the protection of the public on subjects in relation

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to which the Dominion Act is silent. Again everybody knows that the assumption by the Dominion of jurisdiction over works obviously of only local interest by declaring them to be for the "general advantage of Canada" became a few years ago a grave scandal. Is it suggested that there is any power in any court in the Empire to nullify a charter under the Dominion "Companies Act" or such an Act of the Dominion Parliament on the ground that there had been an absence of the Dominion power ? In the case of enactments of the Dominion Parliament (which are subject to no power of disallowance such as that which exists in respect of provincial legislation) there might be some possible reason for investing the courts with such a power. The constitution, however, has not done so.

I refer to these things to illustrate the difficulties standing in the way of a court which should apply itself to the task of investigating the question whether an enactment of a provincial legislature professing to deal and dealing with matters in respect of which it has jurisdiction ought to be declared invalid on the ground that it is directed against some supposed Dominion interest.

Has the Dominion power to override such provincial legislation ?

I have been considering the effect of this provincial legislation in the absence of the conflicting Dominion legislation. On behalf of the Dominion it is contended that the Dominion in exercise of the general power or of the jurisdiction conferred by No. 2 of section 91 could effectually legislate in such a way as to exempt companies incorporated for trading through-

out Canada from provincial authority in respect of such matters as those dealt with in the provisions of the provincial statutes which we have been just discussing.

The argument as I understand it in support of Dominion jurisdiction is put in some such way as this: the Dominion has, it is said, under the general power authority to legislate in respect of matters which are truly of "national interest and importance," in addition to its authority to legislate in relation to matters comprised within the subjects enumerated in section 91. The business of a company having authority to carry on its business beyond the limits of one province and the powers with which such a company is endowed for that purpose and the right to execute those powers are said to constitute, taken as an entirety, a single subject matter of such "national interest and importance." It being, therefore, competent for the Dominion to legislate on such matters under its general power, such legislation when it comes into conflict with provincial legislation must, it is argued, prevail. It is said that the Dominion enactment incorporating such a company to carry on business in more than one province without imposing any condition or limitation does effectively exempt such a company from the necessity of complying with such provisions as those we have been considering. I think the decisions and the dicta relied upon in support of these propositions when properly understood have not the effect they are assumed by counsel for the Dominion to have and I proceed to consider the authorities in some detail. The question is one of great practical importance; for the proposition advanced amounts to nothing less than this, namely, that in all matters

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which may appear to the courts to be truly "of national interest or importance" the Dominion possesses plenary power to make laws which in each province supersede provincial legislation upon subjects enumerated in section 92; and this principle applied as the Dominion on this reference contends it ought to be applied would unquestionably leave to the provinces very little of that local autonomy which the parties to the Confederation compact believed they had reserved to them.

The cases which have admittedly involved the construction of the introductory clause of section 91 and the scope of the power conferred by that clause are the cases dealing with legislation on the subject of the "drink question" (as Lord Macnaghten called it, in the *Manitoba Licence Holders' Case*(1), and the *Parsons Case*(2); the *Colonial Building Association Case* (3), and the *Montreal Street Railway Case*(4). The counsel for the Dominion as well as for the Manufacturers' Association rely upon *La Compagnie Hydraulique de St. François* v. *Continental Heat and Light Co.*(5), as supporting the view just indicated, but my own conclusion, which I have reached after careful examination of that case, is that it did not turn upon a consideration of the general power and I shall give my reasons for thinking so later. In the meantime I propose to examine the effect of the decisions which unquestionably are relevant.

The judgment in the *Montreal Street Railway Case* (4), contains an impressive warning against yielding too easily to such contentions as that I am now con-

(1) [1902] A.C. 73.
(2) 7 App. Cas. 96.
(3) 9 App. Cas. 157.
(4) [1912] A.C. 333.
(5) [1909] A.C. 194.

sidering. The following is the passage to be found at pages 343 and 344.

It was laid down in *Attorney-General of Ontario* v. *Attorney-General of the Dominion*(1), (1) that the exception contained in sec. 91, near its end, was not meant to derogate from the legislative authority given to provincial legislatures by the 16th sub-section of sec. 92, save to the extent of enabling the Parliament of Canada to deal with matters local or private, in those cases where such legislation is necessarily incidental to the exercise of the power conferred upon that Parliament under the heads enumerated in sec. 91; (2) that to those matters which are not specified amongst the enumerated subjects of legislation in sec. 91 the exception at its end has no application and that in legislating with respect to matters not so enumerated the Dominion Parliament has no authority to encroach upon any class of subjects which is exclusively assigned to the provincial legislature by sec. 92; (3) that these enactments secs. 91 and 92, indicate that the exercise of legislative power by the Parliament of Canada in regard to all matters not enumerated in sec. 91 ought to be strictly confined to such matters as are unquestionably of Canadian interest and importance, and ought not to trench upon provincial legislation with respect to any classes of subjects enumerated in sec. 92; (4) that to attach any other construction to the general powers which, in supplement of its enumerated powers, are conferred upon the Parliament of Canada by sec. 91 would not only be contrary to the intendment of the Act, but would practically destroy the autonomy of the provinces; and, lastly, that if the Parliament of Canada had authority to make laws applicable to the whole Dominion in relation to matters which in each province are substantially of local or private interest, upon the assumption that these matters also concern the peace, order, and good government of the Dominion, there is hardly a subject upon which it might not legislate to the exclusion of provincial legislation.

The cases on the drink legislation ought to be read by the light of this judgment and so read they lend no support to the Dominion's contention.

In *Russell* v. *The Queen*(2), it was admitted by Mr. Benjamin, who appeared for the defendant (the provinces were not represented) that the "Canada Temperance Act" of 1878 (which provided for what may be called the "prohibition" of the sale of intoxicating

(1) [1896] A.C. 348. (2) 7 App. Cas. 829.

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liquor in the localities within which it should be brought into force) if brought into force at once throughout the Dominion would have been valid. "A large admission" Lord Herschell called it in a subsequent case; page 168 of the stenographer's note of the argument in the Liquor Prohibition Appeal, printed in 1895 by William Brown & Co. He relied on the machinery for bringing the Act into force as shewing that the subject was dealt with as a local matter. And their Lordships did not really apply themselves in that case to the consideration of the question whether the matter of the suppression of the "drink" traffic was "substantially a local matter in each of the Provinces." In the Prohibition Reference, *Attorney-General of Ontario* v. *Attorney-General of Canada*(1), at page 362, Lord Watson said that their Lordships were relieved by this decision (*Russell* v. *The Queen*(2)), from the *"difficult duty"* of considering the validity of the "Canada Temperance Act," 1886, which was a re-enactment of the Act of 1878. Their Lordships also said that if the prohibitions of the "Canada Temperance Act" had been made imperative throughout the Dominion their Lordships *"might have been constrained by previous authority to hold"* that the jurisdiction of Ontario to pass a local Act of a similar nature would have been superseded. When these two judgments are read together with the subsequent judgment in the *Manitoba Licence Holders' Case*(3), it becomes apparent that they rest upon considerations which would have no possible application to any question before us.

