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UNIVERSITY OF LONDON
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INSTITUTE OF ADVANCED
LEGAL STUDIES
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In the Privy Council

No. of 1942.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

BETWEEN:

ABITIBI POWER & PAPER COMPANY LIMITED
(*Defendant*) APPELLANT,

AND

MONTREAL TRUST COMPANY
(*Plaintiff*) RESPONDENT,

AND

JOSEPH P. RIPLEY, STANTON GRIFFIS, MILTON C. CROSS, W. H. SOMERVILLE, ROBERT H. REID, ANDREW FLEMING and W. A. ARBUCKLE,
(*Defendants*) RESPONDENTS,

AND

THE ATTORNEY-GENERAL FOR ONTARIO,
INTERVENER.

RECORD OF PROCEEDINGS

BLAKE & REDDEN, 17 Victoria St., London, S.W. 1 — *for the Appellant and for the Intervener.*

LAWRENCE JONES & CO., Winchester House, Old Broad St. London, E.C. 2 — *for the (Plaintiff) Respondent.*

LINKLATERS & PAINES, Granite House, 97-101 Cannon St. London, E.C. 4 — *for the (Defendants) Respondents.*

HAMILTON:
HAMILTON TYPESETTING COMPANY, LIMITED
1942

In the Privy Council

No. of 1942.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

BETWEEN:

ABITIBI POWER & PAPER COMPANY LIMITED
(*Defendant*) APPELLANT,

AND

MONTREAL TRUST COMPANY
(*Plaintiff*) RESPONDENT,

AND

JOSEPH P. RIPLEY, STANTON GRIFFIS, MILTON C. CROSS, W. H. SOMERVILLE, ROBERT H. REID, ANDREW FLEMING and W. A. ARBUCKLE,
(*Defendants*) RESPONDENTS,

AND

THE ATTORNEY-GENERAL FOR ONTARIO,
INTERVENER.

RECORD OF PROCEEDINGS

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2.		**Exhibits to Affidavit of John F. Hobkirk, dated October 9, 1941.**
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3.		**Exhibits to Affidavit of John F. Hobkirk, dated November 25, 1941.**
	"A"	Statement of Receiver and Manager for September, 1941.
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No.	Description of Document
4.	**Exhibit to Affidavit of Roderick Walter Strachan Johnston, dated December 1, 1941.**
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	"A" Copy of letter from R. G. Meech to R. S. McPherson, Liquidator of Abitibi Power & Paper Company Limited, dated May 22, 1940.
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	"E" Copy of "A Plan for Sale of Assets and Reorganization" (Ripley Plan).
6.	**Exhibit to Affidavit of Richard George Meech, dated June 5, 1940.**
	"A" "Compilation of Statements and Information."
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	"A" Pages 889 to 926 inclusive of Volume 8 of the Evidence taken before the Royal Commission enquiring into the affairs of Abitibi Power & Paper Company Limited.
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	"A" Report of Royal Commission enquiring into the affairs of Abitibi Power & Paper Company Limited, dated the 17th day of March, 1941.

In the Supreme Court of Ontario

No. 1
Endorsement on Writ of Summons.
September 8, 1932.

PART I.

No. 1

Endorsement on Writ of Summons

The Plaintiff's claim is—

1. For the administration and execution by the Court of the trusts of an Indenture and Mortgage dated as of the 1st day of June, 1928, made between the defendant Abitibi Power & Paper Company Limited, of the first part, the plaintiff, of the second part and The National City Bank of New York, of the third part, whereby the undertaking, property
10 and assets of the defendant, Abitibi Power & Paper Company Limited, therein mentioned, were vested in, mortgaged, pledged and charged in favour of the plaintiff as trustee upon the trusts therein set forth and for the benefit of the holders of the First Mortgage Gold Bonds of the defendant, Abitibi Power & Paper Company Limited for and with the payment of a principal amount of the said bonds and interest thereon and of all other sums from time to time due under the said Indenture and Mortgage and of all other moneys for the time being and from time to time owing upon or charged or chargeable under the said Indenture and Mortgage on the security thereof.

20 2. A declaration that the said Indenture and Mortgage is a first charge on all the undertaking, property and assets of the defendant, Abitibi Power & Paper Company Limited.

3. To have an account taken of what is due by the defendant Abitibi Power & Paper Company Limited to the plaintiff and to the holders of the said bonds.

4. To have the undertaking, property and assets of the defendant Abitibi Power & Paper Company Limited comprised under or subject to the security of the said Indenture and Mortgage sold under the direction of the Court.

30 5. For the appointment of a Receiver and Manager of the undertaking, property and assets of the defendant Abitibi Power & Paper Company Limited comprised in or subject to the trusts of the said Indenture.

In the Supreme Court of Ontario

No. 2
Order of Riddell, J.A., appointing Geoffrey Teignmouth Clarkson Receiver and Manager of the Defendant Company.
September 10, 1932.

No. 2

Order of Riddell J.A. Appointing Geoffrey Teignmouth Clarkson Receiver and Manager of the Defendant Company

THE HONOURABLE MR. JUSTICE RIDDELL } Saturday, the 10th day of September, 1932.

On motion made unto this Court this day by Counsel on behalf of the Plaintiff in the presence of Counsel for the Defendant, upon hearing read the Writ of Summons herein, the affidavits of John Ferdinand Hobkirk, and Strachan Johnston and Geoffrey Teignmouth Clarkson filed and the exhibits therein referred to and upon hearing what was alleged by Counsel for the Plaintiff and Counsel for the defendant and for the Committee hereinafter mentioned consenting hereto. 10

1. THIS COURT DOTH ORDER that Geoffrey Teignmouth Clarkson of the City of Toronto in the County of York, be and he is hereby appointed Receiver on behalf of the Plaintiff and all holders of the First Mortgage bonds of the Defendant entitled to the benefit of the Indenture and Mortgage dated as of June 1st, 1928, securing the said bonds and made between the Defendant of the first part, the Plaintiff of the second part, and The National City Bank of New York of the third part, of all the undertaking, property and assets of the Defendant comprised in and subject to the security or charge created by the said Indenture and Mortgage and also to manage any undertaking of the Defendant, Abitibi Power & Paper Company Limited, and to act at once, and until the trial or until further order. 20

2. AND THIS COURT DOTH FURTHER ORDER that the Defendant do forthwith deliver over to the said Geoffrey Teignmouth Clarkson as such Receiver and Manager all the undertaking, property and assets of every kind comprised in or subject to the security or charge created by the said Deed of Trust and Mortgage and all books, documents, papers and records of every kind relating thereto. 30

3. AND THIS COURT DOTH FURTHER ORDER that the said Geoffrey Teignmouth Clarkson do furnish security to the satisfaction of the Master of this Court in the sum of $50,000. for the due and proper performance of his duties as such Receiver and Manager with power to the said Master to increase the amount of security at any time if found advisable or necessary.

4. AND THIS COURT DOTH FURTHER ORDER that the said Receiver and Manager be and he is hereby fully authorized and empowered to institute and prosecute all suits, proceedings and actions at law as may in his judgment be necessary for the proper protection of the undertaking, property and assets of the defendant and likewise to defend all suits, proceedings and actions instituted against him as such Receiver and Manager and to appear in and conduct the prosecution or defence of any such proceedings and actions now pending in any Court against the 40

Defendant, the prosecution or defence of which will, in the judgment of the Receiver and Manager, be necessary for the proper protection of the property, assets, business and undertaking of the Defendant and the authority hereby conferred shall extend to such appeals as the said Receiver and Manager shall deem proper and advisable in respect of any order or judgment pronounced in any such suit or action.

5. AND THIS COURT DOTH FURTHER ORDER that no action at law or other proceeding shall be taken or continued against the Defendant or the said Receiver and Manager without leave of this Court first 10 being obtained.

6. AND THIS COURT DOTH FURTHER ORDER that the tenants of any property of the Defendant do attorn to and pay their rents in arrears and accruing rents to the Receiver and Manager.

7. AND THIS COURT DOTH FURTHER ORDER that the said Receiver and Manager shall be at liberty to employ such assistants as he may consider necessary for the purpose of preserving the said property and assets of the Defendant and carrying on the business and undertaking of the Defendant and that any expenditure which shall be properly made or incurred by the said Receiver and Manager in so doing shall be 20 allowed him in passing his accounts and shall form a charge on the undertaking, property and assets of the Defendant in priority to the said Indenture and Mortgage and the mortgage and charge therein contained and the bonds secured thereby.

8. AND THIS COURT DOTH FURTHER ORDER that the said Receiver and Manager do from time to time pass his accounts and pay the balances in his hands as the said Master may direct, and for this purpose the accounts of the Receiver and Manager are hereby referred to the Master of the Supreme Court.

9. AND THIS COURT DOTH FURTHER ORDER that liberty 30 be reserved to all or any party or parties interested to apply for such further or other order as they may be advised.

10. AND THIS COURT DOTH FURTHER ORDER that Joseph P. Ripley, C. M. Bowman, Milton C. Cross, Andrew Fleming, Stanton Griffis, Harold P. Janisch, John Leslie, George W. Pearson and Edward E. Reid, a bondholders committee acting in pursuance of an agreement dated as of June 10th, 1932, made between themselves and such holders of the said bonds as shall become parties to such agreement in the manner therein provided shall be at liberty to attend the proceedings in this action and that the plaintiff do give notice from time to time to their 40 solicitors, Messrs. Blake, Lash, Anglin & Cassels, of the proceedings to be had and taken in this action.

11. AND THIS COURT DOTH FURTHER ORDER that the said Receiver and Manager be at liberty and he is hereby empowered to borrow moneys from time to time as he may consider necessary not exceeding the principal amount of two million dollars ($2,000,000.) for the purpose of protecting and preserving the undertaking, property and assets of the

In the Supreme Court of Ontario

No. 2
Order of Riddell, J.A., appointing Geoffrey Teignmouth Clarkson Receiver and Manager of the Defendant Company. September 10, 1932.

—continued

Defendant and carrying on the business and undertaking of the Defendant, and that as security therefor and for every part thereof the whole of the undertaking, property and assets of the Defendant of every nature and kind comprised in or subject to the said Indenture and Mortgage, together with all other assets and property which may hereafter be in the custody or control of the Receiver and Manager as such do stand charged with the payment of the moneys so borrowed by the Receiver and Manager, together with interest thereon not exceeding six per cent. per annum in priority to the said Indenture and Mortgage and the mortgage and charge therein contained and the bonds secured thereby. 10

12. AND THIS COURT DOTH FURTHER ORDER that the moneys authorized to be borrowed by this order shall be in the nature of a revolving credit and the Receiver and Manager may pay off and reborrow within the limits of the authority hereby conferred so long as the maximum amount owing in respect of such borrowings at any one time does not exceed the amount hereby authorized with interest.

13. AND THIS COURT DOTH FURTHER ORDER that the Receiver and Manager shall be at liberty and he is hereby authorized to give or issue Receipts or Certificates for any sums borrowed by him pursuant to this order, which Receipts and Certificates shall be substantially 20 in the form of the Schedule annexed hereto, which is hereby directed to be made part of this order.

14. AND THIS COURT DOTH FURTHER ORDER that the costs of the Plaintiff and the Defendant and the said Committee up to and inclusive of this order be taxed and paid by the Receiver and Manager as part of the expense of the management of the property and undertaking of the Defendant.

"WILLIAM RENWICK RIDDELL"
J.A.

Entered O.B. 127, pages 506-7-8 30
September 10th, 1932.
"V.C."

SCHEDULE

Abitibi Power & Paper Company Limited

1. This is to certify that the undersigned Geoffrey Teignmouth Clarkson, the Receiver and Manager of the undertaking, property and assets of Abitibi Power & Paper Company Limited comprised in and subject to the security created by the Indenture and Mortgage dated as of the first day of June, 1928, made between Abitibi Power & Paper 40 Company Limited of the first part, Montreal Trust Company of the second part and The National City Bank of New York of the third part, appointed by order of the Supreme Court of Ontario dated the 10th day of September, 1932, made in an action between Montreal Trust Company, Plaintiff, and Abitibi Power & Paper Company Limited, Defendant, has

received as such Receiver and Manager from the holder of this certificate the sum of Dollars ($), part of the total principal sum of Two Million dollars ($2,000,000.) which the said Receiver and Manager is authorized to borrow under and pursuant to the said order.

2. The principal sum of Dollars ($) represented by this certificate is payable not later than the day of , with interest thereon at the yearly rate of per cent. ( ) per annum payable half-yearly on the day of , and the day of , the first of such payments of interest being payable on the day , .

3. The said principal sum, together with interest thereon not exceeding six per cent. (6%) per annum, is by the terms of the said order, together with the principal amounts and interest thereon of all other certificates issued by the said Receiver and Manager up to but not exceeding the said principal sum of Two million dollars ($2,000,000.), a charge upon the whole of the undertaking, property and assets of every nature and kind comprised in and subject to the aforesaid Indenture and Mortgage, and all other assets and property which now are or which may hereafter be in the custody or control of the Receiver and Manager as such, in priority to the said Indenture and Mortgage and the mortgage and charge therein contained and the Bonds secured thereby.

4. All sums payable in respect of principal and interest under this certificate are payable at the office of
at

5. In case default shall be made in payment of interest on this certificate and such default shall continue for a period of thirty days, the principal of this certificate may be declared immediately due and payable by the holder hereof.

6. This certificate is subject to be redeemed and all liability in respect of the sum for which it is issued and for further interest thereon terminated on tender to the holder thereof of the principal sum due in respect thereof, with interest as aforesaid down to the date of such tender.

7. The said charge shall operate so as to permit the Receiver and Manager to carry on the undertaking and business of Abitibi Power & Paper Company Limited and deal with the property and assets thereof as may be authorized by the order of the Supreme Court.

8. The Receiver and Manager does not undertake and is not under any personal liability to pay any sum in respect of which he may issue certificates under the terms of the said order dated the 10th day of September, 1932.

Entered O.B. 127, pages 506-7-8.
September 10th, 1932.
V.C.

In the Supreme Court of Ontario

No. 2
Order of Riddell, J.A., appointing Geoffrey Teignmouth Clarkson Receiver and Manager of the Defendant Company. September 10, 1932.

—continued

In the Supreme Court of Ontario

No. 3
Order of Sedgewick, J., granting leave to take proceedings under Bankruptcy Act or Winding Up Act.
September 26, 1932.

No. 3

Order of Sedgewick J. Granting Leave to Take Proceedings Under Bankruptcy Act or Winding-up Act

THE HONOURABLE MR. JUSTICE SEDGEWICK } Monday, the 26th day of September, 1932.

UPON MOTION made unto this Court this day by Counsel on behalf of Canada Packers Limited in the presence of Counsel for the Defendant; upon hearing read the Writ of Summons and Proceedings herein, the Order of The Honourable Mr. Justice Riddell dated the 10th day of September, 1932, herein, the affidavit of Harold Wilson Shapley and the consent of the Plaintiff's Solicitors filed and it appearing that a Petition in Bankruptcy had been filed by Canada Packers Limited against the Defendant on the 15th day of September, 1932, without the leave of this Court first obtained pursuant to the said Order dated the 10th day of September, 1932, and upon hearing what was alleged by Counsel aforesaid;

1. THIS COURT DOTH ORDER that Canada Packers Limited be and it is hereby granted leave to take such proceedings against the Defendant under the provisions of the Bankruptcy Act and/or under the provisions of the Winding Up Act as it may be advised.

2. AND THIS COURT DOTH FURTHER ORDER that the proceedings heretofore taken by Canada Packers Limited against the Defendant under the provisions of the Bankruptcy Act and/or the Winding Up Act, be and the same are hereby ratified and confirmed as though the same had been taken by the said Canada Packers Limited with the leave of this Court first obtained, and that leave be and it is hereby granted to Canada Packers Limited nunc pro tunc to take and continue such proceedings.

D'ARCY HINDS,
Asst. R.

Entered O.B. 127 page 592
Sept. 27, 1932
"H.F."

"T.J.L.P.
"H.H.D."
"G.H.S."
J.

No. 4

Order of Sedgewick J. Adjudging the Defendant Bankrupt

THE HONOURABLE MR. JUSTICE SEDGEWICK In Chambers } Monday, 26th September, 1932.

IN THE MATTER OF THE BANKRUPTCY OF ABITIBI POWER & PAPER COMPANY LIMITED,

Debtor.

UPON the Petition of Canada Packers Limited, a creditor, filed on
10 the 15th day of September, 1932, AND UPON reading the affidavit of Charles Wadge in support thereof, in the presence of counsel for the said creditor and in the presence of counsel for the debtor, AND UPON hearing the evidence adduced and what was alleged by counsel aforesaid, and it appearing to this Court that the following act of bankruptcy has been committed, namely:

The Debtor has within six months before the date of the presentation of the said Petition ceased to meet its liabilities generally as they became due.

1. IT IS ORDERED that Abitibi Power & Paper Company Limited
20 be and it is hereby adjudged bankrupt and a receiving order is hereby made against the said Abitibi Power & Paper Company Limited, whose head office is at the City of Toronto in the Province of Ontario.

2. IT IS FURTHER ORDERED that Frederick Curzon Clarkson of the City of Toronto in the Province of Ontario be and he is hereby constituted Custodian of the estate of the said debtor, he giving security for the proper performance of his duties in the sum of $1000.00 pursuant to the rules in that behalf.

3. AND IT IS FURTHER ORDERED that the costs of and incidental to this Petition and Order be paid to the Petitioner out of the
30 assets of the estate, forthwith after taxation thereof.

WM. J. REILLEY,
Registrar.

In the Supreme Court of Ontario

No. 5
Order of Sedgewick, J., granting leave to apply the Winding Up Act.
September 26, 1932.

No. 5

Order of Sedgewick J. Granting Leave to Apply the Winding-up Act

THE HONOURABLE MR. JUSTICE SEDGEWICK In Chambers } Monday, 26th September, 1932.

IN THE MATTER OF THE BANKRUPTCY OF ABITIBI POWER & PAPER COMPANY LIMITED,

Debtor.

UPON the application made the 26th day of September, 1932, of Canada Packers Limited, in the presence of counsel for the applicant and in the presence of counsel for the said Abitibi Power & Paper Company Limited; UPON reading the notice of motion herein, the affidavit of Harold Wilson Shapley filed, and hearing the evidence adduced and what was alleged by counsel aforesaid and it appearing to be in the interest of creditors of Abitibi Power & Paper Company Limited that the Winding Up Act do extend and apply to Abitibi Power & Paper Company Limited— 10

1. IT IS ORDERED that leave be and the same is hereby granted to extend or apply the Winding Up Act to Abitibi Power & Paper Company Limited. 20

2. AND IT IS FURTHER ORDERED that leave be and the same is hereby granted to the applicant to take proceedings and apply for an order winding-up the said Abitibi Power & Paper Company Limited under the provisions of the Winding Up Act, Revised Statutes of Canada, 1927, Chapter 213.

3. AND IT IS FURTHER ORDERED that the costs of and incidental to this Order be paid to the Petitioner out of the assets of the estate forthwith after taxation thereof.

WM. J. REILLEY,
Registrar. 30

In the Supreme Court of Ontario

No. 6
Order of Sedgewick, J., declaring the Company to be wound up under the Winding Up Act.
September 26, 1932.

No. 6

Order of Sedgewick J. Declaring the Company To Be Wound Up Under The Winding-up Act

THE HONOURABLE MR. JUSTICE SEDGEWICK In Chambers } Monday, September 26th, 1932.

IN THE MATTER OF THE WINDING UP ACT being Chapter 213 of the Revised Statutes of Canada, 1927, and Amending Acts, and

IN THE MATTER OF ABITIBI POWER & PAPER COMPANY
10 LIMITED.

UPON the application made on the 26th day of September, 1932, of Canada Packers Limited, a creditor of the above named Abitibi Power & Paper Company Limited, in the presence of counsel for the applicant and in the presence of counsel for the said Abitibi Power & Paper Company Limited; UPON READING the notice of motion herein, the affidavit of Harold Wilson Shapley filed, the Orders of this Court each dated the 26th day of September, 1932, and what was alleged by counsel aforesaid.

1. IT IS HEREBY DECLARED that the said Abitibi Power &
20 Paper Company Limited is an incorporated Company within the provisions of the said Winding Up Act and is insolvent and liable to be wound up by this Court under the provisions of the said Winding Up Act and Amendments thereto.

2. AND IT IS ORDERED that the said Company be wound up by the Court under the provisions of the said Winding Up Act and Amendments thereto.

"D'ARCY HINDS,"
Asst. R.

Entered O.B. 128 pages 253-4
30 Sept. 29, 1932.
H.F.

No. 7
Order of Master S.C.O. appointing F. C. Clarkson Permanent Liquidator.
November 25, 1932.

No. 7

Order of Master S.C.O. Appointing F. C. Clarkson Permanent Liquidator

IN THE MATTER OF THE WINDING UP ACT being Chapter 213, Revised Statutes of Canada, 1927, and Amending Acts, and

IN THE MATTER OF ABITIBI POWER & PAPER COMPANY LIMITED.

In the Supreme Court of Ontario

No. 7
Order of Master S.C.O. appointing F. C. Clarkson Permanent Liquidator. November 25, 1932.

