Canadian Indemnity Co. et al. v. A.G. of British Columbia

Collection: Supreme Court Judgments

Date: 1976-10-05

Report: [1977] 2 SCR 504

Judges: Laskin, Bora; Martland, Ronald; Judson, Wilfred; Ritchie, Roland Almon; Spence, Wishart Flett; Pigeon, Louis-Philippe; Dickson, Robert George Brian; Beetz, Jean

On appeal from: British Columbia

Subjects: Constitutional law

Supreme Court of Canada
Canadian Indemnity Co. et al. v. A.G. of British Columbia, [1977] 2 S.C.R. 504
Date: 1976-10-05

The Canadian Indemnity Company, *et al. (Plaintiffs) Appellants;*

and

Attorney-General of British Columbia *(Defendant) Respondent.*

1976: June 8, 9; 1976: October 5.

Present: Laskin C.J. and Martland, Judson, Ritchie, Spence, Pigeon, Dickson and Beetz JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Constitutional law—Provincial legislation establishing universal compulsory automobile insurance plan—Validity of legislation—Automobile Insurance Act, 1973 (B.C.), c. 6—Insurance Corporation of British Columbia Act, 1973 (B.C.), c. 44.

The appellants, numbering 37 in all, were insurance companies carrying on the business, in Canada, *inter alia,* of automobile insurance. Seventeen of the appellants were Canadian corporations. In a suit against the Attorney-General of British Columbia, the appellants sought to obtain a judgment declaring that the *Automobile Insurance Act,* 1973 (B.C.), c. 6, and the *Insurance Corporation of British Columbia Act,* 1973 (B.C.), c. 44, are both *ultra vires* of the Legislature of British Columbia to enact and are, therefore, invalid and of no force or effect. The statutes in question introduced in British Columbia a universal compulsory automobile insurance plan, known as “Autoplan”, to be administered by the Insurance Corporation of British Columbia, which was created by the second of the above−mentioned statutes, and which is an agent of the Crown. The attack made by the appellants upon the constitutional validity of the two statutes was based upon two main submissions: 1. That the legislation related to a matter exclusively

within the jurisdiction of the federal Parliament by virtue of s. 91(2) of *The British North America Act*; *i.e.,* "the regulation of trade and commerce". 2. That the effect of the legislation was in relation to and directed at the status capacities of federally-incorporated companies, and was, therefore, *ultra vires* of the Legislature of British Columbia.

The trial judge rejected these contentions and held that the two statutes were valid enactments and *intra vires* of the Province. An appeal from the judgment of the trial judge to the Court of Appeal for British Columbia was dismissed by a majority. With leave granted by the Court of Appeal, the appellants then appealed to this Court.

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Held: The appeal should be dismissed.

The constitutional validity of the legislation depends upon its aim and purpose. The purpose of the legislation is to provide for the compulsory insurance of motor-vehicles registered in British Columbia and of automobile drivers licensed in British Columbia through a corporation incorporated in British Columbia, which is a government controlled monopoly. The impact of the legislation upon the appellants' automobile insurance business in British Columbia could not be more drastic. However, that effect of the legislation upon companies whose operations are interprovincial in scope does not mean that the legislation is in relation to interprovincial trade and commerce. The aim of the legislation relates to a matter of provincial concern within the Province and to property and civil rights within the Province.

The appellants' second submission also failed. Parliament can create and maintain the legal existence of a corporate entity, with which a Province cannot interfere. But a provincial Legislature within its own field of legislative power can regulate, in the Province, a particular business or activity. The fact that a federally-incorporated company has, by federal legislation, derived existence as a legal person, with designated powers, does not mean that it is thereby exempted from the operation of such provincial regulation. It is subject to such regulation in the same way as a natural person or a provincially-incorporated company.