1st. The judgment in *Russell* v. *The Queen*(2),

(1) [1896] A.C. 348. (2) 7 App. Cas. 829.
(3) [1902] A.C. 73.

proceeds upon the proposition that the "Canada Temperance Act" could not be regarded as a law relating to property and civil rights. It is implied that if such had been the matter of the legislation it could not have been sustained under the general power. In the *Manitoba Licence Holders' Case*(1), at page 78, their Lordships express the opinion that the effect of the previous decisions was that an enactment of similar character when passed by a province would fall within No. 16 rather than No. 13 and that if it fell within the latter it would be doubtful if the provincial enactment could be superseded by Dominion legislation.

From all these judgments it may be inferred, although they do not expressly decide, that uniform legislation by the Parliament of Canada imperative throughout the Dominion relating to matters which if dealt with in a single province would fall within any of the first fifteen heads of section 92, cannot in any circumstances be sustained under the general power to make laws for the peace, order and good government of Canada. If it were otherwise the enactments of section 94 would, as Lord Watson(2), said, be "idle and abortive." Legislation conferring upon Dominion companies rights in derogation of the provisions of the statutes now in question or dealing with the same subject matters unless passed under the authority of the enumerated heads of section 91 would necessarily be legislation in relation to the matters assigned to the provinces under Nos. 2, 9, 13 or 14.

2nd. But assuming this legislation ought, from the provincial point of view, to be regarded as enacted

(1) [1902] A.C. 73. (2) [1896] A.C. 348.

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under No. 16, it seems impossible to deduce from these judgments the proposition now advanced. In *Russell v. The Queen*(1), the matter and purpose of the legislation under discussion are indicated by such phrases as "necessary or expedient for national safety or for political reasons" "a law placing restrictions upon the sale, custody or removal of poisonous drugs or dangerously explosive substances" * * * "on the ground that the free sale or use of them is dangerous to public safety * * * and making it a criminal offence to violate these restrictions"; "legislation * * * relating to public order and safety;" "laws for the promotion of public order, safety or morals which subject those who contravene them to criminal procedure and punishment;" laws having "direct relation to the criminal law"(2).

Their Lordships on the prohibition reference appeared to find some difficulty in convincing themselves that legislation to which even such terms were appropriate could be supported under the general power of the Dominion.

In the earlier reference, in 1885 (relating to the Dominion Licence Acts of 1883-4, commonly known as the "McCarthy Act") their Lordships had before them a statute dealing with the "drink question"; but instead of prohibiting the drink traffic professing to make provision for regulating it. The preamble to the Act, 46 Vict. ch. 30, was "Whereas it is desirable to regulate the traffic in the sale of intoxicating liquors and it is expedient that the law respecting the same should be uniform throughout the Dominion and that pro-

(1) 7 App. Cas. 829.

(2) See 7 App. Cas. 829, at pp. 838, 839.

vision should be made in regard thereto for the better preservation of peace and order." This Act which professed to establish a uniform system regulating the "drink" trade throughout Canada for these purposes was held to be *ultra vires* of the Dominion. It is obvious therefore that even as regards a state of affairs which the Dominion may treat as constituting a national evil to be suppressed by laws which in effect are criminal laws the same authority may be disabled from otherwise dealing with it; and this is another indication of the difficulty of extracting from these decisions on the "drink" legislation any principle which can serve as a support for legislation upon another subject even when that subject admittedly concerns directly public order and morals unless the legislation in itself bears a "direct relation to the criminal law"(1).

There is certainly nothing here to afford a basis for the proposition that rights of a company which has been incorporated for carrying on, in more than one province of Canada, an ordinary mercantile business constitute by reason of that fact alone (I exclude of course matters relating to "incorporation") a "matter" in relation to which the Dominion under its general power may legislate to the exclusion of provincial jurisdiction or in derogation of the enactments of a province within whose territorial jurisdiction the company is found, upon matters *primâ facie* within the subjects of section 92. Assuming such matters as subjects of legislation to fall within No. 16 rather than within No. 2, No. 9, No. 13 or No. 14 of section 92, when looked at from the provincial point of view,

(1) 7 App. Cas. 829, at p. 839.

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it could hardly be denied that they are matters "substantially of local interest" in each province merely because legislation upon them only relates to companies carrying on business in more than one province; still less because it relates only to companies having power to carry on business in more than one province. Nobody would argue that the Dominion could by the exercise of any of its residual powers pass laws in relation to a natural person or an unincorporated association of persons carrying on business in more than one province which could have the effect of superseding, as regards such persons or associations, legislation (in respect of such matters) by any province in which he or they should be found setting up a place of business. On the question whether such matters are or are not "substantially of local interest" it must be immaterial whether they are considered in relation to a partnership carrying on business in two provinces or to a corporation carrying on business in two provinces, matters relating to "incorporation"—I repeat—being left out of view.

Where it is intended that a business of a particular character, or an undertaking of a particular character, shall be under the control of the Dominion or the provinces the authors of the Act seem to have said so. In section 91, for example, not only the "incorporation of banks" but "banking" also is specified. In No. 10 of section 92 it is the "undertaking" or "the work" which is expressly committed to the Dominion or the province as the case may be. In the case of "municipal institutions" where the subject is defined as "municipal institutions" simpliciter it was held by their Lordships, in *Attorney-General of Ontario* v. *Attorney-General for Canada*(1), that the

(1) [1896] A.C. 348.

power of creating the institution was all that was thereby conferred.

And the authorities cited in support of the proposition are all authorities upon the effect of some provision of the Act by which the control of a particular kind of *business or work or undertaking* is committed exclusively to the Dominion. In *The Union Bank* v. *Tennant*(1), for example, Lord Watson says that section 91 expressly declares that

> notwithstanding anything in this Act the exclusive authority of the Parliament of Canada shall extend to all matters coming within *enumerated* clauses,

and at p. 46, he says, referring to No. 15 of section 91, the "legislative authority conferred by these words is not confined to the mere constitution of corporate bodies with the privilege of carrying on the business of bankers. It also comprehends 'banking,' an expression which is wide enough to embrace every transaction coming within the legitimate business of a banker." In *The City of Toronto* v. *Bell Telephone Co.* (2), Lord Macnaghten in the judgment upon which counsel for the Dominion relies was dealing with No. 29 of section 91 and No. 10 of section 92 the joint effect of which is that "works" extending beyond the boundaries of the province or connecting one or more provinces are under the exclusive control of the Dominion.

The *Cie. Hydraulique de St. François* v. *Continental Heat and Light Co.*(3).—The decision in this case which appears to me to be in the same category must be examined at length. The appellant company

(1) [1894] A.C. 31, at p. 45. (2) [1905] A.C. 52.
(3) [1909] A.C. 194.

