

# CASES

DETERMINED BY THE

## EXCHEQUER COURT OF CANADA.

BETWEEN

THE ROYAL TRUST COMPANY;  
LAFAYETTE HOYT DE FRIESE  
AND GEORGE LEDGER AS TRUS-  
TEES FOR BONDHOLDERS OF THE ATLANTIC  
AND LAKE SUPERIOR RAILWAY COMPANY;  
AND WILLARD BROWN AND  
CHARLES W. WELLS..... } PLAINTIFFS;

1907  
Sept. 23.

AND

THE BAIE DES CHALEURS RAIL-  
WAY COMPANY, THE ATLAN-  
TIC AND LAKE SUPERIOR RAIL-  
WAY COMPANY, AND THE  
CREDITORS OF THE BAIE DES  
CHALEURS RAILWAY COM-  
PANY..... } DEFENDANTS.

*Railway—Insolvency — Sale — Prior enquiry into claims of creditors—  
Pledgee of bonds—Trustee for bondholders—Right to purchase railway  
—Sale of portion of road—Exchequer Court Act, sec. 26—Director—  
Estoppel—Reviewing judgment of another court—Comity.*

- An enquiry before a referee into the validity and priority of the claims of creditors of an insolvent railway may be ordered before an order for the sale of the railway is made under the provisions of sec. 26 of *The Exchequer Court Act* (R. S. 1906) c. 140.
2. A pledgee of railway bonds has a sufficient interest (in the nature of that of a mortgagee) in such bonds to institute an action for the sale of the railway under the provisions of sec. 26 of *The Exchequer Court Act*.
  3. A trustee for the bondholders of an insolvent railway may become a purchaser, as such trustee, at the sale of the railway.

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4. Under the terms of sec. 26 of *The Exchequer Court Act* part of a railway may be sold when the railway is in default in paying interest on its bonds.
5. A director, being a creditor of a railway company, present at a meeting where authority is given to pledge the bonds of the company, is estopped from setting up the invalidity of such bonds in an action by the pledgee.
6. The court in exercising its jurisdiction in respect of railway debts under the said section, will not review the judgment of another court of competent jurisdiction affecting the railway, but will leave the rights of any person entitled to attack the judgment to the determination of the court which pronounced the same.

**THIS** was a case instituted by a statement of claim, alleging the following facts:—

1. "In virtue of the statute of the Province of Quebec, 45 Victoria, ch. 53, the Directors of the Baie des Chaleurs Railway Company, on or about the second day of January, 1889, issued mortgage bonds bearing the seal of the company, and signed by the President, and countersigned by the Secretary for an amount of £409,400 sterling, which said bonds, in virtue of the said statute created a first claim and privileged debt against the said company, its undertakings, tolls and revenues and the moveables and immoveables which it might thereafter acquire.

2. By a certain indenture or trust deed duly executed and signed by the said company, at the City of Quebec, on the second day of January, 1889, certain trustees were appointed for the holders of said bonds.

3. On the 10th day of June, instant, the petition of the directors of the said Baie des Chaleurs Railway Company for confirmation of a certain scheme of arrangement with its creditors, duly filed in this honourable court, pursuant to the provisions of section 365 of the Railway Act, was granted, and the said scheme duly enrolled in the said Exchequer Court.

4. By the said scheme of arrangement the Royal Trust Company, one of the plaintiffs herein, was duly appointed

trustee for the bondholders of the said Baie des Chaleurs Railway Company.

5. On the 19th June, 1907, at the City of Montreal, by the ministry of John Fair, Notary Public, the said Royal Trust Company duly presented for payment to the said Baie des Chaleurs Railway Company, the coupons of the bonds above mentioned and more specifically set out in a copy of the demand for payment, and produced herein as Plaintiff's Exhibit No. 1.

6. Upon such demand of payment and protest the said Company refused payment and declared that it had no funds available for the payment of the said coupons.