—continued

UPON the application of Canada Packers Limited, the Petitioning Creditor, and upon reading the report of the result of the meeting of creditors and contributories held on the 14th day of November, 1932, and upon reading the affidavit of Frederick Curzon Clarkson of the City of Toronto in the County of York, Provisional Liquidator of the said Company, proving service and publication of the notice of said meeting and notice of the application and notice to creditors to file claims in accordance with the direction given herein, and upon hearing Geoffrey Teignmouth Clarkson, Receiver and Manager of the Company appointed in an action in which the Montreal Trust Company was plaintiff and the above company was defendant, and dated September 10th, 1932, and what was alleged on behalf of the parties attending thereon,— 10

1. IT IS ORDERED that Frederick Curzon Clarkson of the City of Toronto in the County of York be and he is hereby appointed Liquidator of the above named Company; and it appearing that the said Frederick Curzon Clarkson in his capacity as Provisional Liquidator has filed a bond in the amount of $1000. pursuant to the direction given by me to that end, for the due performance of his duties as Provisional Liquidator, which bond provides in effect that if he be appointed Permanent Liquidator said bond shall stand as security not only for the due performance of his duties as Provisional Liquidator but also as security for the due performance of his duties as Permanent Liquidator, no further security in the circumstances need be given by the said Frederick Curzon Clarkson to secure the due performance of his duties as Permanent Liquidator of the Company. 20

2. AND IT IS FURTHER ORDERED that the said Liquidator do deposit at interest in the Royal Bank of Canada, King & Yonge Streets Branch, Toronto, all sums of money coming into his hands belonging to the said company whenever and so often as such sums amount to $100. pursuant to the Statute in that behalf. 30

3. AND IT IS FURTHER ORDERED that the costs of and incidental to this application be costs in the winding up.

DATED at Toronto this 25th day of November, 1932.

"I. HILLIARD",
Master.

Entered O.B. 149, pages 66-7
April 26, 1935.
H.F.

No. 8

Order of Garrow J. Granting the Plaintiff Leave to Proceed with the Mortgage Action

No. 8 Order of Garrow, J., granting the Plaintiff leave to proceed with the mortgage action. December 7, 1932.

THE HONOURABLE
MR. JUSTICE GARROW
In Chambers } Wednesday, the 7th day of December, 1932.

IN THE MATTER OF THE WINDING UP ACT, being Chapter 213 of the Revised Statutes of Canada, 1927, and Amending Acts, and

IN THE MATTER OF ABITIBI POWER & PAPER COMPANY
10 LIMITED.

1. Upon the application of Counsel for Montreal Trust Company, the Plaintiff in an action commenced in this Court on the 8th September, 1932, against the above named Abitibi Power & Paper Company Limited for the enforcement of the trusts and security of a certain Deed of Trust and Mortgage dated as of 1st June, 1928, made by the said Abitibi Power & Paper Company Limited in favour of the said Montreal Trust Company and the National City Bank of New York as Trustees, in the presence of Counsel for F. C. Clarkson, Esquire, the Liquidator appointed herein, upon reading the Writ of Summons in the said Action and upon
20 hearing what was alleged by Counsel aforesaid.

2. IT IS ORDERED that the said Montreal Trust Company shall be at liberty to proceed with the said action against the said Abitibi Power & Paper Company Limited notwithstanding the winding-up order made herein the 26th September, 1932.

"D'ARCY HINDS",
Registrar, S.C.O.

No. 9

Order of Middleton J.A. Adding Individual Defendants

No. 9 Order of Middleton, J.A., adding Individual Defendants. September 13, 1935.

THE HONOURABLE
30 MR. JUSTICE MIDDLETON } Friday, the 13th day of September, 1935.

1. UPON MOTION made unto this Court this day by Counsel on behalf of Joseph P. Ripley, Stanton Griffis, Milton C. Cross, W. H. Somerville, Edward E. Reid, Andrew Fleming and W. A. Arbuckle, in the presence of Counsel for the Plaintiff and in the presence of Counsel for Geoffrey Teignmouth Clarkson, Receiver and Manager of the property, assets and undertaking of the Defendant appointed by Order of this

In the Supreme Court of Ontario

No. 9
Order of Middleton, J.A., adding Individual Defendants. September 13, 1935.

—continued

Court dated the 10th day of September, 1932, and in the presence of Counsel for F. C. Clarkson, the Liquidator of the Defendant; upon hearing read the Order of this Honourable Court made herein and dated the 27th day of March, 1935, and upon hearing read the Affidavit of Gordon F. Harkness, filed, and the Exhibits therein referred to, and upon hearing what was alleged by Counsel aforesaid, and it appearing that the said Joseph P. Ripley, Stanton Griffis, Milton C. Cross, W. H. Somerville, Edward E. Reid, Andrew Fleming and W. A. Arbuckle were duly appointed members of a Committee known as Bondholders' Representative Committee, Abitibi Power & Paper Company Limited, First Mortgage Gold Bonds, which said Committee, consisting of seven members with power to appoint two or more of the members of the Committee as an Executive Committee, was constituted, by resolution passed at a meeting of the holders of First Mortgage Gold Bonds of the Defendant issued under Indenture and Mortgage dated as of June 1st, 1928, made between Abitibi Power & Paper Company, Limited and Montreal Trust Company, Canadian Trustee, and The National City Bank of New York, Authenticating Trustee, and held in the City of Toronto, on Friday, the 7th day of June, 1935, to represent the holders of First Mortgage Gold Bonds of the Defendant in this action and in all other matters relating to the rights of the holders of the said Bonds, and it appearing that the said resolution also provided that such persons as might from time to time be members of the said Committee might, by the vote of a majority of such members, fill any vacancies which might from time to time occur in the said Committee, and authorized the said Committee, if it should seem to it to be in the best interests of the Bondholders, by a vote of majority of the members of the said Committee then in office, from time to time to add one or more additional persons to its numbers so that the total number at any one time should not exceed ten, and also authorized the said Committee to apply to this Court for an Order appointing it to represent the holders of the said Bonds as a class in all of the proceedings relating to the Defendant in this action, and it appearing that the said Joseph P. Ripley, Stanton Griffis, Milton C. Cross, W. H. Somerville, Edward E. Reid, Andrew Fleming and W. A. Arbuckle are holders of First Mortgage Gold Bonds of the Defendant and are in the same interest with all other holders of the said Bonds, and upon hearing Counsel aforesaid.

2. THIS COURT DOTH ORDER that the said Joseph P. Ripley, Stanton Griffis, Milton C. Cross, W. H. Somerville, Edward E. Reid, Andrew Fleming and W. A. Arbuckle be made parties defendant to this cause.

3. AND THIS COURT DOTH FURTHER ORDER that the said Joseph P. Ripley, Stanton Griffis, Milton C. Cross, W. H. Somerville, Edward E. Reid, Andrew Fleming and W. A. Arbuckle may appear by Counsel and defend this action and take such part therein as they may be advised and that they be bound by the final result of the action.

4. AND THIS COURT DOTH DECLARE that all holders of First

Mortgage Gold Bonds of the Defendant, Abitibi Power & Paper Company Limited, are sufficiently represented in this action by the said Joseph P. Ripley, Stanton Griffis, Milton C. Cross, W. H. Somerville, Edward E. Reid, Andrew Fleming and W. A. Arbuckle and that the said Joseph P. Ripley, Stanton Griffis, Milton C. Cross, W. H. Somerville, Edward E. Reid, Andrew Fleming and W. A. Arbuckle are to be considered as representing and do represent such holders of the said Bonds in this action and doth order the same accordingly, and that all such holders of the said Bonds be bound by the final result of the action.

10 5. AND THIS COURT DOTH FURTHER ORDER that liberty be reserved to all or any party or parties interested to apply from time to time to add any other persons who may be appointed members of the said Bondholders' Representative Committee, Abitibi Power & Paper Limited First Mortgage Gold Bonds, as Defendants and to represent all the holders of the said First Mortgage Gold Bonds of the Defendant, Abitibi Power & Paper Company Limited, and to apply for such further or other Order or directions as they may be advised.

6. AND THIS COURT DOTH FURTHER ORDER that the said Receiver and Manager do pay the costs of the said Committee of and inci-
20 dental to this motion and that all sums so paid by him shall be included and allowed in the passing of his accounts.

"D'ARCY HINDS",
Registrar, S.C.O.

Entered O.B. 152 pages 91-2
September 13th, 1935
"R.M."
"W.E.M."
J.A.
13 Sept. 1935

No. 10

No. 10
Order of McTague, J.A., appointing Roy Sharvell McPherson Liquidator. December 20, 1935.

30 **Order of McTague J.A. Appointing Roy Sharvell McPherson Liquidator**

THE HONOURABLE MR. JUSTICE McTAGUE, In Chambers	Friday, the 20th day of December, 1935.

IN THE MATTER OF The Winding Up Act, being Chapter 213, Revised Statutes of Canada, 1927, and Amending Acts, and

IN THE MATTER OF Abitibi Power & Paper Company Limited.

1. UPON the application of Grinnell Company of Canada Limited, Ontario Malleable Iron Co. Limited, Ayers Limited, Canadian Industries Limited, The Marine Trust Co. of Buffalo, Algoma Steel Corporation

In the Supreme Court of Ontario

No. 10
Order of McTague, J.A., appointing Roy Sharvell McPherson Liquidator. December 20, 1935.

—continued

Ltd., and D. H. Howden & Co. Limited, unsecured creditors of the said Abitibi Power & Paper Company Limited, and the Abitibi Preferred Stockholders' Protective Committee, and upon reading the resignation of Frederick Curzon Clarkson as liquidator of the said Abitibi Power & Paper Company Limited, and the affidavits of the said Frederick Curzon Clarkson and Peter Wright filed, and the exhibits thereto, and in the presence of counsel for the said Frederick Curzon Clarkson, the liquidator of the said Abitibi Power & Paper Company Limited and for the Hydro Electric Power Commission of Ontario, and upon hearing what was alleged by counsel for the applicants, and counsel for all other parties 10 consenting thereto, the consent of the Hydro Electric Power Commission of Ontario being upon the terms hereinafter stated;

2. IT IS ORDERED that the resignation of the said Frederick Curzon Clarkson as liquidator of the said Abitibi Power & Paper Company Limited be and the same is hereby accepted.

3. AND IT IS FURTHER ORDERED that Roy Sharvell McPherson of the City of Toronto, in the County of York, be and he is hereby appointed Liquidator of the said Abitibi Power & Paper Company Limited to fill the vacancy in the office of Liquidator occasioned by the resignation of the said Frederick Curzon Clarkson, upon giving security 20 to the satisfaction of the Master of the Supreme Court of Ontario for the due performance of his duties.

4. AND IT IS FURTHER ORDERED that the said Frederick Curzon Clarkson shall forthwith deliver to the said Roy Sharvell McPherson all property, assets and securities in his hands as Liquidator as aforesaid; and that after passing his accounts before the Master of the Supreme Court of Ontario and upon having paid over, transferred and assigned the balance of the assets of the said Abitibi Power & Paper Company Limited as found on such passing of accounts, the said Frederick Curzon Clarkson be and is hereby relieved and discharged of and 30 from all liability heretofore arising or in any way connected with his dealings as Liquidator of the said Abitibi Power & Paper Company Limited, and that thereupon the security given by him for performance of his duties be delivered up to be cancelled.

5. AND IT IS FURTHER ORDERED that all costs, charges and expenses properly incurred by the said Frederick Curzon Clarkson in the winding up of the said Abitibi Power & Paper Company Limited, including the taxed costs of his solicitors, Messrs. Osler, Hoskin & Harcourt, Toronto, shall be paid out of the assets of Abitibi Power & Paper Company Limited coming into the hands of the said Roy Sharvell McPherson 40 as Liquidator.

6. AND IT IS FURTHER ORDERED that this order and the consent of the Hydro Electric Power Commission of Ontario thereto is without prejudice to any and all rights, objections and claims of the said Hydro Electric Power Commission of Ontario in certain pending proceedings styled "In the Matter of the Bankruptcy of Abitibi Power &

Paper Company, Limited, debtor; And In the Matter of the Bankruptcy and Winding-up Acts, being Chapters 11 and 213 of the Revised Statutes of Canada, 1927, and Amending Acts."

7. AND IT IS FURTHER ORDERED that the costs of all parties of this application be taxed and paid by the Liquidator out of the assets of the said Abitibi Power & Paper Company Limited coming into his hands.

"H. B. PALEN",
Assistant Registrar, S.C.O.

10 Entered O.B. 154 pages 117-18
December 27th, 1935
R.M.

No. 11

No. 11
Statement of Claim.
February 15, 1937.

Statement of Claim

(Writ issued the 8th day of September, 1932)

1. The Plaintiff is a Trust Company, incorporated by Special Act of the Legislature of the Province of Quebec and licensed to carry on business in the Province of Ontario. The Defendant, Abitibi Power & Paper Company Limited, is a Company duly incorporated by Letters Patent of the Dominion of Canada and having its head office in the Town
20 of Iroquois Falls, in the Province of Ontario. The Defendants, other than the Defendant, Abitibi Power & Paper Company Limited, were made parties defendant to this cause by order made herein the 13th day of September, 1935.

2. By Indenture and Mortgage dated as of June 1st, 1928, made between the Defendant, Abitibi Power & Paper Company Limited, of the First Part, the Plaintiff, as Canadian Trustee, of the Second Part, and The National City Bank of New York as Authenticating Trustee, of the Third Part, the Defendant, Abitibi Power & Paper Company Limited, did mortgage, pledge, and charge as and by way of a first and specific
30 first mortgage, pledge and charge to and in favour of the plaintiff and its successors in trust thereby created, the property and assets therein mentioned and described, whether then owned or thereafter acquired and did also charge to and in favour of the Plaintiff and its successors in the trust thereby created, its property and assets for the time being, both present and future, of whatsoever kind and wheresoever situate (other than the property and assets specifically mortgaged and charged thereunder), including its undertaking, goodwill, tolls, rents, incomes, moneys, rights, powers and privileges, as and by way of a first floating charge, all for the benefit of the holders of its First Mortgage Gold Bonds secured
40 thereby and for the purpose of securing payment of the principal and

In the Supreme Court of Ontario

No. 11
Statement of Claim.
February 15, 1937.

—continued

interest of the bonds issued and certified thereunder at any time outstanding and of all other sums from time to time due thereunder, and of all other moneys, if any, for the time being and from time to time owing on the security thereof and of the said bonds. Bonds designated as "First Mortgage Gold Bonds Series "A", 5%, due 1953" to an aggregate principal amount of $48,267,000., payable with interest at the rate of 5% per annum at the time and at the places set forth in the said Indenture and Mortgage are now outstanding thereunder and are entitled to the benefit of the security comprised in the said Indenture and Mortgage.

3. Under the said Indenture and Mortgage it is provided, inter alia, that the security thereby constituted shall become enforceable, subject to the terms thereinafter contained, if the Defendant, Abitibi Power & Paper Company Limited makes default in payment of any interest due on the bonds secured thereunder, or any of them, and any such default shall have continued for a period of sixty days. The Defendant, Abitibi Power & Paper Company Limited, made default in paying the half-yearly instalment of interest due the 1st day of June, 1932, on its said bonds and such default has continued, the said interest and all subsequent accruing interest remaining unpaid at the date hereof. The said Indenture and Mortgage further provides, inter alia, that in the event of a Liquidator, Receiver, Receiver and Manager, or Trustee in Bankruptcy being appointed to the Defendant, Abitibi Power & Paper Company Limited, the principal of all bonds outstanding thereunder shall, together with interest thereon, immediately become due and payable, anything therein or in the said Bonds contained to the contrary notwithstanding. By order of this Court dated the 10th day of September, 1932, Geoffrey Teignmouth Clarkson, of the City of Toronto, in the County of York, was appointed Receiver, on behalf of the Plaintiff and all holders of the First Mortgage Bonds of the Defendant, Abitibi Power & Paper Company, Limited, entitled to the benefit of the said Indenture and Mortgage securing the said bonds, of all the undertaking, property and assets of the Defendant, Abitibi Power & Paper Company, Limited, comprised in or subject to the security or charge created by the said Indenture and Mortgage, and also to manage the business and undertaking of the Defendant, Abitibi Power & Paper Company, Limited, and to act at once and until the trial or until further order. All conditions precedent to the Plaintiff's right to enforce the security comprised in the said Indenture and Mortgage have been fulfilled.

4. The Plaintiff therefore claims:

(a) a declaration that the holders of the bonds of the Defendant, Abitibi Power & Paper Company Limited, issued and certified under the said Indenture and Mortgage dated as of the 1st day of June, 1928, and now outstanding, are entitled to a first charge on the undertaking, property and assets of the said Defendant, comprised in and subject to the security created by the said Indenture and Mortgage;

(b) that the trusts of the said Indenture and Mortgage may be administered and carried into execution under the order and direction of this Honourable Court;
(c) the enforcement of the said security of the said Indenture and Mortgage by sale or foreclosure or otherwise;
(d) that an account be taken of what is due by the Defendant, Abitibi Power & Paper Company Limited, to the Plaintiff and all the holders of bonds secured by the said Indenture and Mortgage;
(e) payment by the Defendant, Abitibi Power & Paper Company Limited, of the amount found due upon the taking of the said account;
(f) that the said Geoffrey Teignmouth Clarkson may be continued as Receiver and Manager of the property, assets and undertaking of the Defendant, Abitibi Power & Paper Company Limited;
(g) the costs of this action;
(h) such further and other relief as this Honourable Court shall deem meet.

5. The Plaintiff proposes that this action shall be tried at the City of Toronto, in the County of York.

DELIVERED this 15th day of February, 1937, by Johnston, Tory & Johnston, 80 King Street West, Toronto, Solicitors for the Plaintiff.

No. 12

No. 12 Statement of Defence of Individual Defendants. February 16, 1937.

Statement of Defence of Individual Defendants

(Writ issued the 8th day of September, 1932)

1. The above named Defendants admit the allegations contained in paragraphs numbers 1, 2 and 3 of the Statement of Claim.

2. At a meeting of the holders of First Mortgage Gold Bonds of the Defendant, Abitibi Power & Paper Company Limited, issued under the Indenture and Mortgage dated as of June 1st, 1928, referred to in the 2nd paragraph of the Statement of Claim, and duly held at the City of Toronto on the 7th day of June, 1935, at which holders of bonds of the said issue of the par value of $28,871,500.00, principal amount, were present or represented by proxy, it was resolved that a Committee to be known as 'Bondholders' Representative Committee, Abitibi Power & Paper Company, Limited First Mortgage Gold Bonds' consisting of 7 members with power to appoint 2 or more of the members of the Committee as an Executive Committee should be and it was thereby constituted to represent the holders of First Mortgage Gold Bonds of Abitibi Power & Paper Company Limited in this action and in all other matters relating to the rights of the said Bondholders, and that such persons as may from time to time be members of the said Committee may, by the

In the Supreme Court of Ontario
—
No. 12
Statement of Defence of Individual Defendants.
February 16, 1937.
—continued

vote of a majority of such members, fill any vacancies which may from time to time occur in the said Committee, and that if it should seem to the said Committee to be in the best interests of the Bondholders, the said Committee should be and it was thereby authorized by the vote of a majority of the members of the said Committee then in office, from time to time to add one or more additional persons to its numbers so that the total number at any one time shall not exceed 10, and that the said Committee should be and it was thereby authorized to apply to this Honourable Court for an Order appointing it to represent the said Bondholders as a class in all of the proceedings relating to the said Defendant, Abitibi Power & Paper Company, Limited, before this Honourable Court, and that the original members of the said Committee should be elected by ballot at the said meeting. 10

3. The said resolution was carried by votes representing $28,842,500 principal amount of the said bonds cast in favour thereof against votes representing $25,000.00 of the said bonds cast against the said resolution.

4. By a further resolution passed at the said meeting the said Defendants Joseph P. Ripley, Stanton Griffis, Milton C. Cross, W. H. Somerville, Edward E. Reid, Andrew Fleming and W. A. Arbuckle, were unanimously appointed members of the said Committee. 20

5. By Order of the Supreme Court of Ontario dated the 13th day of September, 1935, it was ordered that the said Defendants, Joseph P. Ripley, Stanton Griffis, Milton C. Cross, W. H. Somerville, Edward E. Reid, Andrew Fleming and W. A. Arbuckle, be made parties Defendants to this cause, and it was further ordered, inter alia, that all holders of First Mortgage Gold Bonds of the Defendant, Abitibi Power & Paper Company Limited, are sufficiently represented in this action by the said Joseph P. Ripley, Stanton Griffis, Milton C. Cross, W. H. Somerville, Edward E. Reid, Andrew Fleming and W. A. Arbuckle, and that the said Joseph P. Ripley, Stanton Griffis, Milton C. Cross, W. H. Somerville, Edward E. Reid, Andrew Fleming and W. A. Arbuckle are to be considered as representing and do represent such holders of the said Bonds in this action, and that all such holders of the said Bonds be bound by the final result of the action. 30

6. These Defendants, Joseph P. Ripley, Stanton Griffis, Milton C. Cross, W. H. Somerville, Edward E. Reid, Andrew Fleming and W. A. Arbuckle, support the claims of the Plaintiff herein and submit that this Honourable Court should give effect thereto in all respects except that no order for costs should be made against these Defendants and that the Defendant, Abitibi Power & Paper Company Limited, should be ordered to pay the costs of these Defendants. 40

DELIVERED this 16th day of February, 1937, by Blake, Lash, Anglin & Cassels, 25 King Street West, Toronto, Solicitors for the Defendants, Joseph P. Ripley, Stanton Griffis, Milton C. Cross, W. H. Somerville, Edward E. Reid, Andrew Fleming and W. A. Arbuckle.