Citizens Insurance Co. v. Parsons (1881), 7 App. Cas. 96; *Attorney General for Canada v. Attorney-General for Alberta,* [1916] 1 A.C. 588; *Attorney General for Ontario v. Reciprocal Insurers,* [1924] A.C. 328; *In re The Insurance Act of Canada,* [1932] A.C. 41; *Reference as to the Validity of Section 16 of the Special War Revenue Act,* [1942] S.C.R. 429; *Carnation Co. Ltd. v. Quebec Agricultural Marketing Board,* [1968] S.C.R. 238; *John Deere Plow Co. v. Wharton,* [1915] A.C. 330; *Great West Saddlery Co. v. The King,* [1921] 2 A.C. 91; *Lukey v. Ruthenian Farmers' Elevator Co.,* [1924] S.C.R. 56; *Attorney-General for Manitoba v. Attorney General for Canada,* [1929] A.C. 260; *Morgan v. Attorney-General for Prince Edward Island,* [1976] 2 S.C.R. 349; *Lymburn v. Mayland,* [1932] A.C. 318; *R. v. Arcadia Coal Co.,* [1932] 1 W.W.R. 771, referred to.

APPEAL from a judgment of the Court of Appeal for British Columbia[1], dismissing an

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appeal from a judgment of Aikins J. Appeal dismissed.

R.F. Wilson Q.C., D. McK. Brown, Q.C., and G.S. Cumming, Q.C., for the plaintiffs, appellants.

G.W. Ainslie, Q.C., for the intervenant, the Attorney General of Canada.

J.D. McAlpine, Q.C., P.D. Leask and R.D. Diebolt, for the defendant, respondent.

J. Lefrançois, for the intervenant, the Attorney-General of Quebec.

W. Henkel, Q.C., for the intervenant, the Attorney General of Alberta.

K. Lysyk, Q.C., and G.V. Peacock, for the intervenant, the Attorney General of Saskatchewan.

The judgment of the Court was delivered by

MARTLAND J.—The appellants, who are the plaintiffs in these proceedings, are 37 insurance companies, all of which carry on the business, in Canada, *inter alia,* of automobile insurance. Seventeen of the appellants are Canadian corporations. The respondent is the Attorney−General of British Columbia. The appellants, in their suit against him, sought to obtain a judgment declaring that the *Automobile Insurance Act,* 1973 (B.C.), c. 6, and the *Insurance Corporation of British Columbia Act,* 1973 (B.C.), c. 44, are both *ultra vires* of the Legislature of British Columbia to enact and are, therefore, invalid and of no force or effect.

The learned trial judge, Aikins J., made a careful study of the relevant portions of these statutes, the evidence submitted to him and the authorities cited in argument. His reasons are reported in [1975] 1 W.W.R. 481 and they make it unnecessary to review the statutory provisions and the evidence in detail. The two statutes under attack introduced in British Columbia a universal compulsory automobile insurance plan, known as “Autoplan”, to be administered by the Insurance Corporation of British Columbia, hereinafter referred to as “the Corporation”, which was created by the second of the above-mentioned statutes,

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and which is an agent of the Crown. The learned trial judge describes the plan in the following passages from his judgment:

> The two statutes under attack do not themselves reveal the whole plan because there are related statutes which were amended in order to implement the overall plan. The related statutes are the Motor-vehicle Act (R.S.B.C. 1960, c. 253), the Motor Carrier Act (R.S.B.C. 1960, c. 252) and the Insurance Act (R.S.B.C. 1960, c. 197). I will describe generally the legislative scheme enacted by the impugned statutes and by amendments to related acts. Motor-vehicle insurance is compulsory. Every driver licensed to drive in British Columbia must have driver’s insurance evidenced by a driver’s certificate. Driver’s insurance is valid from and expires on the same date as does the driver’s licence: it is coterminous with the driver’s licence. A driver cannot get a driver’s licence without driver’s insurance; put shortly, no driver’s insurance, no driver’s licence. Every owner of a motor-vehicle registered and licensed in British Columbia must have insurance on his vehicle and that insurance must be evidenced by an owner’s certificate. Owner’s insurance runs for the licence year of the motor-vehicle and, therefore, is coterminous with the vehicle licence. Again, put shortly, no owner’s insurance, no motor−vehicle licence.
>
> The legislative plan provides that the driver’s certificate and owner’s certificate must be issued by the Corporation. I should note that the Corporation does not issue actual policies of insurance. The Corporation simply issues driver’s and owner’s certificates. The contract of insurance, and the terms and conditions thereof, are not found in an issued policy of insurance but are to be found in the regulations made pursuant to the Automobile

> Insurance Act. These regulations provide, inter alia, that owners and drivers must insure to minimum prescribed limits and that extension insurance is available for those who wish to protect themselves to higher limits than the limits of the compulsory minimum coverage.
>
> …
>
> This complicated network of statutory and regulatory provisions comes down to this. An owner of a motor-vehicle or trailer licensed and registered in British Columbia must have motor-vehicle insurance and an owner's certificate evidencing such insurance. The only source of the required motor-vehicle insurance and the required owner's certificate is the Corporation.