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was a company incorporated by an Act of the legislature of Quebec, chapter 76 of the statutes of 1902, which authorized it, among other things, within a radius of 30 miles around the Village of Disraeli, and for Disraeli, to construct certain electric tramways, to utilize certain water powers, to acquire the franchises and exercise the powers conferred upon certain named companies, to work the tramways, to generate and distribute electricity for heat, light and motive power and to establish all necessary works in and over the streets and public lands for these purposes. By a subsequent statute it was enacted that no company "shall exercise any privileges, franchises or rights of a like nature to those conferred upon the St. Francis Water Company in the territory designated by the said Act" without obtaining the consent of the said company. In 1897 the respondents in the appeal had been incorporated as the Continental Heat and Light Company by the Parliament of Canada (60 & 61 Vict. ch. 72) with powers (exercisable without any restriction as to territory) to manufacture, supply, sell and dispose of electricity for the purpose of light, heat and motive power, and to construct tramways; and by section 8 it was specially empowered with the consent of "the municipal council or other authority having jurisdiction over any highway or public place" to enter thereon for the purpose of constructing and maintaining lines for the conveyance of the electric power when deemed necessary by the company and to erect, equip and maintain poles and other works and devices, stretch wires and other electrical contrivances thereon, and it was provided that the company should be responsible for all "unnecessary damage" caused in maintaining or carrying out any of the said works.

The Continental Company having proceeded to establish itself by constructing works within the territory designated by the "St. Francis Company's Act," an action was brought to restrain them. No question appears to have been raised as to the interest of the St. Francis Company to maintain the action, the point dealt with and decided which was probably the point the parties desired to raise, being the question of the effect of the prohibition above mentioned as against the Continental Company. Their Lordships held that the prohibition was not effective.

It appears from the judgment of the Court of King's Bench (1), that in that court counsel on behalf of the St. Francis Company admitted the Dominion legislation to be *intra vires*. This admission that the Act was *intra vires* would appear to have removed from the controversy any question material to the present reference. The case was in that court supposed to be governed by the *Bell Telephone Case* (2), in other words the Continental Company's undertaking was treated as an undertaking governed by No. 29 of section 91 and No. 10 of section 92 as an undertaking that is to say extending beyond the limits of a single province. It was, I think, on this hypothesis that the judgment of the Privy Council proceeded. The "St. Francis Act" authorized the establishment of works in a particular locality in the province of Quebec and prohibited the establishment in the same locality of any works of the same character. That was clearly an Act relating to local works within the meaning of No. 10 of section 92. In face of that prohibition no municipal authority or other authority in the

(1) Q.R. 16 K.B. 406. (2) [1905] A.C. 52.

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Province of Quebec could lawfully authorize anybody to enter upon a highway for the purpose of establishing any similar work which was also a local work. The Dominion Parliament could validly authorize the establishment of a work of similar character by declaring that work to be for the general advantage of Canada, or if it were a work connecting two provinces or extending beyond the boundaries of a single province; and it seems clear that their Lordships must have taken that to be the character of the works authorized by the "Continental Company's Act." That the Dominion legislation was paramount in the sense that the provincial legislation was overborne by it, was treated by their Lordships as a self evident result of the authorities. Now, if the Continental Company's undertaking was not a work or undertaking extending beyond the boundaries of the province within No. 10 of section 92, it was certainly a local work or undertaking within that article; and there certainly was no decision, prior to 1909, countenancing the proposition that under the general power Parliament could authorize the establishment of a local work of that description in face of a prohibition enacted by a province.

In this connection it is important to bear in mind the construction which the Judicial Committee of the Privy Council has placed upon No. 8 of section 92, and which can best be stated in the language of Lord Watson in *Attorney-General for Ontario* v. *Attorney-General for the Dominion*(1), at pages 363 and 364:—

> The first of these, which was very strongly insisted on, was to the effect that the power given to each province by No. 8 of sec. 92 to

(1) [1896] A.C. 348.

create municipal institutions in the province necessarily implies the right to endow these institutions with all the administrative functions which had been ordinarily possessed and exercised by them before the time of the Union. Their Lordships can find nothing to support that contention in the language of sec. 92, No. 8, which, according to its natural meaning, simply gives provincial legislatures the right to create a legal body for the management of municipal affairs. Until Confederation, the legislature of each province as then constituted could, if it chose, and did in some cases entrust to a municipality the execution of powers which now belong exclusively to the Parliament of Canada. Since its date a provincial legislature cannot delegate any power which it does not possess; and the extent and nature of the functions which it can commit to a municipal body of its own creation must depend upon the legislative authority which it derives from the provisions of sec. 92 other than No. 8.

The control exercised commonly throughout Canada by municipalities over highways, tramways, works for distribution of light, heat and power, is based upon powers conferred by the provinces under heads of section 92 other than No. 8, such for example as 10, 13, 16.

A municipality can confer only such rights in respect of its highways as it is authorized to confer by the legislature having control of such rights. If the legislature of a given province prohibits the establishment of local works of a particular character in a particular municipality, that prohibition is final and decisive unless it be overborne by some superior legislative authority. The prohibition to be found in the "St. Francis Water Company's Act" having made it unlawful for the municipality or other authority having control of highways, to confer any right upon the Continental Company in respect of the establishment of any such works as those authorized by the "St. Francis Company's Act," the effect of the decision as construed by counsel for the Dominion is that the Dominion by incorporating a company having authority

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to establish similar works in any locality in Canada could override such a prohibition. If that is so, it is obvious that the control of the streets of every municipality in Canada with respect to local works, as local works, rests with the Dominion Parliament. That would appear to be a very remarkable result in view of No. 10 of section 92 by which local works and undertakings within a province are committed to the exclusive legislative jurisdiction of the province, and by which exact provision is made for a specific procedure by which the Dominion can obtain control of such works, viz., by declaring them to be for the general advantage of Canada. It is impossible to suppose that their Lordships could have given their decision upon any such principle.

The conclusion I have reached is that this decision proceeded upon the basis of the "Continental Company's Act" having been passed in execution of the authority conferred upon the Dominion by the combined force of section 91 (29), and section 92 (10). Whether a work or undertaking authorized by the Dominion is really a work or undertaking extending beyond the limits of a single province, is a question, of course, which must in each case depend upon the construction of the particular enactment in question.

There is one conceivably possible contention not put forward during the argument, which perhaps ought not to be overlooked in dealing with this point, and that is that the word "undertaking" in No. 10 is intended to include the business of an incorporated company as such. The undertaking of a mercantile company carrying on business in more than one province might perhaps be said to be an undertaking extending beyond the limits of the province. There are

many reasons for rejecting any such construction of the word "undertaking" in No. 10 of section 92, which so far as I know has never been put forward, and certainly has never been acted upon. In *Montreal Street Railway Case*(1) their Lordships observed that the works and undertakings referred to in No. 10, are "physical things." It is also rather difficult to see why if the business of an incorporated company which carries on business in more than one province is an undertaking in the sense of these words, the business of an un-incorporated association or of an individual having several places of business in different provinces, should not equally be an undertaking in that sense. It would follow of course that the Dominion could authorize the construction of a series of local works in each of the provinces quite disconnected as works, merely by authorizing a single company or individual to construct them; a tramway in Winnipeg, another in Montreal, another in Halifax. This seems to be inconsistent with the general objects of the enactments of No. 10 of section 92.