No. 13

Statement of Defence of the Defendant Abitibi Power & Paper Company Limited

In the Supreme Court of Ontario

No. 13
Statement of Defence of Abitibi Power & Paper Company Limited.
September 16, 1937.

1. This Defendant is defending this action by its Liquidator, Roy Sharvell McPherson, pursuant to an Order of the Master of this Honourable Court made in the matter of The Winding-Up Act and in the matter of Abitibi Power & Paper Company Limited on the 25th day of February, 1937.

2. This Defendant admits the allegations contained in paragraph 1 of the Statement of Claim and says that on the 26th day of September, 10 1932, this Defendant was ordered to be wound up under the provisions of the said Winding-Up Act (being Chapter 213 of the Revised Statutes of Canada, 1927) and Amending Acts, and Frederick Curzon Clarkson was appointed Liquidator of this Defendant. On or about the 20th day of November, 1935, the said Frederick Curzon Clarkson resigned as Liquidator and on the 20th day of December, 1935, the said Roy Sharvell McPherson was appointed Liquidator of this Defendant upon giving security, which security was duly given on the 27th day of December, 1935.

3. This Defendant says that the Defendants other than this Defend- 20 ant were struck out as parties to this action by Order of the Master herein made on the 25th day of February, 1937, which Order was reversed and set aside by an Order of the Honourable Mr. Justice MacKay made on the 10th day of March, 1937. This Defendant has duly applied for leave to appeal from the said Order of the Honourable Mr. Justice MacKay and that application has been adjourned by consent sine die to be brought on by any party on two days' notice. This Defendant says that the said other Defendants are no longer necessary or proper parties to this action and are not entitled to costs from this Defendant as claimed by their Statement of Defence herein.

30 4. As to paragraph 2 of the Statement of Claim, this Defendant says that the Indenture and Mortgage dated as of 1st June, 1928, was beyond the powers of the parties thereto and was not properly authorized by the shareholders of this Defendant to the knowledge of the Plaintiff and it is not valid or binding upon this Defendant.

5. This Defendant pleads the provisions of the Loan and Trusts Corporation Act (being Chapter 223 of the Revised Statutes of Ontario, 1927), and amending Acts, The Extra-Provincial Corporations Act (being Chapter 219 of the Revised Statutes of Ontario, 1927) and amending Acts, and The Mortmain and Charitable Uses Act (being Chapter 132 of 40 the Revised Statutes of Ontario, 1927) and says that the true intent and effect of the said Indenture and Mortgage is to enable The National City Bank of New York, being the dominant Trustee thereunder, to act as Trustee, to do business and to hold interests in land in the Province of

In the Supreme Court of Ontario

No. 13
Statement of Defence of Abitibi Power & Paper Company Limited. September 16, 1937.

—continued

Ontario contrary to the said Statutes. This Defendant therefore says that the said Indenture and Mortgage is illegal, void and unenforceable and confers no mortgage pledge or charge to or in favour of the Plaintiff or any other person or persons.

6. This Defendant further says that this Defendant did not receive the sum of $48,267,000.00 referred to in paragraph 2 of the Statement of Claim.

7. As to paragraph 3 of the Statement of Claim, this Defendant refers to the said Indenture and Mortgage for the terms and effect thereof and admits that Geoffrey Teignmouth Clarkson was appointed Receiver by Order of this Court on behalf of the Plaintiff and certain bondholders as alleged in the said paragraph, but this Defendant says that the principal of all bonds outstanding under the said Indenture and Mortgage did not thereby become due and payable before action was brought. This Defendant does not admit that all conditions precedent to the Plaintiffs' right to enforce the security comprised in the said Indenture and Mortgage have been fulfilled and repeats and relies upon the facts herein set forth and further says that no sufficient demand in accordance with the said Indenture and Mortgage has been made by the Trustees.

8. As to paragraph 4 of the Statement of Claim, this Defendant does not admit that the Plaintiff is entitled to the relief claimed. This Defendant says that substantial portions of the undertaking, property and assets referred to in the said paragraph 4 are not situate within the jurisdiction of this Honourable Court and that this Honourable Court has no jurisdiction to grant the relief claimed in the said paragraph so far as the relief relates to the said portions and to the administration and execution of trusts beyond the jurisdiction of this Honourable Court.

9. This Defendant further says that the Plaintiff cannot reconvey the property under the said Indenture and Mortgage, having alienated and assigned large portions of the said property, and in any event cannot reconvey the said property without the consent in writing of the dominant Trustee, The National City Bank of New York, which is not a party to this action and which has no power to do business, to act as Trustee, to reconvey or to consent to the reconveyance of such of the said property as is situate in Ontario.

10. This Defendant does not admit that any sum is due by it to the Plaintiff and all the holders of bonds secured by the said Indenture and Mortgage.

11. This Defendant pleads the provisions of the said The Winding-Up Act, The Bankruptcy Act (being Chapter 11 of the Revised Statutes of Canada, 1927) and amending Acts, and The Companies' Creditors' Arrangement Act, 1933 (being Chapter 36 of the Statutes of Canada 23, 24 George V) and says that save in so far as this action is for a declaration that the holders of the said bonds are entitled to a first charge on the undertaking, property and assets of the Defendant within the jurisdiction of this Honourable Court, this Court in this action has no jurisdic-

tion to determine the extent and effect of such a charge and the respective priorities of the creditors of the Defendant whether secured or unsecured.

12. This Defendant, by its Liquidator, submits its rights to this Honourable Court.

FILED and DELIVERED this 16th day of September, 1937, by Rowell, Reid, Wright & McMillan, 38 King Street West, Toronto, Solicitors for the Liquidator of the Defendant, Abitibi Power & Paper Company Limited.

No. 14

Formal Judgment of Kingstone J. at Trial

No. 14
Formal Judgment of Kingstone, J., at trial.
November 3, 1937.

THE HONOURABLE MR. JUSTICE KINGSTONE } Wednesday, the 3rd day of November, 1937.

1. This action coming on for trial on the 26th day of October, 1937, before this Court at the sittings holden at Toronto for trial of actions without a jury, in the presence of Counsel for all parties, upon hearing read the pleadings, the admissions of fact by all parties, and upon hearing the evidence adduced, and what was alleged by Counsel aforesaid, this Court was pleased to direct this action to stand over for judgment, and the same coming on this day for judgment.

2. THIS COURT DOTH DECLARE that the Plaintiff and the holders of bonds of the Defendant Company issued under the Indenture and Mortgage dated as of June 1, 1928, in the pleadings mentioned are entitled to a first charge upon the undertaking, property and assets of the Defendant Company for payment of all moneys secured by the said Indenture and Mortgage, and by the bonds issued and outstanding thereunder, and that the trusts of the said Indenture and Mortgage ought to be performed and carried into execution, and doth order and adjudge the same accordingly;

3. AND THIS COURT DOTH FURTHER ORDER that the Receiver and Manager appointed by order dated September 10, 1932, be continued;

4. AND THIS COURT DOTH FURTHER ORDER that any of the parties shall be at liberty to apply as they may be advised;

5. AND THIS COURT DOTH ORDER that further directions and costs be reserved.

In the Supreme Court of Ontario

No. 14
Formal Judgment of Kingstone, J. at trial. November 3, 1937.
—continued

"JUDGMENT SIGNED this 6th day of November, 1937,

"D'ARCY HINDS,
Registrar, S.C.O."

O.K.
"E.G.M."
O.K.
"B.L.A. C."
Entered J.B. 70 page 483
November 6, 1937.
H.F.

10

No. 15
Reasons for Judgment of Kingstone, J. November 3, 1937.

No. 15

Reasons for Judgment of Kingstone J.

S. C. O.

MONTREAL TRUST
v.
ABITIBI POWER CO.

Copy of Reasons for Judgment of Kingstone J., delivered November 3, 1937.
STRACHAN JOHNSTON, K.C., J. S. D. TORY, IAN S. JOHNSTON, for the Plaintiff.
R. S. ROBERTSON, K.C., E. G. MCMILLAN, K.C., PETER WRIGHT, for the defendant, Abitibi Power & Paper Company, Limited, and for Roy Sharvell McPherson, the Liquidator of the said Company.
20
W. N. TILLEY, K.C., GLYN OSLER, K.C., JOHN R. CARTWRIGHT, K.C., for the individual defendants.

November 3rd, 1937. KINGSTONE, J.:—An action for a declaration that a bond mortgage given by the defendant company to the plaintiff and the National City Bank of New York is a valid and first charge upon the assets of the defendant company, and for consequential relief.

A summary of the facts is necessary to an understanding of what are the issues between the parties. The Abitibi Power & Paper Company 30 was incorporated under The Companies Act by letters patent on the 9th February, 1914. On the 18th February, 1914, a by-law was passed by the directors, and ratified at a special general meeting of the shareholders, authorizing the directors to borrow money on the credit of the company. On the 30th May, 1928, at a meeting of the board of directors, a resolution was passed creating an issue of bonds, the total aggregate principal of which was not to exceed seventy-five million dollars ($75,000,000.) Bonds to the aggregate principal amount of fifty million dollars ($50,000,000.) were authorized for immediate use. By this resolution the plaintiff (Montreal Trust Company) and the National City Bank of New York 40 were appointed trustees for the bondholders under the indenture and

mortgage which was to be given by the company to secure the said bonds. This resolution contained the following clause:

"That the draft or outline of the indenture and mortgage from this company to Montreal Trust Company and the National City Bank of New York drawn to secure the said issue of bonds which may from time to time be issued in accordance with its provisions to a total aggregate principal amount at any one time outstanding of seventy-five million dollars ($75,000,000), which draft or outline has been submitted and read to this meeting, be and the same is hereby approved as containing a correct statement or outline of the terms and conditions upon which the said bonds are to be issued and secured, and conveying, assigning, mortgaging, pledging, charging, ceding and transferring to the said trustees, either by way of a first fixed and specific charge or a floating charge, in the said principal amount of seventy-five million dollars ($75,000,000), and interest at the rate which said bonds bear, and of all other moneys from time to time due and payable thereunder, all the undertaking, real, immoveable, personal and moveable property, assets, shares, stock, bonds, securities, rights and incomes of the company, whether now owned or which may hereafter be acquired as therein stipulated, be and the same is hereby approved, and that an indenture substantially in the same form and terms as outlined and disclosed in said draft, but with such amendments or variations, additions and amplifications as the president or a vice-president of the company may deem it expedient to make or approve, and all other deeds necessary and supplemental thereto, be executed and delivered for and in the name and on behalf of the company by the president or a vice-president and the secretary or assistant secretary of the company and that the company's seal be thereto affixed; and that the approval of the president or a vice-president of the company of any amendment or variation, addition and amplification in the form of the said indenture and mortgage shall be conclusively proved by the fact of his execution of the said indenture and mortgage."

On the 27th June, 1928, by an agreement in writing, the National City Bank agreed to buy from the defendant company fifty million dollars ($50,000,000) face amount first mortgage gold bonds. The mortgage dated June 1, 1928, made between the defendant company and the plaintiff and the National City Bank of New York was executed by the parties thereto on the 10th and 13th August, 1928. This mortgage which is in question in this action was made by the company to the plaintiff as Canadian trustee and the National City Bank of New York as authenticating trustee for the purpose of securing an immediate issue of first mortgage gold bonds series "A" to the aggregate principal amount of fifty million dollars ($50,000,000). These bonds were executed by the company and delivered to the authenticating trustee certified to by it and subsequently issued by the defendant company. Neither at the date of the execution of the said mortgage nor at any subsequent date was the National City Bank of New York registered as a trust company or otherwise under The

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—continued

Loan and Trust Corporations Act, R.S.O. 1927, ch. 223, nor was it licensed under The Extra Provincial Corporations Act, R.S.O. 1927, ch. 219. On the 1st June, 1932, the defendant company made default in payment of the interest due on that date and there were then, and are now, outstanding bonds of the principal amount of some $48,267,000. On the 27th August, 1932, the plaintiff and the National City Bank of New York by letter demanded payment of this principal amount.

The plaintiff, in whom the title to the lands and property was vested under the mortgage, on the 8th September, 1932, issued a writ in this action claiming certain specific relief, and on the 10th September, by an order of this Court, G. T. Clarkson was appointed receiver and manager of the defendant company. Mr. Clarkson, as such receiver and manager, took possession of the undertaking, property, and assets of the defendant company and proceeded to manage the business and undertaking of the company. On the 26th September, 1932, the defendant company was adjudged a bankrupt, and a receiving order made against it. It was declared insolvent and ordered to be wound up under the provisions of The Winding-Up Act, R.S.O. 1927, ch. 213, and F. C. Clarkson was appointed liquidator. An order of this Court was made on the 13th September, 1935, adding the individual defendants as parties defendant to this cause, and on the 20th December, 1935, F. C. Clarkson, having resigned, Roy Sharvel McPherson was appointed liquidator in his place.

This action, by reason of the default in payment of the interest as above, is brought to enforce the plaintiff's rights under the mortgage in accordance with the provisions of the document as therein set out, and is defended by the company, through its liquidator, on the ground that the mortgage was and is illegal, void, and unenforceable, and conferred no charge to or in favour of the plaintiff. Although other matters were raised in the pleadings, by agreement of counsel at the trial the real issue between the parties was confined to the single question whether the mortgage was, and is, a valid and first charge upon the undertaking, property, and assets of the defendant company.

Mr. Robertson, for the liquidator, attacks the validity of the mortgage on two grounds. First, that it was not authorized by the resolution of the directors, which is set out in part above. He contends that the mortgage that was authorized by this resolution is substantially different to the document that was finally drawn up and executed. He complains that there are a great many changes in the wording of the two mortgages, and, in particular, that the authority given to execute the mortgage to two trustees had been altered in its final form so as to provide that the vesting, transferring, and charging of the property was made in favour of only one trustee, viz., the plantiff, and that these alterations, which were substantial and important, made with the full knowledge of the plaintiff, did not receive the sanction of the board of directors.

The second ground of alleged invalidity that is urged is that the

National City Bank of New York, the authenticating trustee, was not, and is not, registered under The Loan and Trust Corporations Act, R.S.O. 1927, ch. 223, above referred to.

Dealing with the last objection the relevant section of this Act is section 135 (1) which reads:

"No incorporated body or person acting in its behalf, other than a registered corporation, and a person duly authorized by it to act in its behalf shall undertake or transact the business of a . . . trust company in Ontario."

10 It is submitted on behalf of the liquidator that there are many things contemplated and carried out under the provisions of this mortgage, which was a mortgage by an Ontario company upon Ontario assets, clearly establishing that the New York trustee was intended to act, and did, in fact, act as a trust company, although unregistered, thereby constituting a clear breach of the provisions of this section. Several illustrations are instanced by counsel showing the duties that the New York trustee was called upon to perform in connection with the trust, either separately or in conjunction with the Canadian trustee:

(a) The Canadian trustee is not to proceed in suits or actions without the consent in writing of the New York trustee;
20
(b) The proviso for the trustees releasing bonds of subsidiary corporations;
(c) For calling meetings of bondholders;
(d) Demands for payment of mortgage moneys;
(e) Payments into sinking fund for the retirement of bonds, which moneys the New York trustee was to have control of;
(f) The joining by the New York company in all releases;
(g) The control of the final discharge of the mortgage.

These acts by the New York trustee, it is strongly argued, constitute 30 essentially "the undertaking or transacting of the business of a trust company in Ontario" and, being prohibited by the Act, render the transaction void and invalidate the security. The case of *Harrison v. Nepisquit Lumber Company* (1911), 11 E.L.R. 314, is cited in support of the principal that where an American company, unregistered, assumes to act as trustee under a bond mortgage contrary to the provisions of the New Brunswick Act, the mortgage itself is bad. In that case the mortgage was given direct to a foreign trustee on property in New Brunswick.

The cases seem to establish that the law is clear that, where a penalty is imposed by Act of Parliament upon any transaction, the transaction 40 will be illegal, though it is not expressly prohibited by the Act, and it is not necessary that the Act should declare that a contract prohibited by the Act is void. The cases quoted in support of this statement are: *Melliss v. Shirley and Freemantle Local Board of Health* (1885), 16 Q.B.D. 446; *Bonnard v. Dott* (1906), 1 Ch. 740; *Shaw v. Benson* (1883), 11 Q.B.D. 563, 52 L.J.Q.B. 575; *Bellamy v. Porter* (1913), 28 O.L.R. 572; *Greenberg v. Cooperstein,* (1926) 1 Ch. 657.

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Mr. Robertson argues that the acts of the New York trustee constituted "undertaking or transacting the business of a trust company in Ontario," and being prohibited by the above statute, the statute must be obeyed, and the transaction is invalid. If it is not prohibited, and there is a penalty imposed, as there is in the Ontario Act, upon the doing of it the same result follows and the document and all that flows from it is illegal and void.

The Loan and Trust Corporations Act, R.S.O. 1927, ch. 223, is an Act that strikes at the carrying on of business in the Province by unregistered loan and trust companies, so that the public, dealing with them in Ontario, will be protected. That, obviously, is the purpose of this Act. **10**

A trust company is defined in section 1(q) as "a company constituted or operated for the purpose of acting as trustee, agent, executor, etc."

As pointed out by Mr. Tilley, reading the definition of section 1. (q) with section 135 (1), it is clear that it is the undertaking or transacting of the business of a trust company in Ontario by an unregistered company that the Act is prohibiting, not the single act or transaction. It has to do with the activities of the company as a company, not the isolated contract. The ordinary operations and the general character of the company's business must determine whether it is within the prohibition or not: *Euclid Ave. Trust Company v. Hohs* (1911), 24 O.L.R. 447. **20**

Here the question raised is whether the trust company falls within the statute by being a party to a mortgage which has to do with Ontario assets. If the New York company does offend against the statute by carrying on in Ontario as an unregistered company, does that fact of itself invalidate the mortgage? I think not.

In the cases quoted by Mr. Robertson where you find that an act is prohibited and the doing of an act is punishable, that act is illegal and rights cannot accrue from it. Under our Act, while a penalty is imposed, on an unregistered company for transacting the business, there is nothing that says the thing done, the transaction itself, is invalid or void. **30**

In the case of *Shaw v. Benson* (1883), 11 Q.B.D. 563, 52 L.J.Q.B. 575, at p. 579, Brett M.R., uses these words:

"It was argued that the mere fact of the plaintiff being the trustee of an illegal society would prevent him from recovering on behalf of the society upon the contract of loan of money which the defendants have had. But I am unable to agree to that proposition. If the objection had been based merely upon the fact of the society being illegal, I should not have thought that that fact would have made the contract itself illegal— The question therefore is, whether the contract is illegal." **40**

Even if it could be said that the New York company by the obligations it assumed falls within the prohibition of the Act, I cannot think, and I do not so hold, after a careful reading of this statute, that the Legislature intended to make contracts such as this one, involving heavy obligations on the part of the trust company illegal, void and unenforce-

able. But after reviewing the various activities of this American company under the mortgage, such as certifying and supervising securities and giving its consent to the doing of certain acts by the plaintiff company, I have reached the conclusion that these things do not necessarily make it a trustee or trust company in Ontario. As pointed out the Abitibi Company is a Dominion company doing business largely with people living in the United States, and it would seem to be reasonable if not essential, that there should be some person or company in the United States associated with the plaintiff company for the protection of
10 bondholders resident there and having a voice in the acquiring of or disposing of securities which are the subject of this mortgage.

That such an arrangement made by a foreign company with a trust company in Ontario, in whom the title to the property is vested, ipso facto makes that foreign company a trust company in Ontario I do not believe and cannot so find.

The first objection, urged by Mr. Robertson, that the original draft or outline of the mortgage as authorized by the board of directors, has been so altered and modified as to render it a different contract to that sanctioned by the Board, is in my opinion not tenable. A printed form
20 of mortgage, changed to show all the differences between the mortgage as signed and the original draft, was placed in my hands for perusal. The completed and executed document was really a carrying out of the scheme embodied in the original draft. The plaintiff company is the sole trustee for the purpose of taking the security and holding it, and under the original draft, though not so stated, it was clearly indicated that if for any reason the National City Bank was not permitted to take lands as a trustee, or become a trust company in Ontario, the plaintiff automatically would be the sole trustee for taking the security and holding it. The mortgage as executed merely puts into concise language, and more
30 accurately, what in general terms is set out and clearly authorized in the original draft. The resolution of the directors set out above gave the president, or vice-president, of the company wide powers to alter the original draft or outline. We find these words: "Such amendments, or variations, additions and amplifications as the president or vice-president of the company may deem it expedient to make or approve." And again later on: "And that the approval of the president or a vice-president of the company of any amendment or variation, addition and amplification in the form of the said indenture and mortgage shall be conclusively proved by the fact of his execution of the said indenture and mortgage."

40 The vice-president, L. R. Wilson, did execute the mortgage, thereby expressing his formal approval of the document in its final and completed form.

I hold and declare that this indenture and mortgage is an indefeasible first charge upon the undertaking, property and assets of the defendant company for the payment of all moneys secured by the said indenture

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and mortgage, and that the trusts of the said indenture and mortgage ought to be performed and carried into execution.

The liquidator, who on behalf of the Abitibi Company defended this action, is an officer of the Court and as such has an obligation to submit the rights of all interested parties to the Court. It is questionable, however, whether in such a case as this there is any real justification for the attack made on the validity of this mortgage on the grounds advanced by him. What good purpose is served by raising and pressing specious, narrow and technical objections to the legality of a document that broadly speaking, has served the purpose of protecting millions of dollars of investors' money and in which there is no suggestion of fraud or improper conduct on the part of anyone, is difficult to understand or appreciate. The reason or explanation for such a course as taken by this liquidator may exist, but it does not appear from the pleadings and proceedings or on the trial of this action.