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He concluded that the matter of the legislation is the establishment of a universal compulsory scheme of motor-vehicle insurance in the Province of British Columbia with a monopoly in that class of insurance for the Corporation.

The *Automobile Insurance Act* provides for its provisions coming into effect on dates fixed by proclamation and for different dates being fixed for the coming into force of the several provisions. Some of the provisions of the Act had not come into effect at the date of the trial and were not in effect when the appeal to this Court was heard. Of these, the most important, in relation to this appeal, are ss. 8, 77, 78, 79 and 80.

Section 8 provides:

> 8. Notwithstanding any other Act or regulation, where the corporation is authorized under section 2 to engage in and carry on the activity of automobile insurance,
>
> > (a) every person who applies in the Province for a policy of automobile or trailer insurance or a motor-vehicle liability policy in respect of a motor-vehicle or trailer registered or licensed in the Province shall apply to the corporation and, upon compliance with this Act and the regulations and paying the appropriate premium, he shall be provided with a motor-vehicle liability policy sufficient for the purposes of the *Motor-vehicle Act,* and such extension insurance as he applies for and pays for on the terms and conditions set out in the plan; and
> >
> > (b) every contract of automobile insurance in the Province and every motor-vehicle liability policy made or issued in the Province, after the coming into force of this section, in respect of a motor-vehicle or trailer registered or licensed in the Province by an insurer other than the corporation is void and of no effect.

The other four sections provide for amendments to the *Insurance Act,* R.S.B.C. 1960, c. 197, and their effect is indicated by the following extracts from those sections:

> 77. …
>
> > (2) … a contract of automobile insurance made by any insurer in respect of an automobile or trailer licensed in the Province, on or after the date to be fixed by Order of the Lieutenant-Governor in Council, is void and of no effect; and the insurer shall forthwith upon

demand refund to the insured any unearned premium paid in respect of the contract.

78. …

(2) … on or after a date to be fixed by Order of the Lieutenant-Governor in Council, no insurer shall be licensed to carry on, in the Province, any class of automobile insurance.

79. …

(2) … every licence authorizing an insurer to carry on in the Province any class of automobile insurance is revoked and cancelled, in respect of that class of insurance, on a date to be fixed by Order of the Lieutenant-Governor in Council.

80. …

(3) On or after a date to be fixed by Order of the Lieutenant-Governor in Council, no insurer, other than the Insurance Corporation of British Columbia, shall make a contract in respect of an automobile or trailer licensed in the Province.

(4) A contract made by an insurer in contravention of subsection (3) is void and of no effect.

The appellants had all been licensed under the *Insurance Act* to carry on the business of automobile insurance in British Columbia. Their last licences were for the period from March 1, 1973, to February 28, 1974. Renewals of these licences were refused.

The attack made by the appellants upon the constitutional validity of the two statutes was based upon two main submissions:

1. That the legislation related to a matter exclusively within the jurisdiction of the federal Parliament by virtue of s. 91(2) of *The British North America Act*; *i.e.,* "the regulation of trade and commerce".

2. That the effect of the legislation was in relation to and directed at the status and capacities of federally-incorporated companies, and was therefore, *ultra vires* of the Legislature of British Columbia.

These contentions were rejected by the learned trial judge. All of the three judges sitting on the appeal to the Court of Appeal rejected the first submission, although Carrothers J.A. expressed doubts as to the validity of the unproclaimed sec-

tions. The majority of the Court agreed with the trial judge in respect of the second submission, but Robertson J.A. dissented on this point and would, for that reason, have held the legislation to be invalid. The reasons of the judges of the Court of Appeal are reported in [1976] 2 W.W.R. 499.