For these reasons I think it is impossible to maintain the contention that such provisions as those above considered as a part of the "British Columbia Companies' Act," are not operative against the Dominion companies incorporated and exercising powers conferred under the authority of the introductory clause of section 91.

"Regulation of trade and commerce."

The 7th question, however, is broad enough in its terms to include powers of trading conferred under

(1) [1912] A.C. 333.

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the enumerated heads of section 91. I do not propose to attempt to deal with this question in its broadest sense. What trading powers might be conferred in conceivable circumstances upon a Dominion company under several of the enumerated heads (*e.g.,* Militia and Defence), and how far such power might be held to be in their exercise free from provincial control, is a question that it would be futile to enter upon. The only one of the enumerated heads to which reference was made during the argument was No. 2, Trade and Commerce. Here again I do not propose to attempt to define or even to indicate what powers might be conferred upon a Dominion company in exercise of this particular jurisdiction. In the *Montreal Street Railway Case*(1) their Lordships held that the same general considerations as those governing the construction and application of the introductory clause, would apply to Trade and Commerce. In *The Bank of Toronto* v. *Lambe*(2), it was in effect stated that its jurisdiction under this head would not enable the Dominion to exempt traders from the provincial power of taxation in any province in which they should be carrying on their trade. In the *Brewers' Case*(3), it was held that the provinces might exact a license fee and regulate the manner in which a Dominion brewing company carried on its trade within the province. In the *Manitoba Liquor Licence Case*(4), it was held that a province might prohibit the sale of intoxicating liquors even by traders trading under a Dominion license, so long as the legislation did not directly interfere with transactions between residents of the province and outsiders. So far as I know nobody has

(1) [1912] A.C. 333.
(2) 12 App. Cas. 575.
(3) [1897] A.C. 231.
(4) [1902] A.C. 73.

doubted that the "Ontario Liquor Licence Act" which was held to be valid in *Hodge* v. *The Queen*(1), and under which authority is given to municipal bodies to require licenses to be taken out by persons dealing in intoxicating liquors, to fix the number of licences and to nominate the licensees, applies to Dominion companies carrying on that business in the province. I have already referred to the decision upon the "McCarthy Act." These decisions seem to suggest that, save at all events in exceptional circumstances, the Dominion could not confer powers upon a Dominion company under No. 2 of section 91, to be exercised in derogation of provincial legislation in respect of the matters dealt with in the legislation under consideration. Whether in any circumstances or in what circumstances, if any, the Dominion would possess such authority, is another point upon which I think it would be utterly futile to attempt to offer an opinion. The point pressed upon us by Mr. Newcombe was this: applying some words of Sir Montague Smith in the *Parsons Case*(2), to the effect that trade matters of interprovincial concern are given to the Dominion by No. 2, of section 91 and that such legislation as that before us necessarily affects interprovincial trade, in so far as it affects companies authorized to carry on some business which could be called a "trade" in more than one province. Now it is observed in the first place that this legislation is not legislation relating to trading companies. It is legislation relating to all companies carrying on business for gain. As I have already pointed out, it deals with companies as established in a province, as being in the province and sub-

(1) 9 App. Cas. 117.

(2) 7 App. Cas. 96.

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ject to the general territorial jurisdiction of the province, and it is with the business so carried on in the province that the legislation is intended to deal. It is not intended in any way to deal with Ontario companies as trading with British Columbia, or as trading into British Columbia. It deals with companies that establish themselves in British Columbia, and there carry on their trade. It may be that the British Columbia establishment is the only establishment the company has. But let us take the case of a company having an establishment in Vancouver and another in Winnipeg. On what conceivable ground can it be said that this legislation affects interprovincial trade in such a way as to make it legislation in respect of the interprovincial trade of that company? The "Partnership Act" of British Columbia requires that every partnership carrying on business in the province shall be registered. The registration involves the public record of certain information and a fee is to be paid. A partnership formed according to the law of Ontario carrying on business in Toronto and desiring to set up business in Vancouver would be obliged to comply with this law.

Is it not an absurdity to suggest that such an enactment is an enactment relating to interprovincial trade? And if the partners form an incorporated company which takes over the business, carrying it on as before, on what ground can it be said that [save as to incorporation] the company is in a less degree subject to the jurisdiction of the Province than the partnership was ?

It is conceivable that conflicting Dominion legislation under No. 2 might in exceptional circumstances overbear some of the provisions of the legis-

lation in question. But I must decline to pass any opinion upon such a question until the particular legislation is brought before me. Confining the question to companies incorporated under the Dominion "Companies Act" I have no hesitation in saying that there is nothing in that Act which in any way has the effect of removing companies formed under it from the operation of such legislation as that in question.

To summarize my views on the points raised by the questions 6 and 7 excluding any question as to the effect of competent Dominion legislation enacted under any of the enumerated heads of section 91.

The authority of the Dominion Parliament under the introductory clause of section 91 to make laws for the peace, order and good government of Canada is not exercisable by the express words of that clause in respect of those matters which fall within any of the classes of subjects exclusively assigned to the provincial legislatures by section 92. In the matter of the incorporation of companies the authority of the provincial legislatures has been held by the Privy Council to be limited to the matters described in the words of No. 11 of section 92, the "incorporation of companies with provincial objects." It has accordingly been held by the same authority that the power of the Dominion Parliament in relation to this subject, "the incorporation of companies," extends to all companies having objects which within the meaning of No. 11 of section 92 are other than "provincial objects"; and it has further been held that the objects of a company incorporated with capacity to carry on its business in all or any of the provinces of Canada without restric-

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tion are objects which do not answer the description "provincial" within the meaning of that clause.

The subject of "incorporation of companies" in relation to such companies as those just mentioned is, therefore, one of the subjects which (not having been assigned to the provincial legislatures by section 92) is comprised within those matters over which the Dominion exercises authority by virtue of its residual powers.

But this particular jurisdiction relates strictly to the subject of the "incorporation of companies." As regards all other matters in connection with such companies they are subject to the jurisdiction of the Dominion and of any province in which they carry on business respectively as a natural person, an unincorporated association, a provincial company, an extra-Canadian company would be in the like circumstances.

The limitation upon the provincial authority in relation to the creation of that species of corporate persons known as companies which is expressed in No. 11 of section 92 does not imply any restriction upon the provincial jurisdiction over corporate persons in relation to matters not comprised within the subject of "incorporation." And with regard to all other matters the jurisdiction of the provinces and the Dominion respectively in relation to corporate persons as well as to natural persons must be discovered by an examination of the provisions of sections 91 and 92 other than No. 11 of section 92.