No. 16
Order of Middleton, J.A. directing sale of property of Defendant Abitibi Power & Paper Company Limited.
June 10, 1940.

No. 16

Order of Middleton J.A. Directing Sale of Property of Defendant Abitibi Power & Paper Company Limited

THE HONOURABLE MR. JUSTICE MIDDLETON } Monday, the 10th day of June, 1940.

Upon motion made unto this Court on the 8th day of June, 1940, by counsel on behalf of the Plaintiff, in the presence of counsel for Geoffrey Teignmouth Clarkson, Receiver and Manager of the property, assets, and undertaking of the Defendant Abitibi Power & Paper Company Limited appointed by order of this Court dated the 10th day of September, 1932; and in the presence of counsel for the Defendants other than the Defendant Abitibi Power & Paper Company Limited; and in the presence of counsel for Roy Sharvell McPherson, Liquidator of the Defendant Abitibi Power & Paper Company Limited appointed by order of this Court bearing date the 20th day of December, 1935; and upon hearing read the Notice of Motion dated, served and filed herein on the 20th day of May, 1940; the affidavit of John F. Hobkirk and the exhibits therein mentioned, the affidavits (2) of Richard George Meech, also filed; the affidavit of G. Harold Fisk, filed; and the respective exhibits mentioned in the said affidavits; and upon hearing read the judgment pronounced in the action by the Honourable Mr. Justice Kingstone on the 3rd day of November, 1937, after the trial; and upon hearing what was alleged by counsel aforesaid; and judgment on the motion having been reserved until this day.

1. THIS COURT DOTH ORDER that the undertaking, property and assets of the Defendant Abitibi Power & Paper Company Limited,

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No. 16
Order of Middleton, J.A. directing sale of property of Defendant Abitibi Power & Paper Company Limited. June 10, 1940.

—continued

including all property and assets in the possession or control of the said Geoffrey Teignmouth Clarkson, Receiver and Manager of the property of the said Defendant Abitibi Power & Paper Company Limited, be sold on Wednesday, the 16th day of October, 1940, under the direction of the Master of the Supreme Court and that the purchase money be paid into Court to the credit of this action subject to further order and that the said Master do report to this Court pursuant to the practice and procedure in that behalf.

2. AND THIS COURT DOTH FURTHER ORDER that any Bondholder or Bondholders shall be at liberty to bid at the sale and become a purchaser or purchasers and shall in connection with such sale have all the powers and privileges conferred on him or them by the Indenture securing the said Bonds, including and without limiting the generality of this provision all rights and privileges conferred on him or them by Paragraph 34 of the said Indenture.

3. AND THIS COURT DOTH FURTHER ORDER that the said Receiver and Manager be continued as Receiver and Manager until further order.

4. AND THIS COURT DOTH FURTHER ORDER that liberty be reserved to all or any party or parties to apply for such further or other order as may be deemed necessary.

5. AND THIS COURT DOTH FURTHER ORDER that the costs of this motion, the costs of the proceedings hereby directed, any and all costs reserved for disposition and any costs not heretofore the subject of any order but proper to be allowed in and chargeable to the proceedings shall be reserved for disposition upon any motion to confirm the report of the Master or on any motion for further directions or otherwise.

"CHAS. W. SMYTH",
Registrar, S.C.O.

Entered O.B. 175, page 354-5
June 17th, 1940.
E.B.

In the Supreme Court of Ontario

No. 17
Reasons for Judgment of Middleton, J.A.
June 10, 1940.

No. 17

Reasons for Judgment of Middleton J.A.

W.C.O.
MONTREAL TRUST COMPANY
v.
ABITIBI POWER AND PAPER COMPANY LIMITED, et al.

WEEKLY COURT

Copy of Reasons for Judgment of Middleton J.A., delivered June 10th, 1940.

W. N. TILLEY, K.C., and STRACHAN JOHNSTON, K.C., for the plaintiff.
W. HEIGHINGTON, K.C., for the receiver.
D. L. McCARTHY, K.C., and E. G. McMILLAN, K.C., for the liquidator. 10
C. R. MAGONE, K.C., for the Attorney-General of Ontario.
GLYN OSLER, K.C., for the bondholders representative committee.
PETER WHITE, K.C., and E. BRISTOL, K.C., for minority bondholders.
R. O. DALY, K.C., for the joint committee of holders of junior securities.
K. W. FRASER, K.C., for the protective committee for general creditors.

June 10th, 1940. MIDDLETON, J.A.:—A motion on behalf of the plaintiff for an order that all the real and personal property, assets and effects of the defendant The Abitibi Power and Paper Company Limited, 20 including its undertaking, rights, privileges and franchises, and including all property and assets in the possession of the receiver and manager, be immediately sold with the approbation of the Judge presiding, made in the presence of counsel for the company, and counsel for the individual defendants, and also in presence of counsel for the Attorney-General of the Province of Ontario, and of counsel for other ceditors and individual bondholders of the defendant company.

It appears that on the 3rd of November, 1937, a judgment was pronounced by the Honourable Mr. Justice Kingstone before whom the action came on for trial, declaring that the plaintiff and the holders of 30 the bonds of the defendant company issued under the indenture of mortgage in the pleadings referred to, were entitled to a first charge upon the undertaking, property and assets of the defendant company for payment of all moneys secured by the said indenture of mortgage and by the bonds issued and outstanding thereunder, and that the trusts of the said indenture of mortgage ought to be performed and carried into execution and continuing the receiver and manager appointed on September 10th, 1932. Any of the parties to the action were to be at liberty to apply as they might be advised.

The action as originally constituted was brought against the company for the purpose of enforcing the bond mortgage in the pleadings referred to.

Before the hearing it appearing to me that the beneficiaries under the bond mortgage ought to be added as parties in a representative way, to that end I directed that Ripley, et al be added as parties defendant, these added defendants being a committee representing the interests of the majority of the bondholders.

Bonds to the amount of $60,000,000 had been issued. The undertaking is a vast one and the bonds have been in default for over eight years, and no one suggests that a redemption of the bonds is practicable, or that any good purpose would be served by directing an account to 10 be taken of the amount due the bondholders fixing a day for redemption.

Nearly three years ago an endeavour was made to bring about a reorganization and, to secure this being given favourable effect to, the bondholders proposed to make some concession to the junior securities and simple contract creditors. This was very strenuously resisted and the case was taken to the Court of Appeal which held that the statute relied upon by those seeking to have the scheme approved was ultra vires of the Province.

The bondholders have allowed matters to remain quiescent for upwards of two years, and nothing has been done. War has broken out, 20 no moratorium Act has been passed, and at the present time the bond creditors think that the security should be enforced notwithstanding the admitted disadvantages of any attempted realization while war conditions prevail for they fear that whether successful in the war or not the conditions of defeat or victory will prevent a successful reorganization.

In the meantime the receiver and manager has been in charge of the affairs of the company. He has been managing the company with great success, but no one can tell when, notwithstanding his ability and diligence, affairs may take such a turn as will render it quite impossible for him to continue to have even the measure of success in the future 30 that he has had in the past.

It is to be borne in mind that the receiver and manager has not so far been able to pay anything on account of the indebtedness of the company. The amount due bondholders remains not constant but an ever increasing indebtedness. The arrears now due upon the bonds amount, pending this litigation to about $24,000,000, and the bondholders are anxious to realize something upon their securities.

Mr. Meech, a solicitor, representing as chairman a joint committee, representing the committee for the general creditors, secondly, the preferred shareholders committee, thirdly, the common stockholders com- 40 mittee, is opposed to what is proposed by the plaintiff and by sixty per cent. of the bondholders. He files an affidavit in which he produces a strong letter written by himself, but he does not swear to the accuracy of the statements of opinion and fact contained in this letter. He produces also a vigorous telegram by Mr. Gibson, a member of the joint committee. This communication is not in any way verified as to its statements. He produces also some plans of reorganization which were

In the Supreme Court of Ontario

No. 17
Reasons for Judgment of Middleton, J.A.
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rejected and certain prospectuses issued by the mortgagor company which contain statements of the value of the assets, which statements are not borne out by the facts, and are not in any way binding upon the mortgagees or the bondholders represented by them.

Mr. Meech further points out a great improvement in the position of the current assets as of June 30th, 1937, and April 30th, 1930, and also that the sundry liabilities, which I take it means the liabilities for which the manager of the assets in his hands is responsible, have greatly decreased, but these figures themselves, very hard to understand, do not indicate that the bond interest is secured in any better way. Mr. Meech does not suggest that there is any possibility of the realization, which has been directed to take place, resulting in any surplus over and above the amount due upon the bonds. No one else has suggested on oath that there is any possibility of this resulting.

In essence the contention seems to be to compel the holders of these preferred bonds to pay something further to their mortgagors as creditors in order to secure enforcement of their securities. Surely eight years delay in realization ought to satisfy even the most optimistic of those concerned of the impossibility of this.

My duty, therefore, I think, is to forward the interest of the first mortgagee bondholders and to allow them to assert their rights without being in any way influenced by considerations that are not strictly before the Court.

I was much impressed by the attitude taken by the Attorney-General and Government of the Province. Mr. Magone appeared as representing the Attorney-General and the Government to warn me that some of the licences to cut timber have been forfeited or may be forfeited and that the Government was not to be taken as in any way assenting to the jurisdiction of the Court to enforce the security. This is undoubedly true. All the Court can do is to attempt to enforce the security, leaving the parties and others to bring such influence to bear upon the powers that be as may be possible.

It seems to me that for the sake of those who have invested money in the purchase of these bonds much might be said as to the duty of the Government to facilitate their realization. That, however, is not a question for me, and I think I should not be influenced by any outside consideration.

I therefore make an order directing the publication of advertisements to be carefully settled by the Master looking to the sale of the properties in October of this year. These advertisements should not be the long affairs sometimes seen enumerating in detail all the properties, but should refer to descriptions lodged in the Master's office or elsewhere, and give merely a general summary of the properties, and the facts as to the timber licenses should be stated.

No. 18

Report of the Master S.C.O.

Pursuant to the Order pronounced herein by the Honourable Mr. Justice Middleton on the 10th day of June, 1940, I have in the presence of Solicitors for all parties to this action settled an Advertisement and Conditions of Sale for the sale of the undertaking, property and assets of the Defendant, Abitibi Power & Paper Company, Limited, mentioned or referred to in the said Order, and such Advertisement and Conditions of Sale as settled were according to my directions published on the 8th, 10 15th, 22nd and 29th days of August, 1940, in The Globe and Mail and the Evening Telegram, being newspapers published at the City of Toronto, and in the Montreal Star, a newspaper published at the City of Montreal, and in The New York Times, a newspaper published at the City of New York, U.S.A., and in The Chicago Daily Tribune, a newspaper published at the City of Chicago, U.S.A. The said Advertisement and Conditions of Sale were also published with my approval in The Gazette, a newspaper published at the City of Montreal, and in addition thereto, in accordance with my directions, short notices of the sale were published in two issues during the said month of August in the papers 20 known as The Financial Post, Toronto, The Financial Times, Montreal, and The Wall Street Journal, New York.

Prior to the date of sale, with the consent of the Solicitors for all parties, I conferred with Geoffrey Teignmouth Clarkson, Esquire, the Receiver and Manager of the undertaking, property and assets of Abitibi Power & Paper Company Limited to ascertain the facts which I thought requisite in order to enable me to fix the reserve bid, and on the 16th day of October, 1940, the said undertaking, property and assets were offered by me for sale by public auction pursuant to the said Order and in accordance with the said Advertisement and Conditions of Sale, and such 30 sale was conducted in a fair, open and proper manner.

One H. J. Symington, of the City of Montreal, bid the sum of $30,000,000 for the said undertaking, property and assets. On my asking for further bids, one E. B. Kernaghan referred me to a document purporting to be an offer on behalf of International Service Company, of Toronto, of the sum of $40,300,000, and setting out certain terms, which document had been handed to me before the bidding commenced. I stated that, in my opinion, in view of the conditions of sale, the document was not a bid which I could consider. I then asked if there were any further or other bids. No further or other bid was made. Neither the 40 bid of the said H. J. Symington nor the purported bid of International Service Company was equal to or greater than the amount of the reserve bid which I had fixed, and the sale therefore proved abortive.

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Report of the Master S.C.O. October 24, 1940.

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All of which having been proved to my satisfaction by proper and sufficient evidence I humbly certify.

DATED at Toronto this 24th day of October, 1940.

"F. H. BARLOW",
Master.

No. 19
The Abitibi Power & Paper Company Limited Moratorium Act, 1941.
April 9, 1941.

No. 19

The Abitibi Power & Paper Company Limited Moratorium Act, 1941

An Act respecting a Certain Bond Mortgage made by the Abitibi Power & Paper Company Limited to the Montreal Trust Company. 10

Preamble.

Whereas the Abitibi Power & Paper Company Limited, incorporated under the Dominion Companies Act, owned and operated newsprint mills in the Provinces of Ontario, Quebec and Manitoba;

And whereas by mortgage dated June 1st, 1928, the Abitibi Power & Paper Company Limited mortgaged all its assets and undertakings to secure an issue of First Mortgage Bonds to the Montreal Trust Company, the trustees under the Bond mortgage;

And whereas it appears that the said Company defaulted in the payment of interest due on the said First Mortgage Bonds 20 on June 1st, 1932, and nothing has been paid since that date, and action was taken in the courts in 1932 by the Montreal Trust Company, the trustees under the bond mortgage, to enforce its security; that since that time various proceedings have been taken in the courts and on June 10th, 1940, an order was made directing the sale of all the undertakings, property and assets of the said Abitibi Power & Paper Company Limited; that in pursuance of this order the undertakings, property and assets of the said Company were offered for sale by the Master of the Supreme Court of Ontario by public auction but the sale proved 30 abortive because the only bid received was less than the amount of the reserve bid fixed by the Master, that subsequently an application was made for an order that the said property, assets and effects of the said Company should be immediately sold without a reserve bid being fixed, but the motion was adjourned *sine die* with leave to bring it on on one week's notice;

And whereas during the court proceedings above referred to the Government of Ontario in the year 1937 entered into an agreement with the Montreal Trust Company, the trustees under the bond mortgage, the Receiver and the Abitibi Power & Paper 40

Company Limited acting by its Liquidator, which provided that the Government would renew certain pulpwood cutting agreements if the said Company became reorganized or rearranged or if its assets were sold to a new Company on a basis sanctioned by the Supreme Court and in any case on a basis satisfactory to the Government within one year from the date of the said agreement, or within such further time as the Government might consent; and whereas by Order of the Honourable the Lieutenant-Governor in Council dated March 9th, 1939, it was provided that
10 if and when a reorganization or a rearrangement of the said Company was duly completed, or if and when a sale of the entire undertaking and assets of the said Company was duly approved or directed by the Supreme Court of Ontario and the sale duly completed that such reorganization, rearrangement or sale should be deemed a basis satisfactory to the Government; and whereas the said order-in-council of March 9th, 1939, was rescinded by order-in-council dated October 24th, 1940;

And whereas a Royal Commission was appointed by Order of the Honourable the Lieutenant-Governor in Council dated the
20 1st of November, 1930, comprising the Honourable Charles Patrick McTague, Justice of Appeal of the Supreme Court of Ontario, Albert Edward Dyment, Esquire, and Sir James Dunn, Baronet, "to enquire into the affairs and financial and corporate structure of the Abitibi Power & Paper Company Limited with a view to recommending an equitable plan for solving the financial difficulties of the Company so that the Company may be in a position to meet conditions, regulations and restrictions which the Lieutenant-Governor in Council may consider necessary upon the grant or renewal of the hereinbefore recited leases, licenses,
30 water power rights, flooding rights, licenses of occupation and other rights, powers or privileges; and generally to make such recommendations in the premises as appear to be in the best interests of all parties concerned, including the Province of Ontario;" and whereas the said Royal Commission has reported to the Honourable the Lieutenant-Governor in Council *inter alia* that existing legislation relevant to the reorganization of companies is inadequate to meet the situations that arise when companies are in financial difficulties; that the said Company is dependent for its supply of pulpwood upon the Crown lands of
40 the Province of Ontario; that it also requires large quantities of power in respect of which it is dependent upon leases from the Province of Ontario; that the assistance of the Government must be a largely contributing factor in the success of the enterprise and that the Government would be justified in trying to secure the carrying out of the purposes which led to the making of the various agreements and to protect the legitimate interests

In the Supreme Court of Ontario

No. 19
The Abitibi Power & Paper Company Limited Moratorium Act, 1941. April 9, 1941.
—continued

of persons who have contributed to or are bound up with the conduct of the enterprise; that whatever the potential value of the undertaking and assets of the said Company may be, no price could be obtained for the undertakings and assets, under present conditions, which would begin to approach the amount of the outstanding bonds with interest thereon; that if the present rate of earnings maintains for some time to come, the shareholders may well have a substantial equity in the property;

And whereas it is deemed desirable to stay any action now pending or that may hereafter be taken under the provisions of the above mentioned Bond Mortgage for the sale of all the property and assets of the said Company situate in Ontario in order that an opportunity may be given to all parties concerned to consider the Plan submitted in the Report of the said Royal Commission.

Therefore, his Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Motion stayed.

1. In so far as any property, real or personal, in Ontario is concerned no further proceedings shall be taken or continued under a certain Order made in the Supreme Court of Ontario by the Honourable Mr. Justice Middleton on June 10th, 1940, directing the sale of all the undertaking, property and assets of Abitibi Power & Paper Company Limited under a certain Mortgage made by Abitibi Power & Paper Company Limited of the First Part to Montreal Trust Company as Trustee for the bond holders under the said Mortgage of the Second Part and the National City Bank of New York the authenticating Trustee of the Third Part dated the 1st day of June, 1928, and filed in the Department of the Provincial Secretary on the 14th day of August, 1928, and indexed in the Bills of Sale and Chattel Mortgage Register as Number M125.

No further action without consent of Attorney-General.

2. Excepting the operation of section 1 hereof without the consent in writing of the Attorney-General no new action shall be brought for the purpose of realizing on the security situate in the Province of Ontario under the said Mortgage and no further step shall be taken or order made in the action now pending in the Supreme Court of Ontario under the said Mortgage.

Validating Order-in-Council.

3. The Order-in-Council dated the 24th day of October, 1940, rescinding the Order-in-Council dated the 9th day of March, 1939, with respect to an agreement dated the 24th day of June, 1937, made between the Government of the First Part and the Hydro-Electric Power Commission of Ontario of the Second Part, the Montreal Trust Company, Trustees under the bond mortgage, and the Receiver of the Abitibi Power & Paper

Company Limited, and the said Abitibi Power & Paper Company Limited acting by its Liquidator of the Third Part, is hereby declared to be valid and binding and effectually to rescind the said Order-in-Council dated the 9th day of March, 1939, notwithstanding any alleged lack of notice in writing or lack of sufficient notice in writing to the parties of the Third Part.

Duration of Act.

4. This Act shall come into force on a day to be named by the Lieutenant-Governor by his proclamation and when so proclaimed the Lieutenant-Governor in Council may at any time
10 terminate the operation of this Act, but subject to the operation of any Order-in-Council terminating its operation, this Act shall remain in force until the 31st day of December, A.D. 1942.

Short title.

5. This Act may be cited as *The Abitibi Power & Paper Company Limited Moratorium Act, 1941*

No. 20

No. 20
Proclamation of the Honourable the Lieutenant-Governor of Ontario.
October 9, 1941.

Proclamation of the Honourable the Lieutenant-Governor of Ontario

PROCLAMATION

(THE ONTARIO GAZETTE—OCTOBER 11th, 1941)

(Great Seal) ALBERT MATTHEWS

20 PROVINCE OF ONTARIO

GEORGE THE SIXTH by the Grace of God of Great Britain, Ireland, And the British Dominions beyond the Seas, KING, Defender of the Faith, Emperor of India.

TO ALL TO WHOM THESE PRESENTS SHALL COME,—

GREETING

PROCLAMATION

WHEREAS by an Act passed by Our Legislative Assembly of Our Province of Ontario in the Session thereof held in the fifth year of Our Reign intituled "The Abitibi Power & Paper Company Limited Mora-
30 torium Act, 1941" it is enacted by Section 4 thereof that the said Act shall come into force on a day to be named by the Lieutenant-Governor by his Proclamation;

AND WHEREAS it has appeared expedient that a Proclamation should now issue bringing the said Act into force;

NOW THEREFORE KNOW YE that, having taken the premises into Our Royal consideration, WE, by and with the advice of Our Executive Council of Our Province of Ontario and in the exercise of the power in US vested in this behalf by the said in part recited Act or otherwise

In the Supreme Court of Ontario

—

No. 20
Proclamation of the Honourable the Lieutenant-Governor of Ontario. October 9, 1941.

—*continued*

howsoever, DO, by this Our Royal PROCLAMATION, HEREBY NAME Saturday, the eleventh day of October, 1941, as the day on which the said "The Abitibi Power & Paper Company Limited Moratorium Act, 1941" shall come into force.

OF ALL WHICH PREMISES all Our loving subjects and all others whom it doth or may in anywise concern are hereby required to take notice and govern themselves accordingly.

IN TESTIMONY WHEREOF We have caused these OUR LETTERS to be made PATENT and the GREAT SEAL OF OUR PROVINCE OF ONTARIO to be hereunto affixed. 10

Witness:

THE HONOURABLE ALBERT MATTHEWS, LIEUTENANT-GOVERNOR OF OUR PROVINCE OF ONTARIO.

at Our City of Toronto in Our said Province this ninth day of October, in the year of Our Lord one thousand nine hundred and forty-one and in the fifth year of Our Reign.