On the appeal to this Court submissions were made on behalf of four intervenants. The Attorney General of Canada contended that, in part, the legislation was *ultra vires* of the Legislature of British Columbia. The Attorneys-General of Quebec, Saskatchewan and Alberta supported the position of the Attorney-General of British Columbia.

Counsel for the appellants in this Court relied essentially upon the same arguments as those presented to the Court of Appeal. A third submission to the effect that the impugned legislation involved a denial of rights of citizenship, in that the appellants were precluded from engaging in the business of automobile insurance in British Columbia and the citizens of that province were precluded from doing business with insurers other than the Corporation, apparently was not pursued before the Court of Appeal. It was not pressed before this Court other than in aid of the two main submissions. In my opinion it is lacking in substance and does not merit further consideration.

REGULATION OF TRADE AND COMMERCE

The argument of the appellants on this point is fully reviewed in the judgment at trial. It can be summarized briefly as follows. On the evidence submitted by the appellants the business of automobile insurance is, today, interprovincial and, indeed, international in scope. As an example, Canadian Indemnity Company has its head office in Winnipeg and its executive office in Toronto. It has branch offices in the various provinces. Premiums paid pass through the branch offices to the head office. There is a steady flow of money passing from the branch offices to the head office and the executive office, and a lesser flow from thence to the provincial branches. The company is able to carry on business by the creation of a reservoir or pool of capital which enables the

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company to carry on its nation-wide business and to serve the requirements of policy-holders in all parts of Canada.

The appellants submit that, in the light of this evidence, the operations of the appellants in the field of automobile insurance constitute a “trade” which is a matter of interprovincial concern and, this being so, by virtue of s. 91(2) of *The British North America Act,* such operations are subject to regulation by the Federal Parliament and cannot be affected by a provincial Legislature by the creation of a provincial monopoly. The learned trial judge did not agree that the business of the appellants constituted a trade. McFarlane J.A. was of the view that the business of insurance might constitute a trade, but that it had never been held to be a trade within the meaning of s. 91(2). The other two members of the Court of Appeal felt that the business was a trade, but that the legislation in issue did not fall within s. 91(2).

Counsel for the respondent refers to *Citizens Insurance Company v. Parsons*[2], as establishing

the power of a provincial Legislature to legislate with respect to contracts of insurance in a Province. He cites various cases in which the Privy Council and this Court have struck down attempts by the federal Parliament to regulate the matter of insurance in a Province. These cases include *Attorney General for Canada v. Attorney-General for Alberta*[3]; *Attorney General for Ontario v. Reciprocal Insurers*[4], *In re The Insurance Act of Canada*[5], and *Reference as to the Validity of Section 16 of the Special War Revenue Act*[6]. In the last-mentioned case Chief Justice Duff, referring to the judgment of the Privy Council in the 1932 case, said, at p. 434:

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> The principle of exclusive provincial control of the business of insurance within the province lies at the foundation of the judgment.

The argument of the appellants upon this issue is really founded upon the impact of the legislation upon their business operations in British Columbia. Because its effect is to put an end to their automobile insurance business in that province, and because their operations in the field of automobile insurance are interprovincial in scope, it is contended that the legislation constitutes a regulation of interprovincial trade and commerce. It is not, however, the fact that the legislation affects this business which is determinative. The constitutional validity of the legislation depends upon its aim and purpose (*Carnation Company Ltd. v. The Quebec Agricultural Marketing Board*[7]*).*

The purpose of the legislation in question is to provide for the compulsory insurance of motor-vehicles registered in British Columbia and of automobile drivers licensed in British Columbia through a corporation incorporated in British Columbia, which is a government controlled monopoly. It controls the business of automobile insurance in British Columbia.

The impact of the legislation upon the appellants' automobile insurance business in British Columbia could not be more drastic. However, that effect of the legislation upon companies whose operations are interprovincial in scope does not mean that the legislation is in relation to interprovincial trade and commerce. The aim of the legislation relates to a matter of provincial concern within the Province and to property and civil rights within the Province.