7. By and in virtue of the Statute of Canada, 1st Edward VII, ch. 48, the trustees for the bondholders of the Atlantic and Lake Superior Railway Company were authorized to repair and renew the roadbed and bridges upon the railway between Metapedia and Caplin, that is that part of the Baie des Chaleurs Railway extending from Metapedia to a place called Caplin, a distance of eighty miles, the said statute giving to the said trustees a first lien upon the said part of the said railway for the reasonable cost of repairs or renewals effected by the said trustees upon the said railway.

8. Under the authority of the said statute, the aforementioned trustees laid out large sums of money to repair and renew the roadbed and bridges upon the said railway between Metapedia and Caplin, which said sums amount to \$70,000.

9. The said railway between Metapedia and Caplin was built, in possession of and operated by the Baie des Chaleurs Railway Company until and up to the 1st January, 1895, and is affected by the aforementioned bonds, issued in virtue of the statute of the Province of Quebec, 45 Vic., ch. 53.

10. By and in virtue of the statute of Canada, 54-55 Vic., ch. 97, it was enacted that Henry MacFarlane, or

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his legal representatives, should have, for the reasons mentioned in the said statute, a first preferential claim and charge upon that part of the railway of the Baie des Chaleurs Railway Company extending from its junction with the Intercolonial Railway at or near Metapedia, to the Cascapedia River, and upon all lands, works, buildings, materials, rolling stock and other property, moveable or immovable, to the said part of the railway at the date of the passing of the said Act, (viz., the 30th September, 1901), appurtenant or belonging.

11. At the date of the passing of the said Act, the lands, works, buildings and other property, moveable and immoveable, extended as far as Caplin aforesaid.

12. The said Henry MacFarlane having become insolvent, Alexander F. Riddell and Thomas Watson were duly appointed, under the law of the Province of Quebec, curators to the insolvent estate of the said Henry MacFarlane, and on the 18th day of February, 1897, in a certain suit bearing the No. 1339 of the records of the Superior Court of the Province of Quebec, District of Montreal, the said joint curators obtained judgment against the said Baie des Chaleurs Railway Company and one Charles N. Armstrong for the sum of \$168,964 10 with interest and costs.

13. The said judgment, with accrued interest from the 28th November, 1889, and costs, now amounts to the sum of \$360,000.

14. By a certain transfer, duly executed at the City of Montreal on the 2nd of December, 1904, before Mtre. John Fair, Notary Public, the said Alexander F. Riddell and Thomas Watson, in their quality of joint curators of the said insolvent estate, thereunto duly authorized by a judgment of the said Superior Court, rendered on the 4th day of October, 1904, did sell and transfer to the aforementioned Willard Brown and Charles W. Wells, for and in consideration of the sum of \$35,000, duly paid,

all their right, title and interest in the said judgment against the said Baie des Chaleurs Railway Company, with all the rights, actions, privileges and hypothecs resulting to the said Alexander F. Riddell and Thomas Watson from the above mentioned judgment, the whole as more fully appears by an authentic copy of the said transfer, produced herewith as plaintiff's exhibit No. 2.

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15. The said the Royal Trust Company in its quality aforesaid has a first preferential claim and privileged debt against the said Baie des Chaleurs Railway from Metapedia to Caplin, a distance of eighty miles, and is a holder of a first mortgage of and on the said railway by and in virtue of the said statute of Quebec, 45 Victoria, ch. 53.

16. The said trustees for the bondholders of the Atlantic and Lake Superior Railway Company are the creditors of the said Baie des Chaleurs Railway Company, and have in virtue of the statute of Canada, 1 Ed. VII., ch. 48, a first lien or charge upon the said railway.

17. The said Brown and Wells in virtue of the said statute of Canada 54 and 55 Victoria, ch. 97, have a first preferential claim and charge upon the said railway.