BY COMMAND

F. V. JOHNS,
Assistant Provincial Secretary.

No. 21
Notice of Contestation of Validity of the Abitibi Power & Paper Company Limited Moratorium Act. October 17, 1941.

No. 21

20

Notice of Intention to Contest Validity of the Abitibi Power & Paper Company Limited Moratorium Act, 1941

TAKE NOTICE that on the hearing of the motion before the Honourable Mr. Justice Middleton at Osgoode Hall, Toronto, on Monday, the 27th day of October, 1941, at the hour of 10 o'clock in the forenoon, notice of which said motion was originally given on the 25th day of November, 1940, and further notice of which said motion was given on the 9th day of October, 1941, and on the 17th day of October, 1941, copies of all of which said notices are hereunto annexed, the constitutional validity of The Abitibi Power & Paper Company Limited Moratorium Act, 30 1941, being Chapter 1 of the Statutes of Ontario, 1941 (5 George VI) will be brought in question on the ground that it deals with matters that fall under the head of "Bankruptcy and Insolvency" under Section 91 of The British North America Act.

This notice is given pursuant to Section 32 of The Judicature Act, Revised Statutes of Ontario, 1937, Chapter 100.

DATED at Toronto this 17th day of October, 1941.

JOHNSTON HEIGHINGTON TORY & JOHNSTON,
80 King Street West, Toronto,
Solicitors for the Plaintiff. 40

TO: The Attorney-General for Canada
AND TO: The Attorney-General for Ontario.

In the Supreme Court of Ontario

No. 22
Order of Middleton, J.A. directing sale of property of Defendant Abitibi Power & Paper Company Limited
December 4, 1941.

No. 22

Order of Middleton J.A. Directing Sale of Property of Defendant Abitibi Power & Paper Company Limited

THE HONOURABLE MR. JUSTICE MIDDLETON } Thursday, the 4th day of December, A.D. 1941.

1. Upon motion made unto this Court on the 27th day of November, 1941, by counsel on behalf of the Plaintiff in the presence of the Attorney-General for Ontario, counsel for the Province of Ontario, counsel for the Defendants, other than the Defendant, Abitibi Power & Paper Company
10 Limited, counsel for Roy Sharvell McPherson, Liquidator of the Defendant, Abitibi Power & Paper Company Limited, counsel for Preferred Shareholders' Protective Committee, counsel for Common Shareholders' Protective Committee, and counsel for the Protective Committee for General Creditors, no one appearing for the Attorney-General for Canada though duly served with notice that on the hearing of the motion the constitutional validity of The Abitibi Power & Paper Company Limited Moratorium Act, 1941, Chapter 1 of 5 George VI would be brought in question, and upon hearing read the said notice and the Notices of Motion herein dated the 25th day of November, 1940, and the 9th day of October,
20 1941, the pleadings and proceedings in this action, the Order of the Honourable Mr. Justice Middleton dated the 10th day of June, 1940, the Affidavits filed in support of the application for the said Order and in answer thereto and the Exhibits therein referred to, the Advertisement and Conditions of Sale settled by the Master of this Court dated the 26th day of July, 1940, the Report on Sale of the said Master, the Affidavits of John F. Hobkirk (3), Roy Sharvell McPherson (3), James Ronald Denny (2), C. Harold Fisk, Joseph Corti Boland, and Roderick Walker Strachan Johnston, filed, and the respective Exhibits therein referred to, and the Proclamation appearing in the issue of The Ontario Gazette
30 dated the 11th day of October, 1941, relating to The Abitibi Power & Paper Company Limited Moratorium Act, 1941, and upon hearing what was alleged by counsel aforesaid, and judgment on the motion having been reserved until this day, and the Court having adjudged Sections 1 and 2 of The Abitibi Power & Paper Company Limited Moratorium Act, 1941, 5 George VI, Chapter 1, to be ultra vires.

2. THIS COURT DOTH ORDER that all the real and personal property, assets and effects of the Defendant, Abitibi Power & Paper Company Limited, including its undertaking, rights, privileges and franchises, and including all property and assets in the possession of Geoffrey
40 Teignmouth Clarkson, Receiver and Manager of the property of the said Defendant, Abitibi Power & Paper Company Limited, be sold on Wednesday, the 18th day of February, 1942, under the direction of the Master of the Supreme Court by public auction, subject to a reserve bid, and

In the Supreme Court of Ontario

No. 22
Order of Middleton, J.A. directing sale of property of Defendant Abitibi Power & Paper Company Limited December 4, 1941.

—continued

that the purchase money be paid into Court to the credit of this action, subject to further order, and that the said Master do report to this court pursuant to the practice and procedure in that behalf.

3. AND THIS COURT DOTH FURTHER ORDER that any holder or holders of the First Mortgage Gold Bonds of the Defendant, Abitibi Power & Paper Company Limited, shall be at liberty to bid at the sale and become a purchaser or purchasers and shall, in connection with such sale, have all the powers and privileges conferred on him or them by the Indenture securing the said Bonds, including, but without limiting the generality of this provision, all rights and privileges con- 10 ferred on him or them by Paragraph 34 of the said Indenture.

4. AND THIS COURT DOTH FURTHER ORDER that the said Receiver and Manager be continued as Receiver and Manager until further order.

5. AND THIS COURT DOTH FURTHER ORDER that liberty be reserved to all or any party or parties to apply for such further or other order as may be deemed necessary.

6. AND THIS COURT DOTH FURTHER ORDER that the costs of this motion, the costs of the proceedings hereby directed, any and all costs reserved for disposition, and any costs not heretofore the subject of 20 any order, but proper to be allowed in and chargeable to the proceedings, shall be reserved for disposition upon any motion to confirm the Report of the Master or on any motion for further directions or otherwise.

"H. B. PALEN"
Assistant Registrar, S.C.O.

Entered O.B. 182 pages 61-2
December 16, 1941.
"V.G."

No. 23

Reasons for Judgment of Middleton J.A.

S. C. O.

RE

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ABITIBI POWER & PAPER COMPANY LIMITED

Weekly Court—November 27th, 1941
Copy of Reasons for Judgment of Middleton J.A., delivered December 4th, 1941.
C. F. H. CARSON, K.C., and R. W. S. JOHNSTON, for Plaintiff.
G. OSLER, K.C., and D. G. GUEST, for individual Defendants.
HON. G. D. CONANT, K.C., Attorney-General, C. R. MAGONE, K.C., and A. M. STEWART, K.C., for the Province of Ontario.
J. L. STEWART, Protective Committee for General Creditors.
W. JUDSON, Common Stockholders' Protective Committee.
A. G. SLAGHT, K.C., Protective Committee for Preference Shareholders.
E. G. MCMILLAN, K.C., for Defendant Abitibi

20 December 4th, 1941. MIDDLETON, J.A.:—Motion by counsel for the plaintiff for an order authorizing the real and personal property, assets, and effects of the defendant Abitibi Power & Paper Company Limited, including its undertaking, rights, privileges and franchises, and including all property and assets in the possession of Geoffrey Teignmouth Clarkson, receiver and manager of the property of the defendant company, to be immediately sold without a reserve bid being fixed, and for such further or other order as may be deemed just; made in the presence of counsel for the defendants and the various parties interested, as shown by the above representation.

30 The papers filed indicate a variety of grounds, but before me only one ground of opposition was fully argued.

The report of the Royal Commission inquiring into the affairs of the Abitibi Company was before me. In it, in para. 3, the capital structure of the company is set forth, and in para. 4, the Court proceedings up to the making of the motion. These I take as accurately setting forth the various matters related, and this motion is that referred to as having been made originally before the hearing of the Commissioners. No proceedings, legislative or otherwise, have been taken to give effect to the findings of the Commissioners, or their recommendations, and the question argued was the right of the bondholders of the company in question
40 to proceed with the action therein referred to.

This right depends upon the construction of The Abitibi Power & Paper Company Limited Moratorium Act, 1941 (Ont.), 5 Geo. VI, c. 1,

In the Supreme Court of Ontario

No. 23
Reasons for Judgment of Middleton, J.A.
December 4, 1941.

—continued

by virtue of which it is contended that the power to proceed with the litigation is at an end. This Act recites that the company was incorporated under the Dominion Companies Act, and owned and operated newsprint mills in the Provinces of Ontario, Quebec and Manitoba, and further, that by indenture of mortgage of June 1st, 1928, the company mortgaged all its assets and undertakings to secure an issue of first mortgage bonds to the Montreal Trust Company, the trustee, and this action is an action to enforce the trusts of that mortgage. The Act then proceeds to recite that it appears that the company made default in payment of the interest due on these mortgage bonds on June 1st, 1932, that nothing has been paid on them, and that action was taken in 1932 by the trust company to enforce its security, and since that time various proceedings have been taken in the Courts, and on June 10th, 1940, an order was made directing the sale of all the undertakings, property and assets of the Abitibi Company, and in pursuance of that order the undertakings, property and assets of the said company were offered for sale by the Master of this Court by public auction, and the sale proved abortive because the only bid received was less than the amount of the reserve bid fixed, and that subsequently an application was made for an order that the said property, assets and effects of the said company should be immediately sold without a reserve bid being fixed, but the motion was adjourned sine die, with leave to bring it one one week's notice; and that during the Court proceedings above referred to, in the year 1937 the Government of Ontario entered into an agreement with the Montreal Trust Company, the trustees under the bond mortgage, the receiver, and the Abitibi Company, acting by its liquidator, which provided that the Government would renew certain agreements if the company was reorganized or rearranged, or if its assets were sold to a new company on a basis sanctioned by the Supreme Court, and in any case on a basis satisfactory to the Government, within one year from the date of the said agreement, or within such further time as the Government might consent; and whereas by an Order-in-Council dated March 9th, 1939, it was provided that when a reorganization or rearrangement was duly completed, or when a sale of the entire undertaking and assets of the said company was duly approved and directed by the Supreme Court of Ontario, and a sale was duly completed, it should be deemed a basis satisfactory to the Government; and whereas the said Order-in-Council was rescinded by an Order-in-Council of October 24th, 1940.

And whereas a Royal Commission was appointed to inquire into the affairs and financial and corporate structure of the Abitibi Company, with a view to recommending an equitable plan for solving the financial difficulties of the company, so that the company might be in a position to meet the conditions, regulations and restrictions which the Lieutenant-Governor in Council might consider necessary upon the grant or renewal of the recited leases, licenses, and water-power rights, and generally to make such recommendations in the premises as appear to be in the best

interests of all parties, including the Province of Ontario; and whereas the Commission has reported to the Lieutenant-Governor in Council, inter alia, that existing legislation relevant to the reorganization of companies is inadequate to meet situations that arise when the company in question is in financial difficulties; that the said company is dependent for its supply of pulpwood upon the Crown lands of the Province of Ontario, and that it also requires large quantities of power in respect of which it is dependent upon leases from the Province of Ontario, and that the assistance of the Government must be a largely contributing factor in the success of
10 the enterprise, and that the Government would be justified in trying to secure the carrying out of the purposes which led to the making of the various agreements, and to protect the legitimate interests of persons who have contributed to or are bound up with the conduct of the enterprise; and that whatever the potential value of the undertaking and assets of the said company might be, no price could be obtained for the undertakings and assets, under present conditions, which would begin to approach the amount of the outstanding bonds with interest thereon, and that if the present rate of earnings maintained for some time to come, the shareholders might well have a substantial equity in the property.

20 These recitals are taken from the Act. It is then enacted: S. 1. In so far as any property, real or personal, in Ontario is concerned no further proceedings shall be taken or continued under a certain Order of the Supreme Court of Ontario dated June 10th, 1940, directing that a sale of the undertaking, property and assets of the Abitibi Company under the mortgage in question shall be proceeded with. S. 2. Excepting under the operation of s. 1 hereof, without the consent in writing of the Attorney-General, no new action shall be brought for the purpose of realizing on the security situate in the Province of Ontario under the said mortgage, and no further steps shall be taken or order made in
30 the action now pending in the Supreme Court of Ontario under the said mortgage. S. 3. The Order-in-Council dated October 24th, 1940, rescinding the Order-in-Council of 9th March, 1939, with respect to the agreement made between the Government and the Abitibi Company and the Montreal Trust Company, trustee under the bond mortgage, is declared to be valid and binding and effectually to rescind the said Order-in-Council of 9th March, 1939, notwithstanding any lack of notice in writing, or lack of sufficient notice in writing to the parties of the third part. S. 4. This Act shall come into force on a day to be named by the Lieutenant-Governor by his proclamation, and when proclaimed the Lieutenant-
40 Governor in Council may at any time terminate the operation of this Act, but subject to the operation of any Order-in-Council terminating its operation, this Act shall remain in force until the 31st day of December, 1942.

There are no provisions in the Act other than these. It will be noticed that the Act is not complete in itself, or deliberately ignores the facts recited.

In the Supreme Court of Ontario

No. 23
Reasons for Judgment of Middleton, J.A. December 4, 1941.

—continued

The Act does not in itself go beyond fixing a date at which its operation is to terminate — 31st December, 1942 — and it is impossible for the Attorney-General to state the intention of the Legislature in so providing. That is like a provision contained in the other Moratorium Acts, and it may well be followed by provisions in Acts passed by the Legislature in the year 1942 and subsequent years continuing its operation.

Upon this motion the validity of this Act is challenged.

In the litigation recited is the winding-up order. This was made under an Act of the Dominion Parliament relating to the matters in **10** question. It is in that Act provided that there shall be no proceedings by a secured creditor save as permitted by the Court. Pursuant to this Act, leave was obtained by the Montreal Trust Company to proceed under its mortgage, and a direction was given as to the mode of procedure, i.e., it was stated by implication that it was to be in accordance with the orders and rules of practice that were in existence at the date of the application.

The application for a receiver and manager was made by the Montreal Trust Company. It sought to invoke the powers of the Court to appoint a receiver and manager for the purpose contemplated, to wit, **20** the operation and management of the company and its foreclosure under the terms of the bond mortgage. These terms require it to operate, not only in this Province, but as well in the sister Provinces of Quebec and Manitoba. Operations of the company were carried on, if that is material, in these Provinces, as well as in the Province of Ontario. I think it is impossible to suppose that the company, operating under a Dominion Act, should seek to obtain permission under the Provincial Act limited in any way by the terms that might be imposed by the Legislature of the Province not contained in the Act.

It follows from this that the legislation passed subsequently by the **30** Province did not operate to restrict the leave granted by the Dominion Court under the Dominion Act, and therefore the Act was, as I have said, ultra vires, in so far as it seeks to control or limit the powers of the Court.

I therefore make the order sought — any terms may be spoken to. The applicants may add their costs to their claims.

No. 24

Notice of Appeal

No. 24
Notice of
Appeal.
December 18,
1941.

TAKE NOTICE that the Defendant Abitibi Power & Paper Company Limited, by its Liquidator Roy Sharvell McPherson, appeals to the Court of Appeal for Ontario from the Order of the Honourable Mr. Justice Middleton herein dated the 4th day of December, 1941, and asks that the said Order be reversed and set aside upon the following amongst other grounds:

1. The Order is against law and evidence and the weight of evidence.

10 2. The Court had no jurisdiction or authority to make the said Order because of the provisions of the Abitibi Power & Paper Company Limited Moratorium Act, 1941.

3. The Court erred in adjudging Sections 1 and 2 of the said Abitibi Power & Paper Company Limited Moratorium Act to be ultra vires.

DATED at Toronto this 18th day of December, 1941.

WRIGHT & McMILLAN,
38 King St. West, Toronto,
Solicitors for the Appellant.

TO:

20 Messrs. Johnston, Heighington & Johnston,
Solicitors for the Plaintiff,

AND TO:

Messrs. Blake, Lash, Anglin & Cassels,
Solicitors for the Individual Defendants.

No. 25

Order Granting Leave to Appeal

No. 25
Order of
Roach, J.,
granting leave
to appeal to
Court of
Appeal.
January 2,
1942.

THE HONOURABLE MR. JUSTICE ROACH	}	Friday, the 2nd day of January, A.D. 1942.

UPON motion made unto this Court on the 17th day of December,
30 1941, by special leave of the Honourable Mr. Justice McFarland by counsel on behalf of the Defendant Abitibi Power & Paper Company Limited, in the presence of counsel for the Attorney-General for the Province of Ontario, counsel for the Plaintiff, counsel for the Defendants other than the Defendant Abitibi Power & Paper Company Limited, counsel for the

In the Supreme Court of Ontario

No. 25
Order of Roach, J., granting leave to appeal to Court of Appeal.
January 2, 1942.

—continued

Preferred Shareholders' Protective Committee, and counsel for the Common Shareholders' Protective Committee; and upon hearing read the Notices of Motion herein dated 9th day of December, 1941, 25th day of November, 1940, and 9th day of October, 1941, the pleadings and proceedings in this action, the Orders of the Honourable Mr. Justice Middleton dated 4th day of December, 1941 and 10th day of June, 1940, and the reasons therefor, the Affidavits filed in support of the application for the said Order dated 10th day of June, 1940 and in answer thereto, and the exhibits therein referred to, the Advertisements and Conditions of Sale settled by the Master of this Court dated 26th day of June, 1940, the Report on Sale of the said Master, the Affidavits of John F. Hobkirk (3), Roy Sharvell McPherson (3), James Ronald Denny (2), G. Harold Fisk, Joseph Corti Boland and Roderick Strachan Johnston, filed, and the respective exhibits therein referred to, and the proclamation appearing in the issue of The Ontario Gazette dated 11th day of October, 1941, relating to the Abitibi Power & Paper Company Limited Moratorium Act, 1941; and upon hearing what was alleged by counsel aforesaid; and judgment on the motion having been reserved until this day:

1. THIS COURT DOTH ORDER that the time for bringing this application be and the same is hereby extended until the said 17th day of December, 1941;

2. AND THIS COURT DOTH FURTHER ORDER that leave be granted to the Defendant Abitibi Power & Paper Company Limited to appeal to the Court of Appeal for Ontario from the Order of the Honourable Mr. Justice Middleton pronounced herein on the 4th day of December, 1941;

3. AND THIS COURT DOTH FURTHER ORDER that all proceedings under the said Order of the said Honourable Mr. Justice Middleton pronounced herein on the 4th day of December, 1941, be stayed pending the hearing and determination of the said appeal;

4. AND THIS COURT DOTH FURTHER ORDER that the costs of this motion be costs in the said appeal.

(Sgd.) H. B. PALEN
Assistant Registrar, S.C.O.

Entered O.B. 182 page 120,
January 8, 1942.
NG.

No. 26

Reasons for Judgment of Roach J.

In the Supreme Court of Ontario

No. 26
Reasons for Judgment of Roach, J.
January 2, 1942.

S.C.O. MONTREAL TRUST COMPANY v. ABITIBI POWER & PAPER COMPANY LIMITED, et al.	Copy of Reasons for Judgment of Roach J., delivered January 2nd, 1942. D. L. McCarthy, K.C., and E. G. McMillan, K.C., for Liquidator of defendant Company. C. R. Magone, K.C., for Attorney-General of Ontario. R. I. Ferguson, K.C., for Protective Committee for Preference shareholders. W. Judson, for common shareholders' protective committee. W. N. Tilley, K.C., and R. W. S. Johnston, for plaintiff. D. G. Guest, for Bondholders' Protective Committee.

10

January 2nd, 1942. Roach J.:—This is a motion by the defendant Company for leave to appeal to the Supreme Court of Ontario from the order of Middleton J.A., dated 4th day of December, 1941, which authorized the sale under the direction of the Master of this Court of all the assets of the defendant Company.

20

This is an action to enforce the trusts in a bond mortgage dated June 1st, 1928, given by the defendant Company to the plaintiff as Trustee, securing an issue of $50,000,000. first mortgage bonds, of which it would appear that $48,267,000. principal amount are still outstanding. The Company is a Dominion Company owning and operating newsprint mills in the Province of Ontario, and owning stock in other companies, which in turn own and operate newsprint mills outside Ontario. The property covered by the mortgage is all located in the Province of Ontario.

30

The action was commenced by writ issued on September 8th, 1932. By order dated September 10th, 1932, Mr. G. T. Clarkson was appointed Receiver and Manager. Then, under The Winding-Up Act R.S.C. 1927, ch. 213, the Company was adjudged a bankrupt and ordered to be wound up and a liquidator was appointed. Next, an application was made by the plaintiff under section 21 of The Winding-Up Act for leave to proceed with this action, and by an order dated December 7th, 1932, such leave was given. Subsequently the individual defendants were made parties defendant, and judgment was given in the action on November 3rd, 1937. In June, 1940, an order was made in this cause directing a sale of the assets and undertaking of the company under the supervision of the Master, subject to a reserve bid. In due course the sale was held, but was abortive because the amount bid was less than the amount of

40

In the Supreme Court of Ontario

No. 26
Reasons for Judgment of Roach, J.
January 2, 1942.

—continued

the reserve bid. Then application was made for an order authorizing a sale without a reserve bid, but the motion was adjourned sine die with leave to any party to bring it on on one week's notice at any time. Meanwhile a Royal Commission had been appointed by the Ontario Government to make certain inquiries into the affairs of the Company and to make recommendations for the solution of the financial difficulties of the Company. This Royal Commission made its inquiries, and submitted its report and recommendations under date March 17th, 1941. Then the Legislature of Ontario passed The Abitibi Power & Paper Company Limited Moratorium Act, 1941, 5 Geo. VI, chapter 1, the effect of which 10 was to stay any sale proceedings for the time, and subject to the conditions therein set out, more particular reference to which will be hereinafter made.