The submission of the Attorney General of Canada was in respect of the constitutional validity of s. 8 and ss. 77 to 81 of the *Automobile Insurance Act.* None of these provisions has been proclaimed since this Act was enacted on April 18, 1973, and, consequently, they have never had any legal effect. In these circumstances I do not consider it necessary to determine the extent of their

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application, if proclaimed, or whether or not in the light of their possible effect it was within the

power of the Legislature to enact them.

STERILIZATION OF FEDERALLY INCORPORATED COMPANIES

The appellants, relying upon the authority of such cases as *John Deere Plow Co. Ltd. v. Wharton*[8]*; Great West Saddlery Co. Ltd. v. The King*[9]*; Lukey v. Ruthenian Farmers' Elevator Co.*[10]*,* and *Attorney-General for Manitoba v. Attorney General for Canada*[11]*,* contend that the legislation in question here impairs, in a substantial degree, the status and capacities of each of the appellants incorporated under Canadian law and, in consequence, is *ultra vires* of the Legislature of British Columbia. This submission was accepted by Robertson J.A. in the Court of Appeal.

The effect of this line of case law was the subject of comment recently in this Court by Chief Justice Laskin, when delivering the judgment of the Court, in *Morgan and Jacobson v. The Attorney-General for Prince Edward Island*[12]*,* at p. 364:

> The issue here is not unlike that which has governed the determination of the validity of provincial legislation embracing federally-incorporated companies. The case law, dependent so largely on the judicial appraisal of the thrust of the particular legislation, has established, in my view, that federally-incorporated companies are not constitutionally entitled, by virtue of their federal incorporation, to any advantage, as against provincial regulatory legislation, over provincial corporations or over extra−provincial or foreign corporations, so long as their capacity to establish themselves as viable corporate entities (beyond the mere fact of their incorporation), as by raising capital through issue of shares and debentures, is not precluded by the provincial legislation. Beyond this, they are subject to competent provincial regulations in respect of businesses or activities which fall within provincial legislative power.

The particular legislation which was in issue in the *John Deere* case was a British Columbia stat-

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ute which required every extra-provincial company (which included a federally-incorporated company) to be licensed or registered under that Act, failing which it would not be capable of carrying on business in the Province or able to maintain legal proceedings in the provincial Courts in respect of a contract made in the Province.

Viscount Haldane, at p. 341, said:

> It is enough for present purposes to say that the Province cannot legislate so as to deprive a Dominion company of its status and powers.

However, he went on to say, on the same page:

> This does not mean that these powers can be exercised in contravention of the laws of the

> Province restricting the rights of the public in the Province generally. What it does mean is that the status and powers of a Dominion company as such cannot be destroyed by provincial legislation.

In the *Great West Saddlery* case, a consolidation of three cases, the issue involved the validity of provincial legislation in Ontario, Manitoba and Saskatchewan. Again the legislation in question purported to preclude federally-incorporated companies from carrying on business in the Province unless registered or licensed by the Province. Penalties were imposed for non-compliance. The Acts were held to be *ultra vires* of the provincial Legislatures.

There was also in issue, in one of these cases, the validity of the Ontario *Mortmain and Charitable Uses Act* in its application to federally-incorporated companies. Dealing with this matter, Viscount Haldane said, at p. 119:

> Their Lordships will dispose in the first place of a subsidiary matter, which is whether a Dominion company can be precluded from acquiring and holding land in a province by a Provincial law of the nature of a general Mortmain Act. It is clear, both on principle and from previous decisions, that it is within the competence of a Provincial Legislature to enact such legislation, and the question is therefore answered in the affirmative. If there be a provision to this effect, occurring even in a statute which in other respects is ultra vires, and that provision be severable, it is valid. In the Ontario case there is therefore no doubt that the broad result of the

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> contention of the Province under this head is well founded; for there the Legislature has passed a Mortmain Act of general application, and in regard to this Act a Dominion company is in no better position than any other corporation which desires to hold land.