The argument that the rights of a company incorporated to carry on trade in more than one province even although in fact it carries on its trade in one province only are (by virtue of the fact that it has corporate capacity to carry on trade in more than

one province), in any province in which the company does carry on its business, something other than matters of local interest in that province, even although they are *primâ facie* matters falling within the subjects enumerated by section 92, is an argument which cannot be supported. The argument would lead to the conclusion that the rights of an unincorporated partnership or of an individual, carrying on business in more provinces than one, must in each province with respect to the business carried on there, be considered a matter in respect of which the Dominion could legislate to the exclusion of provincial jurisdiction. There is no warrant in the Act for this theory that the Dominion has authority, in addition to its authority under the enumerated heads of section 91, to legislate (in respect of all persons natural or artificial who happen or have power to carry on business in more provinces than one) in derogation of the provincial authority in relation to matters which would *primâ facie* fall within the provincial jurisdiction. Similar considerations lead to the rejection of the contention that such legislation as that we are considering is legislation in relation to the subject of interprovincial trade. The argument would equally apply to a natural person carrying on business in more provinces than one.

On these principles the provisions of the "British Columbia Companies Act" referred to in question 6 must be held to have been validly enacted and they have the operation indicated above.

ANGLIN J.—In this reference we are confronted with what the Judicial Committee has characterized as

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a series of searching questions very difficult to answer exhaustively and accurately without so many qualifications and reservations as to make the answers of little value.

The main purpose would appear to be to elicit opinions from the members of this Court as to the nature and extent of the restrictions upon the power of provincial legislatures in regard to the incorporation of companies, and chiefly as to whether a corporation created by or under the authority of a provincial legislature without any limitation confining the area of its activities within the boundaries of the province, either expressed in its charter or necessarily to be implied from the nature of its undertaking, is capable of exercising such activities outside the territorial limits of the province subject to the law of the sovereignty or other province within which it seeks to operate. Incidentally we are asked to answer a number of questions, more or less cognate, which cover a wide field. In regard to some of these at least, the Lord Chancellor, speaking for the Judicial Committee, has seen fit to suggest that we may with propriety represent to the Executive the inadvisability of attempting to deal with them(1).

In the same judgment their Lordships have once more emphatically stated that in the provisions of the "British North America Act" are to be found all powers necessary and appropriate for self-government in Canada; that when a power appertaining to self-government is not explicitly mentioned in the Act

it is not to be presumed that the constitution withholds the power altogether; on the contrary it is to be taken for granted that the power is bestowed in some quarter unless it be extraneous to the statute itself * * * or otherwise is clearly repugnant to its sense.

(1) [1912] A.C. 571, at p. 589.

For whatever belongs to self-government in Canada belongs either to the Dominion or to the provinces within the limits of the "British North America Act" (pp. 683-4).

The only clauses in the "British North America Act" in which any reference is made to the incorporation of companies are No. 15 of section 91, "Banking, Incorporation of Banks, and the Issue of Paper Money," and No. 11 of section 92, "The Incorporation of Companies, with Provincial Objects." If the "Incorporation of Banks" had been omitted from the enumeration of the legislative powers of Parliament, and section 92 did not contain clause 11, in my opinion, the faculties of the Dominion Parliament and of the provincial legislatures, in regard to incorporation, would, under the other provisions of the "British North America Act," have been the same as they are with these two clauses in the statute. The creation of a corporation may be regarded as a means appropriate, convenient and sometimes necessary to the efficient exercise of plenary legislative power in regard to many of the enumerated subjects of legislation comprised in both categories of powers — federal and provincial — under the "British North America Act." The power of the Dominion Parliament to create corporations other than banks is unquestionable under "the peace, order and good government" provision, if not under several of the enumerated clauses of section 91. *Citizens Ins. Co.* v. *Parsons*(1), at pages 116, 117; *Colonial Building and Investment Association* v. *Attorney-General of Quebec*(2), at pages 164-5. Is it open to doubt that, if the words "the incorporation of banks," in clause 15 of section 91, had been omitted, the power — and the ex-

(1) 7 App. Cas. 96. (2) 9 App. Cas. 157.

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clusive power — of incorporating banks would have belonged to the Federal Parliament? I think not. If clause 11 of section 92 had not been inserted in the statute, could the exclusive right of provincial legislatures to create municipal corporations, or charitable or eleemosynary corporations (probably not covered by the word "companies" in clause 11) or companies for purely local purposes be questioned? Again, I think not. And it is, I think equally clear that, although the word "companies" in clause 11 should not be taken to include such bodies as municipal corporation, or charitable or ecclesiastical corporations, the presence of that clause in section 92 does not negative the provincial power of incorporating these or other provincial corporations to which it does not apply.

What then was the purpose and effect of the introduction of clause 11 amongst the enumerated exclusive legislative powers of the provincial legislatures? I think it was intended to preclude the contention that, if the power of incorporation should be regarded as a substantive and distinct head of legislative jurisdiction, it was wholly vested in the Dominion Parliament as part of the residuum under the "peace, order and good government" provision of section 91 (see *Citizens Ins. Co.* v. *Parsons*(1), at pages 116, 117,) because not expressly mentioned in the enumeration of provincial powers; and to make it clear that this power, if so regarded, is divided between the federal and provincial jurisdictions as conferred in part on the latter by clause 11 of section 92, and in part on the former, in the case of banks by clause 15, and in the case of other Dominion corporations under the "peace, order and good government" provision of section 91.

(1) 7 App. Cas. 96.

When it was deemed advisable to introduce into the list of provincial legislative powers a reference to the incorporation of companies the delimiting or qualifying words "with provincial objects" were added in order to preclude the contention that the exclusive legislative power expressed in clause 11 comprises the whole field of incorporation, to assure to the Dominion its jurisdiction in regard to incorporation as a convenient means of effectively legislating in regard to the subjects assigned to it and to serve as an index of the line of demarcation between the two legislative jurisdictions. It was thus made clear that from provincial jurisdiction there was excluded the incorporation of companies with Dominion objects—companies for the carrying on of works and operations within the legislative jurisdiction of the Parliament of Canada—companies formed for the transaction of affairs "unquestionably of Canadian interest and importance."

Notwithstanding the introduction of this clause, I think the powers of the Dominion Parliament and the provincial legislatures, respectively, in regard to incorporation are precisely what they would have been had it been omitted from the Act and had the power of incorporation been treated not as a distinct and substantive head of legislative jurisdiction—an end in itself—but as a means for the working out of legislative power in respect of the enumerated subjects and as such conferred as incidental to legislative jurisdiction over them. I regard clause 11 as an instance of the express declaration in a statute of what the law would imply, made in the hope that all doubt as to the intent of Parliament should be removed. *Abundans cautela non nocet.* Yet, assuredly, language of more

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certain import and less provocative of controversy might have been chosen.

The Judicial Committee has, on at least four occasions, affirmed the exclusive power of the Dominion to incorporate companies whose capacities, as set forth in their constating instruments, expressly entitle them to operate in more than one province. *Colonial Building and Investment Association* v. *Attorney-General of Ontario* (1), at p. 165; *Citizens Ins. Co.* v. *Parsons* (2), at pp. 99, 116; *Dobie* v. *Temporalities Board* (3), at page 152; *Compagnie Hydraulique de St. François* v. *Continental Heat and Light Co.* (4). A similar view was taken by the late Chief Justice of this Court in *Hewson* v. *Ontario Power Co.* (5), at page 604. Yet had the objects of such companies not been expressed as intended to be carried out in more than one province they might properly be regarded as provincial.