18. By the said different statutes hereinabove recited the claims of the said plaintiffs among themselves rank as follows :—

(a) The claim of the said trustees for the bondholders of the Atlantic and Lake Superior Railway Company for \$70,000.

(b) The claim of the said Brown and Wells for \$360,000.

(c) The claim of the said Royal Trust Company for £409,400 sterling.

19. The said Baie des Chaleurs Railway Company is and has been for a long time past unable to pay its debts as they became and become due, has acknowledged its

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insolvency and is insolvent within the meaning of the law.

20. The plaintiffs, joining together for the purposes hereof, claim as follows :—

(a) A declaration that the expenditure by the plaintiffs, the trustees for the bondholders of the Atlantic and Lake Superior Railway Company for repairs and renewals upon the railway between Metapedia and Caplin, constitutes a first charge upon the said railway between Metapedia and Caplin, a distance of eighty miles.

(b) A declaration that the plaintiffs, the said Brown and Wells, as the legal representatives of Henry MacFarlane, have a preferential claim and charge, ranking after the charge hereinabove mentioned in the next preceding paragraph in favour of the trustees of the Atlantic and Lake Superior Railway, upon that part of the railway of the said company, extending from its junction with the Intercolonial Railway at or near Metapedia to the Cascapedia River, a distance of sixty miles.

(c) A declaration that the mortgage bonds issued by the Baie des Chaleurs Railway Company and now in the hands of the plaintiffs, the said the Royal Trust Company, as hereinabove alleged, constitute a first claim and privileged debt, ranking as follows on the property of the said railway :—After the two preceding claims of the trustees of the Atlantic & Lake Superior Railway Company and the plaintiffs, Brown and Wells, on that part of the road extending from Metapedia to Cascapedia, and after the said trustees on that part of the said railway extending from the Cascapedia River to Caplin, a distance of twenty miles.

(d) An account of what is due to the plaintiffs under the foregoing liens and mortgage bonds for principal, interest and costs.

(e) That the said liens and mortgage bonds may be enforced by foreclosure or sale.

(f) That the trustees for the bondholders of the Atlantic & Lake Superior Railway now operating the road, by virtue of the Statute of Canada, 1 Edward VII., chapter 48, may be allowed to continue operating the said railway as hitherto."

The defendant railway companies consented to judgment being entered against them as prayed in the statement of claim. Certain of the creditors of the Baie des Chaleurs Railway Company, however, filed statements in defence, opposing the judgment as prayed. The matter then came on for trial.

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September 23rd, 1907.

*T. Chase Casgrain, K. C.*, and *J. W. Weldon*, appeared for the plaintiffs;

*N. K. Laflamme, K. C.*, and *A. W. P. Buchanan, K. C.*, appeared for certain of the creditors.

At the conclusion of the trial the learned Judge ordered that judgment be entered as prayed, the necessary conditions and terms of the judgment to be settled by the Registrar. A reference was directed to the Registrar to take accounts and ascertain what was due to the several plaintiffs and what the priorities were as between the plaintiffs, and whether there were any prior claims, and if any, for what amounts respectively.

During the trial the learned Judge orally decided the following questions, which will appear in the record of proceedings at the trial:—

An order for the sale of the railway may be preceded by a reference to the Registrar in the terms and for the purposes above mentioned.

The plaintiffs, inasmuch as they represented pledgees of bonds by virtue of a Scheme of Arrangement under the *Railway Act* (R. S. 1906 C. 37), had a *locus standi* to institute proceedings for the sale of the railway.

The plaintiffs, as trustees of the bondholders, were entitled to become purchasers of the railway at the sale.

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A portion of the railway could be sold under the provisions of sec. 26 of *The Exchequer Court Act*.

The directors present at a meeting of the company when authority was given to pledge the bonds ought not to be heard to dispute the validity of the bonds after they passed into the hands of the pledgees. (\*)

(\*) REPORTER'S NOTE :—See the report of this case on proceedings before the Registrar, *post* p. 9.

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