In the *Lukey* Case this Court considered the validity of the Saskatchewan *Sale of Shares Act* in relation to its application to the sale of its own shares in the Province by a federally−incorporated company. The statute provided that no person should sell shares of a company, or offer such shares for sale, without first obtaining a certificate from the Local Government Board. Duff J., as he then was, said, at p. 73:

> The enactments of the impugned statute necessarily have as already mentioned the immediate effect of preventing Dominion companies with head offices in Saskatchewan exercising in the normal way the power to obtain capital through subscription for their shares. Not only is that the effect of the legislation, it is of the essence of its design. For by its provisions the exercise of the powers of such a company is made conditional upon submission by the company to a provincial control which would deprive it of the free right of exercising its capacities according to the constitution validly imposed upon it by the Dominion; the constitution, the arrangements between the company and its members, between different classes of members, between the members and the management as touching the control of its affairs, and the distribution of profits are all subjected to the supervision of the provincial Local Board.

He went on to say, at p. 74:

> This is not to say that such companies are withdrawn from the operation of provincial laws

> dealing generally with matters that may be embraced in whole or in part within the objects of the company. Dominion companies empowered to deal in intoxicating liquors for example are subject to provincial laws regulating or suppressing the sale of liquor; but such laws are not laws aimed at Dominion companies as such or at joint stock companies as such and do not in effect or in purpose prohibit or impose conditions upon the exercise of powers of Dominion companies which are essential in the sense that they are necessary to enable them in a practical way to function as corporations according to the constitutions imposed upon them by the Dominion.

The case of *Attorney-General for Manitoba v. Attorney General for Canada,* decided by the

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Privy Council, dealt with two Manitoba statutes, *The Sale of Shares Act* and *The Municipal and Public Utility Board Act,* which had provisions similar to the legislation considered by this Court in the *Lukey* case and which were held, for similar reasons, to be invalid.

The four cases above mentioned all dealt with provincial company law or securities legislation and their effect in frustrating the effect of federal incorporation. In each case the legislation was held to be *ultra vires* of the provincial Legislature. They were followed by the important Privy Council decision in the case of *Lymburn v. Mayland*[13]*.* In this case it was argued that *The Security Frauds Prevention Act, 1930,* of Alberta, was *ultra vires* the provincial Legislature in so far as it applied to federally-incorporated companies. The Act provided that no person could trade in securities unless he was registered with the approval of the Attorney−General. A corporation could be registered which would obviate the necessity for its officials registering. A public company was not permitted to sell its shares unless it did so through a registered person or was itself registered. Section 9 of the Act provided that the Attorney-General, or his delegate, could examine any person or company to ascertain whether any “fraudulent act” had been, was being, or was about to be committed. The case arose when the Attorney-General of Alberta appointed an examiner to examine into the affairs of three federal companies. The Alberta Courts granted an interim injunction to prevent the Attorney-General’s nominee from examining the federal company and held that s. 9 of the Act was *ultra vires* in relation to such companies. On appeal, Lord Atkin, speaking for the Privy Council, said, at pp. 322 and 323:

> Before the Board the attack was made on a broader ground. The whole Act was invalid so far as it related to Dominion companies, because it destroyed their status

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> by making it impossible for them to issue their share capital. In this respect it was said the case was covered by the decision of this Board in *Att.-Gen. for Manitoba v. Att.-Gen. for Canada,* [1929] A.C. 260. … Their Lordships cannot accept any of these contentions.

The Court considered the argument that the provisions of this statute, so far as they affected federal companies, were *ultra vires* according to the principles of *John Deere Plow, Great West Saddlery* and *Attorney-General for Manitoba v. Attorney General for Canada.* The Board’s

answer to that submission is contained in the following language, found on pp. 324 and 325:

> It appears to their Lordships impossible to bring this legislation within such a principle. A Dominion company constituted with powers to carry on a particular business is subject to the competent legislation of the Province as to that business and may find its special activities completely paralysed, as by legislation against drink traffic or by the laws as to holding land. If it is formed to trade in securities there appears no reason why it should not be subject to the competent laws of the Province as to the business of all persons who trade in securities. As to the issue of capital there is no complete prohibition, as in the *Manitoba* case in 1929; and no reason to suppose that any honest company would have any difficulty in finding registered persons in the Province through whom it could lawfully issue its capital. There is no material upon which their Lordships could find that the functions and activities of a company were sterilized or its status and essential capacities impaired in a substantial degree.