It is argued, and with much force, that if a provincial legislature may not in express terms confer on its corporate creature power to operate outside the territorial limits of the province, and if a provincial charter purporting to confer such extra-territorial powers is *ultra vires*, it follows that in every provincial charter there must be implied the limitation that the exercise of the powers of the company (at least what have been called "functional" powers or objects, as distinguished from incidental powers) shall be confined to the territory of the province, and that a provincial corporation upon whose objects or powers no territorial restriction is expressly imposed is, nevertheless, subject to the same limitation as if its opera-

(1) 9 App. Cas. 157.
(2) 7 App. Cas. 96.
(3) 7 App. Cas. 136.
(4) [1909] A.C. 194.
(5) 36 Can. S.C.R. 596.

tions were by its charter expressly confined to the province. No doubt that is the case when the nature of the objects of the corporation indicates that they are to be carried out in a certain locality within the province, *e.g.*, the establishment and maintenance of a hospital, or the building of a railway. But I find nothing in the language of clause 11 of section 92 of the "British North America Act" which compels us to hold that the ordinary mercantile trading or manufacturing company incorporated by a province to do business without territorial limitation is precluded from availing itself of the so-called comity of a foreign state, or of a province, which recognizes the existence of foreign corporations and permits their operations in its territory. Of course such foreign operations must be of the class authorized by the constating instrument of the company and not in contravention of the law or policy of the state in which they are carried on.

If the operations or activities of any foreign corporation should depend for their validity upon the powers conferred on it by the law of the incorporating state, it would in my opinion be difficult to sustain them, inasmuch as "the law of no country can have effect as law beyond the territory of the Sovereign by whom it was imposed." But the exercise of its powers by a corporation extra-territorially depends not upon the legislative power of its country of origin but upon the express or tacit sanction of the state or province in which such powers are exercised and the absence of any prohibition on the part of the legislature which created it against its taking advantage of international comity. All that a company incorporated without territorial restriction upon

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the exercise of its powers carries abroad is its entity or corporate existence in the state of its origin coupled with a quasi-negative or passive capacity to accept the authorization of foreign states to enter into transactions and to exercise powers within their dominions similar to those which it is permitted to enter into and to exercise within its state of origin. Even its entity as a corporation is available to it in a foreign state only by virtue of the recognition of it by that state. It has no right whatever in a foreign state except such as that state confers.

When the "British North America Act" was passed the doctrine of comity in regard to foreign corporations was well established as a rule of international law universally accepted. It had been long acted upon in English courts and had received Parliamentary recognition. Modern law acknowledges this capacity of every corporation, not expressly or impliedly forbidden by its state of origin to avail itself of privileges accorded by international comity, as something so inherent in the very idea of incorporation that we would not, in my opinion, be justified, merely by reason of the presence in the clause expressing the provincial power of incorporation of such uncertain words as "with provincial objects," in ascribing to the Imperial Parliament the intention in passing the "British North America Act" of denying to provincial legislatures, otherwise clothed with such ample sovereign powers, the right to endow their corporate creatures with it. *Bateman* v. *Service*(1), at page 391. The impotency which such a construction of the statute would, in many instances, entail upon provincial com-

(1) 6 App. Cas. 386.

panies affords a strong argumuent against adopting it. Had Parliament intended in the case of the provincial power of incorporation to depart from the ordinary rule by confining the activities of every provincial corporation within the territorial limits of the province creating it, it seems to me highly improbable that the words "with provincial objects" would have been employed to effect that purpose. Some such words as "with power to operate only in the province" would have expressed the idea much more clearly and unmistakably. Inapt to impose territorial restriction the words "with provincial objects" may be given an effect, which seems more likely to have been intended and which satisfies them, by excluding from the provincial power of incorporation such companies as have objects distinctly Dominion in character either because they fall under some one of the heads of legislative jurisdiction enumerated in section 91, or because, they "are unquestionably of Canadian interest and importance."

The provincial company is a domestic company and exercises its powers as of right only within the territory of the province which creates it. Elsewhere in Canada, as abroad, it is a foreign company and it depends for the exercise of its charter powers upon the sanction accorded by the comity of the province in which it seeks to operate, which, although perhaps not the same thing as international comity, is closely akin to it. The Dominion company, on the other hand, is a domestic company in all parts of Canada. It exercises its powers as of right in every province of the Dominion. While a Dominion company is, generally speaking, subject to the ordinary law of the province, such as the law of Mortmain (*Citizens Ins. Co.* v. *Par-*

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sons(1), at p. 117)—while it may be taxed by the province for purposes of provincial revenue (*Bank of Toronto* v. *Lambe*(2)), while it may be required to conform to reasonable provisions in regard to registration and licensing (*The Brewers' Case*(3)), a provincial legislature may not exclude it, or directly or indirectly prevent it from enjoying its corporate rights and exercising its powers within the province (*City of Toronto* v. *Bell Telephone Co.*(4); *Compagnie Hydraulique de St. François* v. *Continental Heat and Light Co.*(5)), as (subject perhaps in the case of alien corporations to the provisions of any general Dominion legislation dealing with them under clause 25 of section 91) it may do in the case of other corporations not its own creatures. It may be that there is some distinction to be drawn, in regard to the extent to which they are subject to provincial law, between corporations created by the Dominion, under clause 15 of section 91 or in the exercise of incidental legislative power under some one to the enumerated heads of section 91, and other corporations created by it solely in the exercise of its power to make laws for the "peace, order and good government" of Canada. For instance, a Dominion railway company in regard to the acquisition and tenure of its right of way might not be subject to a provincial law of mortmain, although it is undoubtedly subject to provincial direct taxation (*Bank of Toronto* v. *Lambe*(2)), and to certain municipal regulations affecting it as a resident of the province (*Canadian Pacific Railway Co.* v. *Parish of Notre Dame de*

(1) 7 App. Cas. 96.
(2) 12 App. Cas. 575.
(3) [1897] A.C. 231.
(4) [1905] A.C. 52.
(5) [1909] A.C. 194.

Bonsecours(1)). Upon this branch of the subject under consideration I desire to reserve my opinion.

The granting of a charter which in terms purports to confer on a corporation the right to carry on its operations in portions of Canada beyond the limits of the province is *ultra vires* of the provincial legislature and an invasion of the Dominion legislative field because it is an attempt to enable the corporation to exercise its powers as of right in parts of the Dominion not subject to the jurisdiction of the legislature which confers them. It would also seem to be beyond the competence of a provincial legislature to create what is known in American law as a "Tramp Corporation" (Thomson on Corporations, 2 ed., par. 6632), or a corporation with express power to operate abroad (*Hewson* v. *Ontario Power Co.*(2), at page 604).

