

IN THE MATTER OF

THE ATLANTIC AND LAKE SUPERIOR RAIL-
WAY COMPANY.

1905
Jan'y 18.

Scheme of arrangement—Motion to restrain pending action—Grounds for refusal.

In proceedings taken to confirm a scheme of arrangement, filed by a railway company under the provisions of sec. 285 of *The Railway Act*, 1903, an application was made, on behalf of the railway company, for an order to restrain further proceedings in an action against such company begun in the Superior Court for the District of Montreal, by certain creditors, before the filing of the scheme of arrangement but which had not proceeded to judgment :

Held, that as there were real and substantial issues to be tried out between the parties in the action pending in the Superior Court, the same ought to be allowed to proceed pending the maturing of the scheme of arrangement. *In re Cambrian Railway Company's Scheme*. (L. R. 3 Ch. App. 280 n. 1) referred to.

MOTION to restrain proceedings in another court pending the maturity of a scheme of arrangement filed under the provisions of sec. 285 of *The Railway Act*, 1903.

January 18th, 1905.

The argument of the motion was now heard at Ottawa.

F. S. MacLennan, K.C., in support of the motion, contended that, pending the maturity of the scheme of arrangement herein, all proceedings against the company in other courts should be restrained. It is a principle established by the English cases decided under the provisions of *The Railway Companies Act*, 1867, from which section 285 of the Dominion Railway Act of 1903 is taken, that a company, having filed a scheme of arrangement with its creditors, should not

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 Argument
 of Counsel.

be harrassed by litigation pending its confirmation. *In re Cambrian Railway Company* (1), *In re Potteries &c. Ry. Co.* (2), *In re Devon and Somerset Railway* (3).

The action we seek to restrain is against the company, in the Superior Court of Montreal, and is by the pledgees of certain bonds and interest coupons issued by the company. This action was brought in August, 1904, but has not yet been tried. The defence to this action sets up, among other things, that the plaintiffs, as pledgees of the said bonds and coupons, have no right to sue the company for the payment of the said securities under the laws of England, which govern the case. It was also set up by the defence that the bonds in question are subject to a mortgage and deed of trust for the bondholders, and that the trustees were not parties to the action. On the 21st December, '904, the trustees for the bondholders intervened in the action, asking for judgment against the company for \$380,480.80, with interest, and subsequently the plaintiffs presented a motion in the Superior Court to have certain of the bonds, which had been transferred by them, registered in the names of the transferees in the company's books. The object of this motion is to enable the transferees to appear and vote at meetings of the company. The scheme of arrangement makes provision for the cancellation of these bonds and seeks to effect a reasonable arrangement with the creditors of the company. We submit, under the circumstances, no further proceedings ought to be allowed in this action until the scheme of arrangement, filed in the Exchequer Court, is confirmed under the provisions of *The Railway Act, 1903*. (*Devas v. East and West India Dock Co.* (4).

(1) L. R. 3 Ch. App., 278, at p. 296. (3) L. R. 5 Ch. App., 67, at p. 71.
 (2) L. R. 6 Eq., 610, at p. 614. (4) 61 L. T. N. S., 217.

T. C. Casgrain, K.C., contra, contended that the English cases cited did not apply, because the constitution of the courts here was not only dissimilar to those of England, but they exercised an entirely distinct and separate jurisdiction. Moreover, the Exchequer Court was not asked to interfere by restraining the execution of a judgment of a provincial court. Until a judgment was sought to be enforced against the property of the company, this court should hesitate to interfere with the proceedings of another court in the exercise of its jurisdiction. He cited *The Railway Act, 1903*, sec. 285, subsecs. 2 and 4.

The action now pending in the Superior Court was begun in August last, and the scheme of arrangement was not filed in this court until December last. The motion to register the bonds transferred in the names of the transferees is still pending, but clearly the transferees have a right to the registration of the bonds as transferred so that the transferees may pursue all the benefits which such registration will give them.

In such a case as this there is no precedent in the English courts to show that the Exchequer Court should grant this motion and restrain the proceedings pending in the Superior Court.

Mr. *MacLennan* replied.

Per Curiam: This does not appear to me to be a case in which the court should exercise the power, given by statute (*The Railway Act, 1903*, s. 285, ss. 2), to restrain action against a railway company that has filed a scheme of arrangement. There is really something to be tried out in the action which the company seeks to restrain and, in such a case, it would appear to be the safe course to allow the matters in controversy to proceed to a hearing or trial. (Per Sir W. Page Wood, V. C. *In re Cambrian Railway Company's Scheme* (1).

(1) L. R. 3 Ch. Ap. 280 Note (1).

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Reasons for
Judgment.

When it is considered that although the Act contemplates a scheme of arrangement between a company, unable to meet its engagements with its creditors, and such creditors, there is no provision whereby any creditor may be bound by such scheme unless he actually assents thereto, it would seem that a creditor's right of proceeding with his action ought not to be interfered with except on very strong grounds. An execution, attachment or other process against the Company's property by which the Company's undertaking may be destroyed, or put in jeopardy, is another matter and as to these the Act provides that no such process shall be available without the leave of the court. But I do not see why an action such as that which the court is here asked to restrain and in which there are real and substantial issues to be tried out between the parties should not be allowed to proceed pending the maturing of the scheme of arrangement. The application will be refused.

Order accordingly.