The learned trial judge dealt with the issues now being considered in the following passage in his judgment:

> The principle which I think can properly be drawn from these cases and the principle which I apply in holding that the impugned legislation is not *ultra vires* the Province, insofar as it affects Dominion companies, is that which was stated by the Appellate Division of the Alberta Supreme Court in *Rex v. Arcadia Coal Co.* [1932] 1 W.W.R. 771. In that case the constitutional validity of the Alberta *Coal Miner's Security Act* was challenged. The statute had purported to prohibit the operation of any mine within the Province where a bond

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> or security satisfactory to the Minister had not been furnished to him. McGillivray J.A., for the Court, declared the Act to be *intra vires* the Province, and in coming to that conclusion stated, at p. 784, what he took to be the effect of the authorities:
>
> > "A provincial Legislature may enact laws, province-wide, of general application (i.e., including the public generally) in respect of any of the subjects enumerated in sec. 92 and in so doing may completely paralyse all activities of a Dominion trading company provided that in the enactment of such laws it does not enter the field of company law and in that field encroach upon the status and powers of a Dominion company as such.
> >
> > "In my view an enactment of a provincial Legislature, limited in direct effect by provincial boundaries, which relates to a particular trade or business carried on within its boundaries, quite regardless of whether or not that trade or business is carried on by natural persons or companies, is valid, but the moment that a provincial Legislature legislates concerning companies as such, then, if such legislation constitutes regulation or impairment or sterilization of the powers and capacities which the Dominion has conferred, the legislation will be invalid.
> >
> > "I may add, as pointed out by Viscount Sumner in *Atty.-Gen. for Man. v. Atty.-Gen. for Can., supra,* such last-mentioned legislation is not saved by the fact that all kinds of companies, provincial as well as Dominion, are aimed at without special discrimination against Dominion companies.
> >
> > "The distinction between enactments affecting Dominion companies that are of general application and those that may be termed company law is simply this: In the former case there is no attempt to interfere with powers validly granted to the

> company by the Dominion nor with the status of the company as such. The circumstance that the company consistently with the general laws of the province may not exercise those powers does not destroy or impair the powers. In the latter case the enactment prohibits or imposes conditions upon the exercise of the powers of Dominion companies as such. In short it is aimed at and affects Dominion company powers as distinguished from being aimed at and affecting a trade or business in the province which Dominion companies may happen to be engaged in in common with provincial companies and natural persons.

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> "In the one case the legislation has to do with a provincial matter, Dominion companies being only incidentally affected; in the other case the legislation is aimed either at Dominion companies or at all companies which includes Dominion companies, and so the province with power to legislate only as to provincial companies must be said to have entered the Dominion field."

The *Arcadia Coal* case was decided shortly after the decision of the Privy Council in *Lymburn v. Mayland,* which judgment is referred to in it.

I am in agreement with this statement which accords with that of Chief Justice Laskin in the *Morgan* case, previously quoted. Parliament can create and maintain the legal existence of a corporate entity, with which a Province cannot interfere. But a provincial Legislature within its own field of legislative power can regulate, in the Province, a particular business or activity. The fact that a federally-incorporated company has, by federal legislation, derived existence as a legal person, with designated powers, does not mean that it is thereby exempted from the operation of such provincial regulation. It is subject to such regulation in the same way as a natural person or a provincially-incorporated company.

In my opinion the second submission of the appellants also fails. I would dismiss the appeal, with costs to the respondent. There should be no costs payable by or to any of the intervenants.

Appeal dismissed with costs.

Solicitors for the plaintiffs, appellants: Gumming, Richards, Underhill, Vancouver.

Solicitors for the defendant, respondent: John McAlpine & Assoc., Vancouver.

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[1] [1976] 2 W.W.R. 499, 63 D.L.R. (3d) 468.
[2] (1881), 7 App. Cas. 96.
[3] [1916] 1 A.C. 588.
[4] [1924] A.C. 328.
[5] [1942] S.C.R. 429.
[6] [1932] A.C. 41.
[7] [1968] S.C.R. 238.
[8] [1915] A.C. 330.
[9] [1921] 2 A.C. 91.

[10] [1924] S.C.R. 56.
[11] [1929] A.C. 260.
[12] [1976] 2 S.C.R. 349.
[13] [1932] A.C. 318.