In its transactions outside the jurisdiction of the legislature to which it owes its existence, a corporation always remains subject to the limitations imposed upon it by its constitution. While it may be further limited in the exercise of its charter powers by the law of the country where it operates, it cannot invoke the law of that country to authorize the transaction of business or the exercise of powers not allowed under its constating instrument. Where the exercise of its corporate powers is territorially limited by the legislature which creates it a company cannot obtain from another legislature the right to exercise those powers beyond the territorial limit so imposed. It is only by re-incorporation, which is nothing else than the creation of a new and distinct body corporate, that another legislature may enlarge the powers

(1) [1899] A.C. 367.
(2) 36 Can. S.C.R. 596.

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or capacities of a company as defined by the legislative authority which created it. The power to amend or to destroy legislation is measured by the capacity to enact it or to reconstruct it. *Dobie* v. *Temporalities Board*(1), at page 152; *The Prohibition Case*(2), at pages 366-7.

Legislation of the Dominion Parliament authorizing a provincial company, as incidental to the accomplishment of its provincial purpose, to affect matters or things subject to Dominion control (such, *e.g.,* as an Act allowing a provincial railway or a municipal corporation to erect a bridge over a navigable river—see *In re Brandon Bridge*(3); Bourinot's Parliamentary Procedure and Practice (2 ed.), p. 680) is in furtherance of that purpose and something which the incorporating province must be taken to have contemplated and sanctioned, and is, therefore, not in any sense an enlargement of its powers or capacities obnoxious to the exclusive jurisdiction of the provincial legislature over its corporate creature. For the same reason, express or tacit sanction by one provincial legislature of the exercise within its jurisdiction of the corporate powers of a corporation created without territorial limitation by, or under the authority of, the legislature of another province is not an enlargement of the powers of such corporation involving an invasion of the exclusive control over it of the legislature to which it owes its existence.

Having regard to the extent and importance of the interests which may be affected by the opinions of the judges of this court and which have not been repre-

(1) 7 App. Cas. 136. (2) [1896] A.C. 348.
(3) 2 Man. R. 14.

sented before us, to the difficult and complex nature of the subject submitted for our consideration and to the utter impossibility of preconceiving all the questions surrounding that subject which may arise, or the varying aspects and circumstances under which they may present themselves, it is, I think, inadvisable to add to the foregoing general statement, which contains many propositions that are obviously elementary as well as some views which I am fully aware have been seriously controverted. It will probably suffice, however, to make clear the reasons upon which are based the following answers to the questions submitted:—

(1) The Legislature of a Canadian province cannot validly incorporate a company which

(*a*) is expressly empowered to exercise its activities in any other part of Canada or abroad, or

(*b*) is empowered to carry on works or operations within the enumerated legislative powers of the Dominion Parliament, or business or affairs "unquestionably of Canadian interest and importance."

The latter limitation—(*b*)—is expressed in clause 11 of section 92 of the "British North America Act" in the words "with provincial objects."

(2) Yes—subject to the general law of the state or province in which it seeks to operate and to the limitations imposed by its own constitution, but not "by virtue of (the powers conferred by its) provincial incorporation."

(3) (*a*) and (*c*). Yes, unless forbidden by its constitution to insure such property.

(*b*) Yes.

The nationality or residence of the owners of the property insured is not material to these answers.

(4) The answer to question (3) being affirmative

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it becomes unnecessary to deal with the first part of question No. 4.

In regard to the second part of question No. 4, as amended, except in so far as it deals with companies incorporated by or under Acts of the legislature of the late Province of Canada which were not confined in their operations to territory not wholly comprised either within the Province of Ontario or the Province of Quebec, sub-sec. 3 of sec. 3 of the "Insurance Act, 1910," is *ultra vires* of the Parliament of Canada.

(5) (*a*) No. (*b*) No.

6. Yes—if the real and primary object of the provincial legislation be the raising of a revenue or the obtaining of information (such, *e.g.,* as the designation of a place at which, or a person on whom process may be served within the province) "for provincial, local or municipal purposes."

No—if the real and primary object be to require the company to obtain provincial sanction or authority for the exercise of its corporate powers.

(7) As to the first part; No.

As to the second part: The Dominion "trading company" is not "subject to or governed by legislation of a province *limiting* the nature or kind 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." The validity of provincial legislation "imposing conditions to be observed or complied with by Dominion trading companies before they engage in business within the province" may be tested by the criterion stated in answer to question No. 6.

It is practically impossible to anticipate every conceivable form in which provincial legislation directly

or indirectly restrictive may be enacted and it would, therefore, seem to be advisable to refrain from attempting to answer the third part of this question.

The answers to question No. 6 and to the latter half of the second part of question No. 7 are not to be taken as intended to be exhaustive.

BRODEUR J.—The purpose of that reference is to ascertain

(1) whether the provincial companies can carry on business outside of the incorporating province;

(2) if the power of those companies can be enlarged by the Dominion Parliament or by the legislature of another province; and

(3) we are called upon to state whether the provinces may impose restrictions upon Dominion companies.

The subject of the incorporation of companies or corporations is specifically mentioned twice in the "British North America Act."

In the section 91 of that Act, which enumerates the legislative powers of the Federal Parliament, it is stated that

> 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 generality of the foregoing 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 next hereinafter enumerated; that is to say.....
>
> 15. Banking, *Incorporation of Banks*, and the issue of Paper money.

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The section 92 of the same Act contains the other formal reference to the incorporation of companies and reads 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 * * *

11. The incorporation of Companies with Provincial objects.

When the terms of Confederation were discussed at the Quebec Conference, 1864, the question of incorporation of companies was not mentioned at first (Pope's Confederation Documents, p. 24, art. 7, and p. 27); but later on we see that the incorporation of banks was formally assigned to the Federal Parliament. (Pope's do., p. 44, art. 20.) And the incorporation of companies was put under the legislative control of the provinces in the following terms:—

17. The incorporation of private or local companies, except such as relate to matters assigned to the federal Legislature. (Pope, *do.* pp. 28 and 47).

That wording of the clause was adhered to at the London Conference in December, 1866 (Pope, do., p. 106, art. 14). But when the bill came to be drafted, they substituted the following phraseology:—

11. The incorporation of companies with exclusively provincial objects (p. 153, art. 11);

and at last, when the last draft was made, the word *exclusively* was struck out.

During the proceedings of the Quebec Conference we see that it was proposed at one time to vest the Canadian Parliament with the power of regulating and incorporating fire and life insurance companies (Pope, art. 3), but it was decided to strike out that item (Pope, p. 88), and we do not see now in the "British North America Act" any reference to the regulation or incorporation of insurance companies.

The intention of the delegates of the provinces of the Canadian Confederation, if we may infer from those historical documents, was that the companies which do not relate to matters assigned to the central authority should be incorporated by the provinces.

By the "British North America Act" the property and civil rights are under the legislative control of the provinces and it has to be assumed in general principle that the creation of artificial or ideal persons under the name of companies is logically of the provincial domain.

A company is a larger form of a partnership with one special privilege added as to the limitation of the liability of its members.

A company in its ordinary relations with other members of the society is clothed with the same powers and is bound by the same obligations as natural persons are.

The rules that govern those relations are necessarily borrowed from the civil law of which they form a part as well as the rules which govern the rights, obligations, incapacities and privileges of minors, absentees, insane persons, etc. (Reports of the Codifiers of the Civil Code, p. xcvii.)