The plaintiff then renewed its motion for an order authorizing a sale, and Middleton J.A. made the order from which leave to appeal is now sought.

On the argument before Middleton J.A., as appears from his written reasons, and on the motion before me the validity of the Act was questioned by the liquidator, and those supporting him in opposition to a sale. Middleton J.A. was of the opinion that sections 1 and 2 of the Act 20 were ultra vires.

On the motion before me the circumstances or conditions justifying the granting of leave to appeal could be only those set out in Rule 493 (3) (b), which reads as follows:

"(3) Leave to appeal shall not be granted unless,—(b) There appears to the judge hearing the application to be good reason to doubt the correctness of the decision or order in question and the appeal involves matters of such importance that in the opinion of the judge leave to appeal should be given."

Dealing with these conditions in reverse order, I have no hesitation 30 in stating that in my opinion there are matters of such importance involved here that, subject to the other condition relating to the correctness of the decision, leave to appeal should be given.

Turning then to the primary essential, namely, "good reason to doubt the correctness of the decision or order," this involves a consideration of the Act.

From the recitals in the Act it appears that in 1937, i.e., during the Court proceedings above related, the Government of Ontario entered into an agreement with the plaintiff, the Receiver and the defendant Company acting by its liquidator, which provided that the Government would 40 renew certain pulpwood cutting agreements upon certain contingencies set out in the recitals, within one year or within such extended time as to which the Government might consent; that in 1939 the Order-in-Council was passed bearing upon the said agreement, and that this Order-in-Council was later rescinded by a subsequent Order-in-Council.

The Act further recites that the Royal Commission in its report had

reported inter alia "that the Government would be justified in trying to secure the carrying out of the purposes which led to the making of the various agreements and to protect the legitimate interests of persons who have contributed to or are bound up with the conduct of the enterprise.

The last recital in the Act is as follows:—

"AND WHEREAS it is deemed desirable to stay any action now pending or that may hereafter be taken under the provisions of the abovementioned bond mortgage for the sale of all the property and assets of the said Company situate in Ontario in order that an opportunity may be given to all parties concerned to consider the Plan submitted in the Report of the said Royal Commission."

The Act then enacts in part as follows:

"Section 1. In so far as any property, real or personal, in Ontario is concerned no further proceedings shall be taken or continued under a certain order made in the Supreme Court of Ontario by the Honourable Mr. Justice Middleton on June 10th, 1940, directing the sale of all the undertaking, property and assets of 'the Company under the bond mortgage above recited.'

"Section 2. Excepting the operation of section 1 hereof without the consent in writing of the Attorney-General no new action shall be brought for the purpose of realizing on the security situate in the Province of Ontario under the said mortgage, and no further step shall be taken or order made in the action now pending in the Supreme Court of Ontario under the said mortgage."

"Section 4. This Act shall come into force on a day to be named by the Lieutenant-Governor by his proclamation, and when so proclaimed the Lieutenant-Governor in Council may at any time terminate the operation of this Act, but subject to the operation of any Order-in-Council terminating its operation, this Act shall remain in force until the 31st day of December, A.D. 1942."

Perhaps it would be well if I at once stated the conclusion at which I have arrived as to the correctness of the decision of Middleton J.A., and then gave my reasons for such conclusion. My conclusion is, with great respect, that there is good reason to doubt the correctness of that decision. Now for my reasons:

Assume, for the purposes of analysis, that proceedings had not been taken under The Winding-up Act, R.S.C. 1927, c. 213, and that this action had been pending. In those circumstances could the Legislature of the Province have passed the Act in question? I should have thought that it could, on the basis that the pith and substance of the Act is this—it is legislation postponing the plaintiff's right to proceed in an action in the Courts of the Province. It is a civil right over which the Legislature has control under the headings "Property and Civil Rights" and "Administration of Justice in the Province." I call it a postponement because the stay thereby imposed will be removed when the term of the Act expires, viz., on December 31st, 1942, if not earlier. The purpose of the post-

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January 2, 1942.

—continued

ponement is stated in the recitals in the Act, viz., "that an opportunity may be given to all parties concerned to consider the Plan submitted in the Report of the said Royal Commission." That Report stated that 'the assistance of the Government' was necessary to the success of the enterprise and, in substance, that the "legitimate interests" of all persons who have contributed to the enterprise should be protected.

During the argument Mr. Tilley referred me to the recent judgment of the Supreme Court of Canada in Reference re Debt Adjustment Act, (Alta.) 1937 [now reported, (1942) S.C.R. 31, (1942) 1 D.L.R. 1], and I was furnished with a copy of the reasons for judgment. Under that Act, s. 8 (1) (a), "No action or suit for the recovery of any money which is recoverable as a liquidated demand or debt in respect of any claim enforceable by virtue of any rule of law or equity or by virtue of any statute, except money payable in respect of rates and taxes payable pursuant to any statute, and debts owing to a hospital for hospital services" shall be taken without a permit first being given by the Board thereby created. In his judgment, Duff C.J.C. says,—"The distinction between right and remedy is often a useful distinction but an enactment which takes away the remedy by action, which the law otherwise would give to the creditor in respect of his debt, and substitutes therefor the chance of obtaining, by the arbitrary act of a public authority, permission to enforce a remedy is, I think something more than an enactment relating to procedure." Mr. Tilley adopted these words and argued that they fitted the case at bar exactly. There is force in Mr. Tilley's argument, but I think I perceive a distinction between the two Acts. It is true that in each case an arbitrary power is vested in a person or persons in authority, but in the Ontario statute it is temporary, while in the Alberta statute it would have no termination until the Act was repealed. Of the Alberta statute it could be said that it extinguished the right; of the Ontario statute, the most, perhaps, that can be said is that it postpones the right of action.

The winding-up order operated as a stay of this action by reason of s. 21 of The Winding-up Act, which reads as follows:

"After the winding-up order is made, no suit, action or other proceeding shall be proceeded with or commenced against the company, except with the leave of the court and subject to such terms as the court imposes."

As already stated, leave was obtained by the plaintiff under s. 21 to continue this action. The Court having charge of the winding-up is a Dominion Court; the Court in which this action was pending is a Provincial Court. The Dominion Court having granted leave to the plaintiff to invoke the jurisdiction of the Provincial Court, I should think that the plaintiff in that forum must submit to such rules and regulations as to procedure as the Provincial Legislature which has jurisdiction might

thereafter impose. If that proposition is sound and if the 1941 Provincial Act is an Act relating to procedure, then the plaintiff is bound by it.

For the reasons above stated, I think, with respect, that there are good reasons to doubt the correctness of Middleton J.A.'s order, and leave to appeal therefrom is accordingly granted, costs to be costs in the appeal.

No. 27

Formal Judgment of the Court of Appeal for Ontario

No. 27
Formal Judgment of the Court of Appeal for Ontario.
March 21, 1942.

THE HONOURABLE MR. JUSTICE RIDDELL
10 THE HONOURABLE MR. JUSTICE FISHER
THE HONOURABLE MR. JUSTICE HENDERSON
THE HONOURABLE MR. JUSTICE HOGG
THE HONOURABLE MR. JUSTICE GILLANDERS

} Saturday, the 21st day of March, A.D. 1942

UPON MOTION made unto this Court on the 5th and 6th days of February, 1942, by Counsel on behalf of the Liquidator, for the Defendant, Abitibi Power & Paper Company Limited, pursuant to leave granted by the Order of the Honourable Mr. Justice Roach dated the 2nd day of January, 1942, by way of appeal from the Order pronounced by the Honourable Mr. Justice Middleton on the 4th day of December, 1941, 20 in the presence of Counsel for the Attorney-General for the Province of Ontario, Counsel for the Plaintiff, Counsel for the Defendants other than the Defendant, Abitibi Power & Paper Company Limited, Counsel for the Protective Committee for the General Creditors, Counsel for the Preferred Shareholders' Protective Committee, and Counsel for the Common Shareholders' Protective Committee; and upon hearing read the Notices of Motion herein dated the 9th day of December, 1941, the 25th day of November, 1940, and the 9th day of October, 1941, the pleadings and proceedings in this action, the Orders of the Honourable Mr. Justice Middleton dated the 10th day of June, 1940, and the 4th day 30 of December, 1941, and the reasons therefor, the Affidavits filed in support of the application for the said Order dated the 10th day of June, 1940, and in answer thereto, and the Exhibits therein referred to, the Advertisement and Conditions of Sale settled by the Master of this Court dated the 26th day of June, 1940, the Report on Sale of the said Master, the Affidavits of John F. Hobkirk (3), Roy Sharvell McPherson (3), James Ronald Denny (2), G. Harold Fiske, Joseph Corti Boland and Roderick Walker Srachan Johnston filed, and the respective Exhibits therein referred to, and the Proclamation appearing in the issue of The Ontario Gazette dated the 11th day of October, 1941, relating to 40 The Abitibi Power & Paper Company Limited Moratorium Act, 1941, the Notice of Appeal herein dated the 18th day of December, 1941, and

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—continued

the said Order of the Honourable Mr. Justice Roach dated the 2nd day of January, 1942, and the reasons therefor; and upon hearing what was alleged by Counsel aforesaid; and judgment upon the motion having been reserved until this day:

1. THIS COURT DOTH ORDER that this appeal be and the same is hereby dismissed.

2. AND THIS COURT DOTH FURTHER ORDER that the said Order of the Honourable Mr. Justice Middleton pronounced herein on the 4th day of December, 1941, be and the same is hereby amended and varied by striking out the words "Wednesday, the 18th day of February, 1942" where the same appear in Paragraph numbered 2 thereof and by inserting in lieu thereof the words "Thursday, the 18th day of June, 1942" and that save as aforesaid the said Order be and the same is hereby confirmed. **10**

3. AND THIS COURT DOTH FURTHER ORDER that the costs of the Respondents (the Plaintiff and the Defendants, other than the Defendant, Abitibi Power & Paper Company Limited) of this appeal and of the motion for leave to appeal made before the Honourable Mr. Justice Roach on the 17th day of December, 1941, be taxed and paid by the Receiver and Manager of the Defendant, Abitibi Power & Paper Company Limited forthwith as part of his expenses. **20**

"CHAS W. SMYTH"
Registrar S.C.O.

Entered O.B. 182 Page 388-9
April 4, 1942
"P.H."

No. 28

Reasons for Judgment of the Court of Appeal for Ontario

In the Supreme Court of Ontario

No. 28
Reasons for Judgment of the Court of Appeal for Ontario.
Riddell, J.A., March 21, 1942.

C.A.

MONTREAL TRUST COMPANY

10 v.

ABITIBI POWER & PAPER CO.

Copy of Reasons for Judgment of Court of Appeal (Riddell, Fisher, Henderson and Gillanders, JJ.A. and Hogg, J.), delivered March 21st, 1942.

D. L. McCarthy, K.C., and E. G. McMillan, K.C., for appellant Abitibi Power & Paper Company.

Hon. G. D. Conant, K.C., and A. M. Stewart, K.C., and C. R. Magone, K.C., for the Province of Ontario.

A. G. Slaght, K.C., for preference shareholders.

J. L. Stewart, for general creditors.

W. Judson, for common shareholders.

W. N. Tilley, K.C., and R. W. S. Johnston, for the plaintiff.

Glyn Osler, K.C., and D. G. Guest, for individual defendants.

20

March 21st, 1942. Riddell, J.A.:—While this case primarily affects only the parties, it is not without importance in the general law of the Province. The appeal was argued at great—not too great—length, with quotation of many authorities, and, I must add, with candour by all counsel.

Fortunately, the facts are not in dispute.

The defendant, the Abitibi Power and Paper Company, is a company incorporated by Letters Patent of the Dominion of Canada, and is possessed of a very considerable extent of valuable real estate in Ontario, 30 as well as of certain personal property in the form of bonds of other companies in the same line of business. In 1928 it executed a mortgage to the plaintiff, securing its First Mortgage Bonds.

Certain bonds becoming due in June, 1932, the plaintiff brought an action, September 10th, 1932, for the enforcement of the mortgage, and in that action Mr. Clarkson was appointed Receiver and Manager on behalf of the plaintiff and all other parties interested in the bonds. Shortly thereafter, the defendant was declared an Incorporated Company within the Winding-up Act, to be insolvent, and liable as it was to be wound up under the provisions of that Act, it was ordered to be wound up. The 40 plaintiff being given leave to proceed with its action, a trial was had, November, 1937, in which it was held that the mortgage was valid and the plaintiff was entitled to a first charge on the assets of the company. An order was made in June, 1940, for the sale of the assets of the com-

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pany, but this proved abortive, the reserved bid not being reached at the bidding. Then a motion was made for an order for sale wtihout a reserved bid—this motion was postponed at the request of the Attorney-General, until a Royal Commission which had been appointed by the Crown had had an opportunity to examine into the matter, and report. The Commission reported in April, 1941—the Report is before us, but it has no bearing upon the matter to be determined on this appeal. However, after the Report was made, an Act, Statutes of Ontario, 1941, cap. 1, was assented to by the representative of the Crown which, *inter alia,* stayed proceedings "in order that an opportunity may be given to all parties concerned to consider the plan submitted in the report of the Royal Commission", and subsequently a proclamation was issued bringing that staying Act into force.

The creditors were not satisfied with this method of dealing with their rights, and launched a motion to have the Act declared *ultra vires* the Province.

The motion came on before Middleton J.A., who, on December 4th, 1941, adjudged the offending sections of the Act *ultra vires,* and ordered the property of the company to be sold under the direction of the Master of the Supreme Court.

An appeal is now taken to us, by leave granted by Roach J. I do not propose to deal with the reasons of Roach J., but assume that the matter is properly before us.

Nor do I question the principles laid down in such cases as Florence Mining Co., Limited v. Cobalt Lake Mining Co., Limited (1908), 18 O.L.R. 275; Irwin v. Attorney-General for Ontario (1932), O.R. 490, (1932) 3 D.L.R. 668; Smith v. City of London (1909), 20 O.L.R. 133. It is clear on binding authority that in matters within its jurisdiction, the Legislature has the powers of Parliament and its powers are practically paramount.

But I find myself bound to accept the conclusions of Middleton J.A. that in the present case the Legislature is—no doubt with the best of intentions—interfering in matters beyond its control. I adopt the reasoning and the conclusions of the learned Judge, and would dismiss this appeal with costs.

I should perhaps add that I have examined the numerous authorities cited; they, as a rule, have but an indirect bearing upon the question in this appeal, but all deserve, and, I trust, have received careful consideration.

FISHER, J.A.:—Appeal is taken—by leave granted—to this Court from the judgment of Middleton J.A. dated December 4th, 1941, declaring the Abitibi Power & Paper Company Limited Moratorium Act, 1941, cap. 1, ultra vires the Province of Ontario, and ordering a sale by public auction, subject to a reserve bid, under the directions of the Master of the Supreme Court of Ontario, of all the property and assets covered by a mortgage given by the Company to the Montreal Trust Company dated

June 1st, 1928, securing the first mortgage bonds issued by the Abitibi Company.

It appears that the company became financially involved and defaulted in the payment of the bond interest due June 1st, 1932, and an action was commenced in the Supreme Court of Ontario in September, 1932, for the enforcement of the mortgage. Thereafter an application was made in the action, and G. T. Clarkson was appointed receiver and manager on behalf of the Montreal Trust Company, of all the assets of the Abitibi Company. On September 26th, 1932, the Company was de-
10 clared insolvent within the provisions of the Winding-up Act, R.S.C. 1927, c. 213. On December 7th, 1932, leave under s. 21 of the Winding-up Act was given to the plaintiff by the late Garrow J. to proceed, notwithstanding the Winding-up Act, with the action commenced for the enforcement of the mortgage. The action was tried by the late Kingstone J. in November, 1937, and at the trial the validity of the mortgage was contested by the liquidator. The trial Judge gave judgment declaring that the bondholders were entitled to a first charge on the assets of the Company, and also that the trusts of the bond mortgage should be carried out. (Reference to what took place in the intervening years rela-
20 tive to an attempt of reorganization of the Company is unnecessary). Subsequently, on June 10th, 1940, an order was made directing a sale at public auction of the assets of the Company, at which bondholders were entitled to bid and, if they desired, to become purchasers. At the sale on October 16th, 1940, the Master certified that only one bid of $30,000,000 was made, and as that sum was less than the reserved bid fixed, the sale was declared abortive.

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Subsequently a motion for another sale was made and adjourned sine die, and it is at this stage that the Legislature of the Province having interests in certain lands, leases, licenses and water and power rights,
30 etc., connected with the property covered by the mortgage, intervened and appointed a commission to inquire into the financial condition of the company with a view of recommending an equitable plan for solving its financial difficulties and generally to make such recommendation in the best interests of all parties concerned, including the Province.

The Commissioners' Report was received on March 17th, 1941, and thereafter the Act now attacked was passed on April 9th, 1941, and upon another motion being made for the sale of the assets of the Company, a proclamation was issued on October 11th, 1941, bringing the Act into effect.

40 Some of the recommendations of the Commissioners as set out in the Report were: that it would be advisable to withhold the property from sale for a certain period for the purpose of enabling the company to work out its financial situation, coupled with the hope that the earnings of the company would in time give the shareholders a substantial equity; and that there should be an extension of time for the maturity of the bonds until 1965, and in the meantime Mr. Clarkson should be continued as

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—continued

Receiver. If the validity of the Act is to be upheld, the recommendation of continuing Mr. Clarkson is, I think, a good one as under his able and efficient management considerable money has been made in recent years, so much so that $6,274,000.70 was ordered to be distributed among all the bondholders on account of principal.

During the argument Mr. Tilley pointed out that as things now stood about 85 per cent. of the bondholders desired to proceed and realize on the security and could not, and that if the recommendations of the Commissioners were adopted all proceedings to realize would be held up for an indefinite period on a pure gamble that the future would produce 10 favourable results. Mr. Slaght argued for delay on equitable grounds, but if there are any such grounds, delay, in my opinion, would involve a great risk. If conditions are favourable for a long period of time, that no doubt would enure to the benefit of the objecting minority, to the shareholders and creditors, but what about the length of time they would have to wait, the risks of unfavourable conditions arising? It is also possible that instead of prosperity there should be adversity in trade and a decline in values. All these, as I see it, are risks that might be attended with serious results, and one of the questions is whether there is any certainty that there would be on the market a purchaser at some future 20 time at as much as $30,000,000, and if not who would be the sufferers? In this connection—although it is not for the Court to question the reason for and the wisdom of the legislation—I am unable to understand the attitude of the Province in intervening, because it appears to me that the interests of the Province in the lands, leases, power rights, etc., would be in a safe, if not a safer position under a purchaser of $30,000,000 operating the different properties, than continuing to struggle on for an indefinite length of time on a pure gamble, that favourable conditions would arise, and under a load of $80,000,000, and perhaps an increase thereof.

It is not to be overlooked that these minority shareholders when they 30 purchased their bonds in the market assumed the same risks as the majority, and all purchases by investors no doubt were made in the hope that the company would succeed and their investments would prove profitable, and for these reasons, as I have stated, I have failed to discover any merit in delay, with all its uncertainties, on equitable grounds. It is not, as I have stated, for this Court to consider the wisdom of the legislation and whether any or all of the recommendations of the Commissioners influenced the Legislature in passing the Act, because they have no direct bearing on the determination of the validity of the Act.

Briefly, Mr. Stewart's contentions are that the security of the secured 40 creditor and its enforcement does not fall within bankruptcy legislation; that a secured creditor makes his claim, not against the debtor, but against his own property; that the 1941 Act does not conflict with the operation of the Winding-up Act or encroach upon it, and that the object and effect of s. 21 of the Winding-up Act was to secure an orderly working out of interests as between a secured creditor and the liquidator, and

that it is therefore ancillary to bankruptcy legislation.

Mr. Magone's contentions are that the Act is intra vires the Provincial Legislature as coming within and based upon clauses 5, 13 and 14 of s. 92 of the British North America Act; that it relates to property and civil rights and the management and sale of public lands; that it relates to the administration of justice in the Province of Ontario; that it does not encroach upon and is not in conflict with bankruptcy and insolvency legislation; that it deals with procedure only, and that in any event it only postpones for a certain time any actions to realize on the security.

10 Mr. Tilley argued that the 1941 Act is ultra vires the Province in that it infringes upon and is in conflict with the exclusive authority of the Dominion Parliament with respect to bankruptcy and insolvency legislation and ss. 4, 5 and 10 of The Companies' Creditors Arrangement Act, 1933, 1932-33 (Dom.), c. 36; ss. 17, 21, 65 and 66 of The Winding-up Act, and s. 24 of The Bankruptcy Act, R.S.C. 1927, c. 11.

