

IN THE MATTER OF THE ATLANTIC AND LAKE
SUPERIOR RAILWAY COMPANY'S SCHEME OF
ARRANGEMENT WITH ITS CREDITORS,

THE HONOURABLE J. R. THI- }
BAUDEAU AND OTHERS... } PETITIONERS;

1905
June 12.

AND

GALINDEZ BROS., AND OTHERS... OBJECTING PARTIES.

Railway—Scheme of Arrangement—The Railway Act, 1903 sec. 285—Petitioners not in possession of railway—Application to confirm.

Where the petitioners for the confirmation of a scheme of arrangement, filed under the provisions of *The Railway Act, 1903, sec. 285*, are not in possession of the railway which they seek to mortgage as security for the issue of new bonds, the application to confirm will be refused.

THIS was a petition for the confirmation of a scheme of arrangement between the Atlantic and Lake Superior Railway Company and its Creditors, filed under the provisions of section 285 of *The Railway Act, 1903*.

The facts of the case are shortly these:—

The Company was incorporated by Act 56 Victoria, Chap. 59; said Act being amended by 57-58 Victoria, Chap. 63. Under the authority of the former Act, certain agreements were entered into with other railway companies, which agreements were confirmed by the last mentioned Act—57-58 Victoria, Chap. 63.

Owing to the failure by the Dominion Government to carry out an alleged contract with the company to guarantee its bonds, the company claimed that it was unable to carry out its agreements with other railway companies and its creditors.

The company was largely in debt for extensions of its line since 1895 and for repairs and improvements;

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Statement
of Facts.

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and by its scheme of arrangement admitted its inability to meet its financial engagements.

Furthermore, owing to prior liens on purchased properties not having been removed by the vendors, the company was unable to secure a clear title to such properties upon which they otherwise might have made a new issue of bonds for the purpose of meeting the general liabilities of the company. The company owed about \$500,000 on the purchase of other railway lines; and the sum of \$750,000 to other creditors.

The directors of the company by their scheme of arrangement proposed to create an issue of \$1,500,000.00 in bonds of which \$750,000.00 would be 4 per cent. first debentures, and \$750,000.00 5 per cent. second debentures constituting a first and second mortgage, respectively, and to create a fully paid share capital of \$1,500,000.00 in 15,000 shares of \$100.00 each. Furthermore, by the scheme the vendors of the different railway properties sold to the company were to be paid the balances due them in full in debentures and to receive a bonus in shares as follows:—50 per cent. in first mortgage debentures, 50 per cent. in second mortgage debentures and a bonus of 50 per cent. in paid up shares. All the bonds of the company held as collateral security were to be returned to the company and cancelled; and finally, the unsecured creditors of the company were to be paid the full amount of their claims in second mortgage debentures, the shareholders of the company to receive one share of the issue for every three share of the former issue.

Objections to the scheme were filed by the trustees for the bondholders of the company, who were in possession of the company's railway; by the plédees of certain bonds of the company; by the representatives of the insolvent estate of one of the unpaid contractors

for the construction of the company's railway, and by certain other creditors of the company.

June 12th and July 18th and 19th, 1905.

The petition to confirm the scheme of arrangement was now heard at Montreal.

The parties entitled to be heard upon the petition were represented by counsel as follows :

F. S. Macleannan, K C. and *J. J. Meagher*, in support of the petition ; *T. C. Casgrain, K.C.* for the Trustees of the Bondholders of the Company and for Brown & Wells, creditors of the company ; *N. K. Laflamme* for Charles Veilleux, a creditor of the company.

Mr. Macleannan, after putting in certain documentary and oral evidence in support of the petition, proceeded to argue the case. He contended, in substance, that the provisions of section 285 of *The Railway Act, 1903*, contemplated just such a case as the present. The court should take into consideration the present state of the railway, the territory through which it was constructed, its usefulness to the public, and the wishes of the shareholders. The resolution endorsing the scheme of arrangement was passed by a meeting of the company at which ninety per centum of the shareholders were represented. The firm of Galindez Bros., opposing the confirmation of the scheme, by their treatment of the company are responsible for the present financial inability of the company to meet its engagements. They are only in the possession of certain of the company's bonds as collateral security for money loaned, and should, therefore, not be heard in opposition to the scheme. Furthermore, they are not in a position to give or withhold their consent as bondholders, but may oppose the scheme only in the status of secured creditors. *In re The Irish North Western Railway Co's. scheme (1).*

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Argument
of Counsel.

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Judgment.
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The scheme is in the interest of all the creditors.

Mr. Casgrain was not called upon.

Per Curiam :—I think I ought not to do anything to dispossess the trustees who are now acting under parliamentary authority. If anything is to be done, it will have to be done by agreement between the parties interested or through the courts of the province. I would be glad to help to arrive at a joint settlement between the parties. The present petitioners have not the possession of the railway in respect of which they wish to issue bonds.

The application will be refused, but without costs. If any of the parties wish to go to appeal my reasons for judgment will be put in writing.

Judgment accordingly.