The creation of an association would then belong essentially to the provinces; but the "British North America Act," as well as the Fathers of Confederation, put in a restriction that the provinces could incorporate companies for matters that fell under their legislative control.

The word "provincial" in section 11 of section 92, is not used in its geographical sense: the objects are not territorial; but that word "provincial" is used with regard to the legislative powers of the province;

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and provincial objects are those that the provincial legislature can authorize or confer.

The "provincial objects" carry the suggestion that they should be distinguished from Dominion objects. They could be defined as all objects which as subjects of legislation are assigned to the province. That restriction has been put in in order to avoid the construction that would have allowed the provinces to incorporate companies to carry out Dominion objects.

There would not have been in the enumeration in section 91 anything relating to the incorporation of companies with the single exception of banks, and could have been argued that the right to incorporate all companies, being of its nature a civil right, should be exercised by the province. We would have seen then interprovincial railways connecting one province with another under the legislative control of Dominion Parliament; but the companies that control those railways would have required provincial charters. Such a state of affairs would have brought a serious confusion and in order to avoid that it was declared that the provincial authorities could incorporate companies whose objects were of the legislative domain of the provinces.

When we examine another sub-section of section 92 we see that the provincial legislatures

> may exclusively make laws in relation to * * * *property and civil rights in the province.*

There again we see a restriction. Does it mean that the capacity of a person should be determined in a neighbouring province or in a foreign country by federal legislation? No, certainly not. The capacity of a person is determined by the law of its domicile and that law is the provincial law; and when that person goes into another province or into another

country his capacity to contract is based upon the law of his province.

The comity of nations recognizes the right of foreign incorporated companies to carry on business and make contracts outside of the country in which they are incorporated, if consistent with the purposes of the corporation and not prohibited by its charter and not inconsistent with the local laws of the country in which the business is carried on. As to the comity of nations, each province should be considered as a country.

All the powers granted by a province to a company are generally recognized in the other provinces and so long as the powers which that company seeks to exercise are not inconsistent with these granted by the incorporating province and with the laws and policies of the other provinces, the company can carry on there its business.

When a company receives its original incorporation from a provincial legislature, then the breath of life has come into it; it becomes equivalent to a natural person and has the power to do business outside the province which incorporated it.

A province could as well incorporate a company and that company could go and carry on business in a neighbouring province by the laws of courtesy or comity, as a bank incorporated by the Dominion Parliament could go and carry on business in a foreign country.

Now with regard to the enlargement of the powers of a company, I am of opinion that those powers could not be enlarged. A company authorized by its charter to do a certain business could not be authorized by the provinces or by the country in which it operates

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to do another kind of business. It is a question of capacity and by the rules of private international law the capacity of a person is determined by the law of his domicile. I would not hesitate then to answer in the negative sub-section (*b*) of section 5, unless the extension by the legislature of another province to a company of the courtesy should be deemed an enlargement of its corporate powers.

As to the power of the provinces on the Dominion companies, the jurisprudence is well established today that those companies can be taxed by the provinces and they can be prevented from carrying on business if they don't take the license provided by the provincial legislation (*The Brewers Case*(1)). Of course, in dealing with those restrictions, the provinces should be careful that those restrictions cover the exercise of powers vested in them by section 92 of the "British North America Act," On the other hand, the Dominion Parliament should not incorporate any company whose objects are not federal nor interprovincial. I am afraid that in many cases companies have been incorporated by the Dominion with the intention of carrying on a local business and not an interprovincial undertaking, though they alleged in their petition that the undertaking was interprovincial.

My answer to the different questions should be as follows:—

QUESTIONS.	ANSWERS.
I.	I.
What limitation exists under the "British North	The "British North America Act" has assigned in

(1) [1897] A.C. 231.

QUESTIONS.	ANSWERS.
America Act, 1867," upon the power of the provincial legislatures to incorporate companies ?	section 92, sub-section 11, to the provinces the power to incorporate companies with *provincial objects.*
What is the meaning of the expression "with provincial objects" in section 92, article 11, 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 upon companies locally incorporated, or what otherwise is the intention and effect of the said limitation ?	That restriction should not be interpreted with reference to any territorial limitation of their capacities; but it has reference to the distribution of the legislative powers between the Parliament and the Legislatures.
II.	II.
Has a company incorporated by a provincial legislature under the powers conferred in that behalf by section 92, article 11, of the "British North America Act, 1867," power or capacity to do business outside the limits of the incorporating province ? If so, to what extent and for what purpose ?	Yes, subject to the laws of the country or province in which it seeks to operate and subject to the limitations imposed by its own constitution.
Has a company incorporated by a provincial	

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QUESTIONS.	ANSWERS.
legislature 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 outside of the incorporating province ?	
III.	III.
Has a corporation 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 ?	Yes, subject to the laws of the country or province in which it seeks to operate.
(*b*) outside of the incorporating province, insuring property within the province ?	
(*c*) outside of the incorporating province, insuring property outside of the province ?	

QUESTIONS.	ANSWERS.
Has such a corporation power or capacity to insure property situate in a foreign country, or to make an insurance contract within a foreign country ?	
Do the answers to the foregoing inquiries, or any of them, depend upon whether or not the owner of the property or risk insured is a citizen or resident of the incorporating province ?	The nationality or residence of the owner of the property or risk insured is not material to these answers.
IV.	IV.
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 power or capacity mentioned in any and which of the said cases, on availing itself of the "Insurance Act, 1910," 9 and 10 Edw. VII. ch. 32, sec. 3, sub-sec. 3 ?	My answer to question No. 3 being affirmative, it becomes unnecessary to deal with the first part of the question.
Is the said enactment, the "Insurance Act, 1910," ch. 32, sec. 3, sub-	In regard to the second part of this question, the sub-section 30, section 3, of the "Insurance Act of 1910" is *ultra vires* of the Parliament of Canada.

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sec. 3, *intra vires* of the Parliament of Canada ?	
V.	V.
Can the power of a company incorporated by a provincial legislature be enlarged, and to what extent, either as to locality or objects by	
(*a*) the Dominion Parliament ?	No.
(*b*) the legislature of another province ?	
VI.	VI.
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 a licence so to do from the government of the province, or local authority constituted by the legislature, if fees are required to be paid upon the issue of such license ?	Yes.
For examples of such	

QUESTIONS.	ANSWERS.
provincial legislation, see Ontario, 63 Vict. ch. 24; New Brunswick, Cons. Sts., 1903, ch. 18; British Columbia, 5 Edw. VII., ch. 11—now sec. 166, R.S. B.C., ch. 39.	
VII.	VII.
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 ?	Assuming as the question does that a trading company can be duly incorporated by the Parliament of Canada, I say that those companies are subject to the provincial laws enacted under section 92, "British North America Act."
Is such a Dominion trading company subject to or governed by the legislation of a province in which it carries out or proposes to carry out its trading powers limiting the nature or kinds of business which corporations not incorporated by the legislature of the pro-	

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QUESTIONS.

vince 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 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 ?

ANSWERS.