The decisive question for determination is the constitutional validity of c. 1 of the Statutes of 1941. The immediate effect of this statute, in fact its sole aim and object, is to stay proceedings in an action by the Montreal Trust Company to realize the bond mortgage under which it is
20 a trustee, commenced by leave of the Court, granted under s. 21 of the Winding-up Act, R.S.C. 1927, c. 213. No doubt the right of a mortgagee to realize this security is primarily within the legislative jurisdiction of the Provincial Legislature under its power over property and civil rights, but the power to regulate the rights of a secured creditor of an insolvent is within the legislative jurisdiction of the Dominion as ancillary to its power over bankruptcy and insolvency: Royal Bank of Canada v. Larue, (1928) A.C. 187, 8 C.B.R. 579, (1928) 1 W.W.R. 534, (1928) 1 D.L.R. 945, and it appears to be well settled law that under those circumstances the Provincial legislative right continues until the Dominion
30 has occupied the field and in so far as the Dominion has not occupied the whole field. By s. 21 of The Winding-up Act the Dominion has dealt with all causes of action against an insolvent company to which the provisions of that Act apply. The Abitibi Power & Paper Company Limited is such a company, and it cannot be argued, I think, that s. 21 does not, among all other causes of action, deal with the right of a secured creditor of that company to realize his security. The effect of sec. 21 is to impose a total prohibition on such an action unless the sole condition that leave of the Court has been obtained is complied with. The effect of section 21 then is, although expressed negatively, to permit a secured creditor to
40 realize his security if he can obtain leave of the Court to do so. This would appear to be just as wide a recognition of the creditors right of action as that contained in s. 74 (a) of The Bills of Exchange Act, R.S.C. 1927, c. 16: "the holder of a bill may sue on the bill in his own name." It was interference with this latter cause of action that was the ground for declaring the Alberta Debt Adjustment Act ultra vires by the Supreme Court of Canada in Attorney-General Alberta and Winstanley v. Atlas

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Lumber Company (1941 S.C.R. 87, (1941) 1 D.L.R. 625. In that case the Provincial legislation declared to be ultra vires took away a cause of action actually given in the proper exercise of its powers by Dominion legislation. In the case at bar the Province has by its legislation taken away a cause of action, the giving of which is wholly within Provincial power; but the Provincial legislation is not less impeachable in this case upon the ground because the right to take away that cause of action is vested in the Dominion unless the Dominion has not seen fit to deal with it, or in so far as it has not completely dealt with it. In other words, the Ontario statute is not challenged because it takes away the cause of action over which it has no power at all, for under ordinary circumstances it could properly deal with the cause of action in this case. But the Ontario statute is challenged on the ground that it prohibits the enforcement of a right which under circumstances of the insolvent debtor it could only do if the Dominion legislation dealing with insolvency had not dealt with that right or had only partially dealt with it. The right of a secured creditor to realize his security against the estate of an insolvent is dealt with by s. 24 (2) of The Bankruptcy Act and s. 21 of the Winding-up Act. These two sections are not in the same terms, and therefore the question of the application of sec. 24 (2) of The Bankruptcy Act might require further consideration. It would appear, however, that as sec. 21 of the Winding-Up Act in fact deals with the whole subject matter of the 1941 Ontario statute it is unnecessary to look any further. Sec. 21 in effect prohibits all actions against an insolvent company that has been brought within the provisions of the Winding-Up Act except upon a sole condition. The Provincial statute prohibits this particular action without any condition whatever. The effect, therefore, of the Ontario statute is to delete from sec. 21, the condition which the Dominion has laid down as the exception from its prohibition. The conflict becomes obvious, and the Dominion legislation, being legislation within the power of the Dominion, must prevail.

Putting the point upon an even narrower basis, the Dominion has ample jurisdiction to regulate actions by a creditor against an insolvent: Royal Bank of Canada v. Larue (supra).

Sec. 21 confers upon the Court the jurisdiction to grant leave to bring such action. The 1941 Ontario statute purports to deprive the Court of its jurisdiction entirely in this particular case, and by sec. 2, to give a jurisdiction in other cases to the Attorney-General. This, in my opinion, it clearly cannot do. A.G. for Alberta and Winstanley v. Atlas Lumber Company Limited (supra).

If further and more cogent reasons were necessary, it could be pointed out that the action at which the 1941 Ontario statute is aimed, is an action which was actually begun by leave of the Court obtained under sec. 21 of the Winding-Up Act. It might also be pointed out that in the later reference re Debt Adjustment Act (1937) (Alta.), (1942) S.C.R. 31, (1942) 1 D.L.R. 1, the statute under consideration in the Atlas

Lumber Company case was held wholly ultra vires by reason of its conflict with Dominion legislation recognizing various causes of action. The whole aim and object of the 1941 Ontario statute is not to interfere with any possible cause of action, but to prohibit a particular action already commenced under a valid power conferred by Dominion legislation. It would appear therefore that the Ontario statute is even less supportable than the Alberta statute, which was declared ultra vires upon much more general grounds.

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Under the cases on the Alberta statute, the conflict of jurisdiction
10 arose over causes of action conferred or recognized by the Dominion. In the case at bar, the cause of action is one that is not generally within Dominion legislative competence. But that is of no moment here as the Dominion legislation arose by virtue of the Dominion's power to deal with all causes of action in the peculiar circumstances of bankruptcy and insolvency. The Dominion could deprive creditors, unsecured or otherwise, of all rights of action against an insolvent. Not only has it not seen fit to do so, it has reaffirmed those causes of action by providing that they may be litigated by leave of the Court. Leave of the Court is imposed as the sole condition, and the Province cannot, in my opinion,
20 widen or narrow that condition or add further conditions thereto or superimpose a prohibition therupon. In this particular case the Province has in fact gone even further than that and has attempted to superimpose upon the condition in the Dominion legislation, with which the litigant has complied, a prohibition of that praticular action and a substituted condition in respect of all other actions. My difficulty throughout has been to discover by what power—where the Dominion has been expressly given the right to proceed under sec. 21—the Province can interfere and take from the Courts the right to proceed.

For the foregoing reasons and after giving consideration to the real
30 character of the Act, my conclusion is, that the Act is not based on, nor does it deal with, property and civil rights, but that it enters the field of bankruptcy and insolvency legislation, and not only interferes with the Dominion company in the course of its winding-up proceedings, but gives to the Attorney-General of the Province in the exercise of his discretion, the absolute right to stay the present action for the enforcement of the security, or to proceed with a new action, and that it is *ultra vires* the Province and absolutely void.

HENDERSON, J.A.:—An appeal from the order of Middleton J.A. dated December 4th, 1941, by which it is directed that the mortgage
40 premises described in an indenture of trust and mortgage dated June 1st, 1928, made to the plaintiff as Canadian trustee by the defendant Abitibi Power & Paper Company Limited, securing the first mortgage gold bonds of that company, be sold on Wednesday, the 18th day of February, 1942, under the direction of the Master of the Supreme Court of Ontario by public auction, subject to a reserve bid, to be fixed by the Master.

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—continued

The defendant Abitibi Power & Paper Company Limited is incorporated by Letters Patent of the Dominion of Canada.

The Company having defaulted in payment of the instalment of interest due on the bonds of June 1st, 1932, an action was commenced by the plaintiff for enforcement of the indenture and mortgage. On September 10th, 1932, by application made in that action, Geoffrey Teignmouth Clarkson was appointed receiver and manager on behalf of the plaintiff and all holders of the first mortgage gold bonds of all the undertaking, property and assets of the defendant company.

By order dated September 26th, 1932, the defendant company was declared to be an incorporated company within the provisions of the Dominion Winding-Up Act and to be insolvent and liable to be wound up by the Court pursuant to that Act, and the defendant company was thereby ordered to be wound up, and a liquidator was duly appointed.

By order made in the winding up proceedings on December 7th, 1932, the plaintiff was given liberty to proceed with its action for the enforcement of the said indenture and mortgage, notwithstanding the winding up order.

The defendants, other than Abitibi Power & Paper Company Limited, were appointed as a Bondholders' Representative Committee at a meeting of Bondholders held on June 7th, 1935, and by order dated September 13th, 1935, were added as parties to the action and it was declared that they sufficiently represented all holders of the said bonds in this action.

On November 3rd, 1937, after a trial at which the validity of the indenture and mortgage was contested by the liquidator, the Court declared that the plaintiff and the holders of the said bonds were entitled to a first charge upon the undertaking, property and assets of the defendant company and that the trusts of the said indenture and mortgage ought to be performed and carried into execution.

On June 10th, 1940, upon the application of the plaintiff, made at the request of a committee claiming to represent the holders of approximately 60% of the outstanding bonds of the defendant company, it was ordered that the undertaking, property and assets of the defendant company be sold on October 16th, 1940.

The sale so ordered was duly held but the reserve bid not being reached it was declared abortive and on November 25th, 1940, the plaintiff, at the request of the said committee, served notice of motion for a sale without reserve bid.

Upon the return of the said motion on November 29th, 1940, the Attorney-General of the Province of Ontario moved for an adjournment until such time as a Royal Commission appointed by the Provincial Government to inquire into the affairs of the defendant company should have made its report. The motion was thereupon adjourned sine die with leave to any party to bring it on upon one week's notice at any time.

On or about April 1st, 1941, the Royal Commission published its

report dated March 17th, 1941. I am unable to find that any plan was propounded by this report.

On April 9th, 1941, the Royal Assent was given to The Abitibi Power & Paper Company Limited Moratorium Act, 1941 which was to come into force by proclamation. The said Act recites, inter alia, that it is desirable to stay any action now pending or that may hereafter be taken under the provisions of the said indenture and mortgage for the sale of all the property and assets of the defendant company situate in Ontario "in order that an opportunity may be given to all parties con-
10 cerned to consider the plan submitted in the report of the said Royal Commission."

On October 9th, 1941, The Abitibi Power & Paper Company Limited Moratorium Act, 1941, not having been proclaimed, the plaintiff, at the request of the said committee, served notice of motion for a sale without reserve bid.

On the said 9th day of October, 1941, a proclamation was issued bringing The Abitibi Power & Paper Company Limited Moratorium Act, 1941, into force on the 11th day of October, 1941.

Middleton J.A. in his order of December 4th, 1941, from which this
20 appeal is taken, in ordering a sale of the mortgage premises (but subject to a reserve bid) adjudged that ss. 1 and 2 of The Abitibi Power & Paper Company Limited Moratorium Act, 1941, (Ont.), 5 Geo. VI, c. 1, are ultra vires and that is the issue raised on this appeal.

I agree with the conclusion of Middleton J.A. that the Act in question is ultra vires the Legislature of the Province of Ontario, and with the reasons therefor. I wish to add, however, some comments with regard to this legislation in the light of some observations by Lord Maugham, L.C., in delivering the reasons of their Lordships of the Privy Council, in *Attorney-General for Alberta v. Attorney-General for Canada,* (1939)
30 A.C. 117, (1938) 3 W.W.R. 337, (1938) 4 D.L.R. 433.

In that case an Act of the Province of Alberta providing for the taxation of banks operating in the Province of Alberta was attacked. It was sought to justify the Act by section 92 (2) of The British North America Act, 1867, as being within the class of subjects described as "Direct Taxation within the Province in order to the raising of a Revenue for Provincial purposes".

A discussion of the principles to be observed will be found in the reasons written by His Lordship in that case, which are important to bear in mind, and one rule which has direct application here, in my view, is to
40 examine the effect of the legislation and also the object and purpose of the legislation. The object and purpose of the Act in question here is very frankly set out in the preamble to the Act, and is quoted in part by Middleton J.A. in the reasons for his order.

In my opinion the object and purpose of this Act is not to legislate upon the subject of property and civil rights within the Province, and this is made clear by the recitals to the Act.

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By this Act, Abitibi Power & Paper Company Limited is singled out, and Montreal Trust Company, the plaintiff in the action, is forbidden to proceed with its action, notwithstanding the order of the Court made in bankruptcy proceedings, that the action may proceed.

I also refer to the language of Duff C.J.C., in delivering judgment in *Reference re Debt Adjustment Act,* 1937 (Alta.), (1942) S.C.R. 31, (1942) 1 D.L.R. p. 1. At p. 3 (D.L.R.), the Chief Justice says:

"By s. 8 (1) (a) of the Debt Adjustment Act, 1937 (Alta.), c. 9, a legal right which the owner of it is entitled to enforce is converted into a conditional right, enforceable only by grace of a permit from the Board granting to the owner of it a dispensation from the incidence of the general rule. 10

"This authority of the Board may be considered with reference to debts arising by virtue of statutes, or legal rules, that the Legislature is powerless to repeal or vary; as well as with reference to creditors whose powers and status it is incompetent to impair, or whose undertakings, or business, the Legislature is incompetent to regulate. . . .

"The distinction between right and remedy is often a useful distinction, but an enactment which takes away the remedy by action, which the law otherwise would give to the creditor in respect of his debt, and substitutes therefor the chance of obtaining, by the arbitrary act of a public authority, permission to enforce a remedy is, I think, something more than an enactment relating to procedure. It strikes, I think, at the substance of the creditor's rights. The enactment is repugnant to the provisions of Dominion statutes relating to matters within the exclusive jurisdiction of the Dominion Parliament, provisions creating or directly giving rise to, or recognizing, obligations in the nature of debts and liquidated demands." 20

The Chief Justice proceeds to give some examples.

"There is a class of creditors occupying a special position which must be considered. I refer to companies incorporated by the Dominion. It is settled that in the case of companies with objects other than provincial objects, the exclusive power to legislate in relation to incorporation is vested in Parliament, and that by the joint operation of the residuary power under s. 91 of the Confederation Act and the powers conferred upon Parliament in relation to the enumerated subject, the regulation of trade and commerce, this power extends to the status and powers of the company. True, where the business of the company is subject to provincial legislative regulation, the provincial Legislature may legislate in such a manner as to affect the business of the company by laws of general application in relation to the kind of business in which the company engages in the Province; but the provisions of this statute giving to the Board the authority to interfere with the affairs of creditors in the manner set forth in s. 8 would not appear to be a general law in this sense. 30 40

"A company, for example, incorporated by the Dominion with

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authority to carry on the business of lending money upon various kinds of security in the Province, may find itself in a position, under the operation of s.-ss. 1 (a) and (b) of s. 8, in which it and other Dominion companies are precluded from enforcing their securities in the usual way."

Legislation enacted by the Provincial Legislatures purporting to be passed in respect to property and civil rights in the Province must, in my view, when examined, be found to be in truth and in fact legislation affecting property and civil rights in the Province, and besides, must not be legislation aimed at a particular person or corporation, but must be general in character.

It was asserted in argument before us, that when legislating upon a subject-matter within its jurisdiction, the authority of the Legislature is supreme, and it is competent for the Legislature to declare that property admittedly belonging to "A" is not his property, but that it belongs to "B". This, in my opinion, is not so. In support of it the case of *Florence Mining Company Limited v. Cobalt Lake Mining Company Limited* (1908) 18 O.L.R. 275; affirmed 43 O.L.R. 474; 102 L.T. 375 is cited, but in that case the Courts found and declared who was the true owner of the property in dispute. There is no suggestion in that case that by legislation the property of one person is taken from him and handed to another.

In my view the Legislature is not competent to deny access to His Majesty's Courts in an individual case. This does not, of course, mean that a Moratorium Act of general application may not be validly passed, within limits.

The Attorney-General argued that the legislation should be upheld as being in defence of the Province's rights in its public lands. It appears from the report of the Royal Commission that the Abitibi Company holds or has held or equires to hold cutting rights of timber on Crown lands, and power from provincial Hydro Power. The legislation does not purport to have any such purpose, nor do I think legislation of this sort can be upheld on that ground.
~~legislation does not purport to have any such purpose, nor do I think legislation of this sort can be upheld on that ground~~.

For these reasons the appeal should be dismissed.

The order as to costs should provide that the plaintiff may add its costs to its claim, and there should be no further order.

As the day fixed in the order appealed from for sale has passed, I suggest in order to save further proceedings, that the order taken out upon the disposition of this appeal, if it be for sale, should fix a new date.

HOGG, J.:—The facts that are material to the question at issue in this appeal are fully set out in the judgment of Riddell J.

The Winding-up Act, R.S.C. 1927, c. 213, provides that the Court having authority to grant a winding-up order in Ontario, and the Court before which subsequent applications in the course of the winding-up proceedings shall be made, is the Supreme Court of Ontario. That Court

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is constituted a special tribunal of exclusive jurisdiction and becomes a Dominion Court for the purposes of the statute.

Section 136 of the Dominion Winding-up Act provides:

"All remedies sought or demanded for enforcing any claim for a debt, privilege, mortgage, lien or right of property upon, in or to any effects or property in the hands, possession or custody of a liquidator, may be obtained by an order of the Court on summary petition, and not by any action, suit, attachment, seizure or other proceeding of any kind whatsoever."

The remedy sought by a secured creditor to enforce his security falls within this section. 10

Section 21 reads:

"After the winding-up order is made, no suit, action or other proceeding shall be proceeded with or commenced against the company except with the leave of the court and subject to such terms as the court imposes."

From this first step in the process of winding-up a company, in so far as any proceedings at law are concerned, the statute assumes authority to direct the course of such proceedings.

All actions against an insolvent company and all proceedings in the nature of interlocutory applications and the various matters which are dealt with in the progress of an action to its conclusion, come to an end unless leave of the court exercising the jurisdiction conferred upon it as a Dominion court, administering a law enacted by the Parliament of Canada, is granted to continue such actions and proceedings. It was held in *re Raven Lake Portland Cement Co.; National Trust Co. v. Trusts and Guarantee Co.* (1911), 24 O.L.R. 286, that s. 133, R.S.C. 1906, c. 144 (now s. 136, must be read in conjunction with s. 22 (now s. 21) and that what is now s. 136 lays down the rule, while s. 21 creates an exception. 20

The issue presented for determination in this appeal is whether the Legislature of the Province of Ontario has the power to enact that a proceeding in a suit or action, commenced by a secured creditor to enforce a security, prior to the invocation of the provisions of the Dominion Winding-Up Act, but permitted to be continued by order of the Court made under the authority of section 21, shall be stayed and shall not be proceeded with against a company respecting which a winding-up order has been made. 30

The Legislature of Ontario in passing The Abitibi Power & Paper Company Limited Moratorium Act, 1941, 5 Geo. VI, chapter 1, has enacted that, in so far as property in Ontario is concerned, the action commenced by the Montreal Trust Company against the Abitibi Company before the winding-up order and permitted to be continued by order of the Dominion Court made in pursuance of the provisions of section 21 above referred to, shall not be proceeded with in so far as proceedings are concerned taken pursuant to the order of the Court on the 10th June, 1940, directing the sale of the undertaking, property and assets of the 40

Abitibi Company under the mortgage to the plaintiff in the action. The Act remains in force to the 31st December, 1942.

The provision that an action against an insolvent company may be stayed or may be continued only on permission of the Court is a feature usual to laws dealing with insolvency.

The principles and rules laid down by the Courts in Canada and by the Judicial Committee of the Privy Council since Confederation to be applied in defining the scope of the respective legislative powers of the Dominion and of the Provinces in the light of sections 91 and 92 of the
10 British North America Act are well known and have many times been referred to in our Courts; but I take the liberty to refer again to certain of these rules of interpretation, in so far as they may assist in a decision of the question now at issue.

In *Attorney-General for Canada v. Attorneys-General for Ontario, Quebec and Nova Scotia* (the Fisheries Case), (1898) A.C. 700, Lord Herschell, L.C., delivered the judgment of the Judicial Committee, referring to s. 91 of the British North America Act, said:—

"In any view the enactment is express that laws in relation to matters falling within any of the classes enumerated in s. 91 are within the 'ex-
20 clusive' legislative authority of the Dominion Parliament. Whenever, therefore, a matter is within one of these specified classes, legislation in relation to it by a Provincial Legislature is in their Lordships' opinion incompetent."

It is true that there is a domain or field in respect to which it is possible for Dominion and Provincial legislation to overlap, in which case neither the legislation of the Dominion Parliament nor of a Provincial Legislature will be ultra vires if the field is clear, but as was said in *Grand Trunk Railway Company of Canada v. Attorney-General of Canada,* (1907) A.C. 65 and later in *In re Regulation and Control of Aeronautics*
30 *in Canada,* (1932) A.C. 54, (1931) 3 W.W.R. 625, 39 C.R.C. 108, (1932) 1 D.L.R. 58, if the field is not clear and the two legislations meet, that of the Dominion must prevail.

Viscount Haldane in *Toronto Electric Commissioners v. Snider,* (1925) A.C. 396, (1925) 1 W.W.R. 785, (1925) 2 D.L.R. 5, discussed the same principle in the following language:

"When there is a question as to which legislative authority has the power to pass an Act, the first question must therefore be whether the subject falls within s. 92. Even if it does, the further question must be answered, whether it falls also under an enumerated head in s. 91. If
40 so, the Dominion has the paramount power of legislating in relation to it."

This principle is also referred to in Royal Bank of Canada v. Larue, (1928) A.C. 187, 8 C.B.R. 579, (1928) 1 W.W.R. 534, (1928) 1 D.L.R. 945, where a subsection of the Bankruptcy Act was under discussion.

In L'Union St. Jacques de Montreal v. Belisle, (1874) L.R. 6 P.C. 31, the question before the Judicial Committee was whether a Provincial Act dealing solely with the affairs of a particular society which were in

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an embarrassed condition, and imposing a forced commutation of existing rights upon the annuitants of the society, came within Dominion powers of legislation respecting bankruptcy and insolvency. No general law with reference to these subjects existed at the time of this appeal and the Provincial Act was held intra vires. Lord Selborne, who delivered the judgment of the Committee, said:

"Their Lordships are by no means prepared to say that if any such law as that had been passed by the Dominion Legislature, it would have been beyond their competency; nor that, if it had been so passed, it would have been within the competency of the provincial legislature afterwards to take a particular association out of the scope of a general law of that kind, so competently passed by the authority which had power to deal with bankruptcy and insolvency". 10

In *Attorney-General of Ontario v. Attorney-General for Canada* (the Assignments and Preferences Case), (1894) A.C. 189, it was held that the provisions of the Ontario Assignments and Preferences Act, R.S.O. 1887, c. 124, relating to voluntary assignments and postponing thereto judgments and executions not completely executed by payment, were merely ancillary to bankruptcy law and as such were within the competence of the provincial legislature so long as they do not conflict with any existing bankruptcy legislation. Lord Herschell, after commenting upon certain features respecting bankruptcy and insolvency common to all such systems, said:— 20

" . . . a system of bankruptcy legislation may frequently require various ancillary provisions for the purpose of preventing the scheme of the Act from being defeated. It may be necessary for this purpose to deal with the effect of executions and other matters which would otherwise be within the legislative competence of the provincial legislature. Their Lordships do not doubt that it would be open to the Dominion Parliament to deal with such matters as part of a bankruptcy law, and the provincial legislature would doubtless be then precluded from interfering with this legislation, inasmuch as such interference would affect the bankruptcy law of the Dominion Parliament. But it does not follow that such subjects, as might properly be treated as ancillary to such a law and therefore within the powers of the Dominion Parliament, are excluded from the legislative authority of the provincial legislature when there is no bankruptcy or insolvency legislation of the Dominion Parliament in existence." 30

In Croft v. Dunphy (1933) A.C. 156, Lord Macmillan, referring to Royal Bank of Canada v. Larue, supra, said that, 40

"when a power is conferred to legislate upon a particular topic it is important in determining the scope of the power, to have regard to what is ordinarily treated as embraced within that topic in legislative practice, and particularly in the legislative practice of the state which has conferred the power. Thus in considering what might be appropriately and legitimately enacted by the Dominion Parliament under its powers to

legislate in relation to bankruptcy and insolvency it was considered relevant to discuss the usual contents of bankruptcy statutes."

And in *Attorney-General for British Columbia v. Attorney-General for Canada,* (1937) A.C. 391, 18 C.B.R. 217, (1937) 1 W.W.R. 320, the Farmers' Creditors Arrangement Act appeal, the Judicial Committee appeared to take even a wider view of the legislative power of Parliament. Lord Thankerton said:

"Their Lordships are unable to hold that the statutory conditions of insolvency which enabled a creditor or the debtor to invoke the aid of the
10 bankruptcy laws or the classes to which these laws applied, were intended to be stereotyped under head 21 of section 91 of the British North America Act so as to confine the jurisdiction of the Parliament of Canada to the legislative provisions then existing as regards these matters."

A clear picture of the legislative power of the Dominion with respect to the subjects of insolvency and bankruptcy, and the right of Parliament with reference to these subjects in interfering with subjects of legislation assigned to the Provinces by the Constitutional Act, is given in the judgment of the Privy Council in Cushing v. Dupuy (1880), 5 App. Cas. 409; Sir Montague E. Smith delivering the judgment of the Judicial
20 Committee expressed the opinion of the Committee in the following language:

"It would be impossible to advance a step in the construction of a scheme for the administration of insolvent estates without interfering with and modifying some of the ordinary rights of property, and other civil rights, nor without providing some mode of special procedure for the vesting realization, and distribution of the estate, and the settlement of the liabilities of the insolvent. Procedure must necessarily form an essential part of any law dealing with insolvency."

In *Shields v. Peak* (1883), 8 S.C.R. 579, Ritchie, C.J.C., was of the
30 opinion that the right to direct the procedure in civil matters in the Provincial Courts has reference to the procedure in matters over which the Provincial Legislature has power to give them jurisdiction, and does not in any way interfere with or restrict the right or power of the Dominion Parliament to direct the mode of procedure to be adopted in cases in which the Dominion Parliament has jurisdiction, and where it has exclusive authority to deal with the subject matter as it has with the subject of bankruptcy and insolvency.

Section 22 of the Winding-Up Act then in force was the subject of consideration by the Supreme Court of Canada in *Stewart v. LePage*
40 (1916), 53 S.C.R. 337, 29 D.L.R. 607, Anglin J. places actions at law respecting a company under the Winding-up Act in the same category, in so far as the control over such actions by legislation of the Dominion Parliament is concerned, as the assets and property of the company. At page 349 that learned Judge said:

"But Parliament probably thought it necessary in the interest of prudence and economical winding-up that the court charged with that

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duty should have control not only of the assets and property of the company in liquidation but also of all litigation."

Under our constitutional system, the Province within its exclusive legislative field, has the same power within the limits prescribed by sec. 92 of the Imperial Parliament in the plenitude of its power possessed and could bestow; *Hodge v. The Queen* (1883), 9 App. Cas. 117. It may be conceived that in instances falling within the exclusive provincial field, an action at law may be put an end to, or stayed for a definite term or otherwise controlled, by a provincial enactment. But I do not think that is the situation here present.

It was argued with skill by Mr. A. M. Stewart on behalf of the Province of Ontario that the action taken by the mortgagee against the Abitibi Company to enforce the mortgage security, is not a matter that is affected by, or that falls within the ambit of the subject of insolvency and that the secured creditor has the same rights and remedies as if the winding-up proceedings had never been instituted. As a consequence, it is contended the Provincial Legislature has power to enact legislation controlling the course of the action, notwithstanding that the company against which the action was taken has come within the Winding-up Act. The emphasis is placed on the character of the security and the status of the creditor and not upon the fact that the mortgagor company is unable to pay its debts and is insolvent.

It is true that a secured creditor may rely upon his security if he thinks fit to do so, but if he desires to bring action against a company after a winding-up order is granted or to continue an action already brought for such purpose, he must obtain leave in the winding-up proceedings. The secured creditor must submit to the Act in this respect.

In re Brampton Gas Co. (1902), 4 O.L.R. 509, Meredith C.J.O. was of opinion that those sections of the Winding-Up Act providing for proof of debts have no application to fully secured claims where the creditor is content to rely upon his security and that only, and does not seek to share in common with other creditors in the distribution of the general assets of the company, and that a secured creditor may come in and prove or rely upon his security if he thinks fit to do so. At page 518 the learned Chief Justice expressed his view in the following language:

"Indeed, apart from the necessity of obtaining leave in a winding-up to bring his action (section 16) and subject to the provisions of section 39, it is the right of a debenture holder or mortgagee of the company to bring his action against the company to realize his security: . . . and the leave is granted almost as a matter of course, as appears from these cases."

The Chief Justice referred to several authorities, among which is *In re David Lloyd & Co.* (1877) 6 Ch.D. 339. The secured creditor was not outside the confines of the statute in all respects. He was bound by the Act and subject to certain of its terms in that it was necessary for him to obtain leave to bring action to enforce his security.

In several earlier Ontario cases the Court was of the opinion that it was a matter of convenience and discretion whether an action would be directed or summary proceedings directed; *Re Essex Land and Timber Company* (1891), 21 O.R. 367; *Titterington v. Distributors Co.* (1906), 8 O.W.R. 328.

Again, following the judgment in the Brampton Gas Company case, the subject was discussed by the Court of Appeal of Ontario in Re Canadian Western Steel Corporation Limited (1922), 51 O.L.R. 615, 2 C.B.R. 494, 69 D.L.R. 689. Meredith C.J.O., referring to the right of a mort-
10 gagee, at page 621, said:

"The rights of a mortgagee under the Bankruptcy Act differ from those which he has under the Winding-Up Act. Under the former he may proceed regardless of the bankruptcy, while under the latter Act he cannot proceed unless by leave of the Court, and one of the questions to be determined, is which of these Acts governs.

The right of a mortgagee to realize his security, and the proceedings to give effect to this right when the provisions of section 136 or of section 21 are invoked, are wholly within the statute and part of insolvency legislation, that is to say, whether the Court directs the security to be enforced
20 by summary petition or by action. Parliament could have withheld the alternative to section 136 provided by section 21, and I do not think it can be maintained that Parliament could not, still legislating within the field of insolvency, have provided for the manner in which the action should subsequently be carried on. In this connection section 21 states that leave to proceed with the action shall be subject to such terms as the Court imposes. The right of the Court to deny leave to a secured creditor to proceed with his action against the insolvent company, is given by the Act and I am unable to conclude that, because leave to proceed with the action should apparently almost always be given as
30 a matter of judicial discretion, that once such discretion is exercised by allowing the action to proceed this fact can be said to place the action in its subsequent progress outside of the domain of insolvency legislation. I think it reasonable to conclude that the action is permitted to proceed because the right of the mortgagee to enforce his security against an insolvent company may be more efficiently decided in an action than by summary petition. If Parliament has the right to enact as it has done in section 21 of the Winding-Up Act, that a secured creditor cannot proceed with an action such as is now under consideration without leave, then it must follow that Parliament could, by suitable amendment to the Wind-
40 ing-Up Act, take charge of every subsequent step in the action, and could if it saw fit provide for the stay of the action upon certain circumstances arising. Parliament would doubtless have the power to legislate in this respect as a further incident of insolvency. Parliament could also have given a secured creditor the wider rights which such creditor has under the Bankruptcy Act, and the fact that the action of a secured creditor has not been dealt with as it has been in bankruptcy proceedings tends to

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the conclusion that an action, after leave to proceed is granted, is not to be considered outside of the winding-up proceedings. Furthermore the action in question came within the jurisdiction of a Dominion Court in the course of the winding-up proceedings and the order permitting the action to continue was an order of a Dominion Court. The Moratorium Act purports to override and set aside the order of such Court.

The only conclusion to be arrived at in my opinion is that the action after leave to proceed was granted was not taken out of the field of insolvency legislation, and I am unable to agree with the position taken by the Province that the mortgagee is outside of and not affected by the 10 winding-up proceedings.

The domain or field of legislation in so far as the subject of insolvency is concerned, has been occupied by the Dominion, and because that field is so occupied it is within the exclusive legislative power of the Dominion when its legislation has enacted as its subject matter one of the attributes of, or a usual content of, insolvency legislation, namely, the determination whether or not after a winding-up order has been made against a company, an action commenced before the making of such order has been made, shall be continued or not as part of the machinery or method of dealing with the claims of creditors against an insolvent 20 company whether secured or otherwise, to enact that an action to enforce such claims shall be stayed or shall be proceeded with. This power of the Dominion is now paramount because a general insolvency Act respecting companies has been enacted by the Dominion, and it is not now within the legislative power of a province to interfere with this right.

In Reference re Debt Adjustment Act, 1937 (Alta.), (1942) S.C.R. 31, (1942) 1 D.L.R. 1, Duff C.J.C. said that the statute was conceived as a means of protecting embarrassed debtors residing in Alberta but that the legislature in seeking to attain this object seemed to have entered upon the field reserved to the Dominion under bankruptcy and insolvency. The 30 Moratorium Act, as is set out in a recital to the Act, was enacted as a means of enabling the interested parties to consider the plan submitted in the report of the Royal Commission, but the Ontario Legislature in the manner in which it sought to attain this object seems to have entered a field not open to it.

My opinion is that the control of an action and the staying or the ending of its progress at any time up to the final conclusion of the action and all proceedings relating thereto, when such action is against a company which has become insolvent and has been taken within the provisions of the Dominion Winding-Up Act, is removed from the jurisdiction of 40 provincial legislation. Only Parliament, if it should consider such further control of the action necessary, in the winding-up of an insolvent company could enact such legislation it being in respect to a matter which is within the subject of one of the exclusive powers of legislation given to the Dominion Parliament by section 91 of the British North America Act, and in a field of legislation occupied by the Dominion.

The Legislature of the Province of Ontario, in enacting the Moratorium Act in question, has attempted to invade a domain or field of legislation occupied by the Dominion and one, in which if conflict arises, as it does in this instance between Dominion and provincial legislation, the power of the Dominion must prevail.

The Moratorium Act is, in my opinion, ultra vires of the Legislature of Ontario.

Mr. Slaght advanced the plea that upon equitable grounds the sale of the company's assets should be stayed. A mortgagor after default has 10 the equitable right to redeem, and I do not think the right of the mortgagee to realize his security can be stayed or set aside for the reasons submitted by Mr. Slaght.

The appeal should be dismissed and the plaintiff should have costs against the defendant company.

GILLANDERS J.A. (dissenting):—The question for decision in this appeal is whether or not an Act respecting a certain bond mortgage made by the Abitibi Power & Paper Company Limited to the Montreal Trust Company, 5 Geo. VI, 1941 (Ont.), c. 1, is valid and within the competence of the Legislature, or invalid as being beyond the power of the 20 Legislature to enact. This involves a consideration of whether or not the enactment in question is in pith and substance bankruptcy or insolvency legislation within the fair and ordinary meaning of these words.

The respondents support the judgment in appeal ordering a sale of mortgaged property on the ground mainly that sections 1 and 2 of the Act here in question are ultra vires as infringing the exclusive authority of the Parliament of Canada to legislate with respect to bankruptcy and insolvency under the British North America Act, section 91, clause 21.

The relevant facts have been stated in the reasons for the judgment appealed from in the reasons of the learned Judge granting leave to 30 appeal and in the opinions of my brethren, and it is unnecessary to repeat them.

To assist in determining the question involved several considerations are indicated by Lord Maugham L.C. in Attorney-General for Alberta v. Attorney-General for Canada, (1939) A.C. 117, (1938) 3 W.W.R. 337, (1938) 4 D.L.R. 433.

The Courts have been careful, so far as I know, not to lay down any specific definition of the words as used in section 91, subsec. 21, or to specify with precision what they include. In Attorney-General for Ontario v. Attorney-General for the Dominion of Canada, (1894) A.C. 189, the 40 Lord Chancellor says in part: "It is not necessary in their Lordship's opinion, nor would it be expedient to attempt to define, what is covered by the words 'bankruptcy' and 'insolvency', in sect. 91 of the British North America Act. But it will be seen that it is a feature common to all systems of bankruptcy and insolvency to which reference has been made, that the enactments are designed to secure that in the case of an

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insolvent person his assets shall be rateably distributed amongst his creditors . . . ."

Furthermore Parliament has authority to deal with matters of a local or private nature in those cases where such legislation is "necessarily incidental to the exercise of the powers conferred upon it by the enumerative heads of clause 91." Attorney-General for Ontario v. Attorney-General for the Dominion, (1896) A.C. 348.

However Provincial legislation affecting insolvent persons and corporations may be valid as falling under the heading of "property and civil rights in the Province", even though of such a nature that it would be ancillary to bankruptcy law if it does not conflict with any existing bankruptcy legislation. Attorney-General for Ontario v. Attorney-General for the Dominion of Canada, (1894) A.C. 189.

The debtor company had made a conveyance by way of mortgage of the property covered thereby; what remained in the company was the equity, if any, and the right to redeem. When the winding-up order was made the liquidator might have redeemed, if desired, or the plaintiff might have come in to the winding-up and filed a claim. The plaintiff sought to make no claim to share in the rateable distribution of the debtor's assets. It did not seek to avail itself of the provisions of the Winding-Up Act to share along with other creditors in the equitable distribution of the insolvent's assets. It did seek to proceed with the action then pending to realize on the security which it held. On application for leave to proceed an order was made giving liberty to proceed notwithstanding the winding-up order.

For the respondent it is urged that, the Abitibi Company being insolvent and a winding-up order having been made, the plaintiff's action is within the ambit of insolvency legislation, that the Court is the forum vested by the Winding-Up Act with jurisdiction to permit the action to proceed or otherwise, and that the legislation in question is in conflict with this provision and therefore invalid.

Further it is argued that the field at which the legislation is directed is already occupied by certain legislation enacted by Dominion Parliament, and that this Act is in conflict therewith. Our attention is directed to the provisions of the Companies' Creditors Arrangement Act, 1933, 1932-33 (Dom.), c. 36, relating to effecting a compromise of creditors and the power to restrain proceedings; to the provisions of section 24 of The Bankruptcy Act, R.S.C. 1927, c. 11, and to certain provisions of The Winding-up Act, itself, particularly ss. 17, 21, 65 and 66.

Prima facie the Act in question, purporting to stay proceedings under the order for sale now in appeal, and further proceedings to that end for a limited time is not, I think, legislation relating to or falling in the field of bankruptcy and insolvency. It does not purport to interfere with the rateable distribution of the debtor company's property amongst its creditors, nor to substitute any provisions which conflict with the scheme or plan of a Dominion Act respecting bankruptcy or insolvency.

It is confined to dealing with the pending action and other actions to realize this mortgage security. Nor do I think the application made by the plaintiff to continue the action and not for any remedy by summary petition, under sec. 136, thereby brought the plaintiff and this action within the insolvency proceedings. I appreciate that expressions in various cases lend weight to conflicting views as to whether or not the plaintiff's proceedings were part of the winding-up. The following might indicate that the plaintiff was outside such proceedings. In re David Lloyd & Co. (1877), 6 Ch. D. 339; Capital Trust Company v. Yellowhead
10 Pass Coal & Coke Co. (1916), 9 Alta. L.R. 463, 27 D.L.R. 25 at 30, 9 W.W.R. 1275, 33 W.L.R. 873; Stewart v. LePage (1916), 53 S.C.R. 337; Re Brampton Gas Co. (1902), 4 O.L.R. 509, although here no action had been started; In re The Cushing Sulphite Fibre Co. Limited (1906), 38 N.B.R. 581. The decision of the Court of Appeal in England in the recent case of Pritchard-Jones v. Le Vaye, (1941) 3 All E.R. 455, seems to proceed on the assumption that bankruptcy legislation has for its primary object the equitable distribution of a debtor's property among his creditors. It held that the Courts (Emergency Powers) Act, 1939 (Imp.), c. 67, which was there under consideration, was not such legislation because
20 its primary object was to protect or assist the debtor.

Lending support to an opposite view there are such cases as ex parte Cochrane; In re Mead (1875), 20 L.R. Eq. 282; In re Henry Pound, Son & Hutchins, Ltd. (1889), 1 Meg. 279, 42 Ch. D. 402.

It may even be that other arguments could be advanced had the legislation in question been passed prior to the order giving liberty to proceed, notwithstanding the winding-up order. The Act in question when passed did not affect property then available in any way to the creditors of the debtor company, or within the control of the liquidator. Where property is left to go where it will according to ordinary contrac-
30 tual or property rights, can it be said that a Province cannot legislate concerning that property, and the contractual or property rights affecting it, merely because under Dominion legislation the property might have been affected? I think not.

As to conflict between the legislation under consideration and existing bankruptcy legislation, it does not prima facie conflict with provisions relating to the effecting of a compromise. It provides no plan of compromise, nor does it touch the creditors of the debtor company as a whole. As to whether the stay of the plaintiff's action is in conflict with the provisions for staying of proceedings under the Winding-Up Act, or
40 other bankruptcy legislation: under section 24 of the Bankruptcy Act no leave is necessary for a creditor to institute foreclosure, although the case is different when a personal judgment is sought, as distinct from the remedy in rem. The provisions of the Winding-Up Act staying proceedings and requiring leave to proceed, have been applied within the limits of the purpose of winding-up to preserve the assets, and work out their distribution among the parties entitled. Where a mortgage has

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started an action and winding-up intervenes leave will usually be granted as a matter of course. Re Brampton Gas Company (supra), at 518.

I am impressed with the view expressed by James L.J. In re David Lloyd & Co. (supra), referred to in a number of cases;

"These sections in the Companies Act, and the corresponding legislation with regard to bankrupts, enabling the Court to interfere with actions, were intended, not for the purpose of harassing, or impeding, or injuring third persons, but for the purpose of preserving the limited assets of the company or bankrupt in the best way for distribution among all the persons who have claims upon them. There being only a small 10 fund or a limited fund to be divided among a great number of persons, it would be monstrous that one or more of them should be harassing the company with actions and incurring costs which would increase the claims against the company and diminish the assets which ought to be divided among all the creditors. But that has really nothing to do with the case of a man who for the present purpose is to be considered as entirely outside the company, who is merely seeking to enforce a claim, not against the company, but to his own property. . ... . Power was given to the Court to interfere with actions by restraining them or not allowing them to proceed, but this power was given because it was understood that the 20 Court would exercise it with a due regard to the rights of third persons, persons who were not members of the company, and who had not come in and claim to share in the distribution of the company's assets among the creditors, and who were not therefore quasi parties to the winding-up proceedings.

It was not argued that if the legislation in question did not fall within the field of bankruptcy and insolvency, that it fell under any other specific power reserved to Parliament under section 91. If not it would appear to have to do with or be within at least two of the powers vested in the Legislature under section 92; clause 5, "The Management and sale of 30 public lands belonging to the Province and the timber and wood thereon," and clause 13 "property and civil rights in the Province."

There was much able argument directed to the point as to whether legislation of this nature, in effect a moratorium, is procedural only, or affects substantive rights. Authorities were cited in support of both views.

If in any event it is not within the field of bankruptcy and insolvency this is probably not important. The question is discussed in Reference re Debt Adjustment Act, 1937 (Alta.), (1942) S.C.R. 31, (1942) 1 D.L.R. 1, and in Attorney-General for Alberta and Winstanley v. Atlas Lumber Company Limited, (1941) S.C.R. 87, (1941) 1 D.L.R. 625. 40

The legislation under consideration in those cases was very different in pith and substance from that now being considered, and was held in direct conflict with specific powers vested in Parliament. Further it was not limited to a moratorium. However I think that the reasons discussed by the Chief Justice in the Debt Adjustment case may be applied, and

that the Act here under consideration does affect substantive rights and is more than mere procedure.

In looking for the object or purpose of the Act, the operative part itself indicates, I think, that its pith and substance is dealing with property and civil rights in the Province. A consideration of the recitals might throw some doubt on the purpose. On the one hand, the preamble recites, inter alia, briefly the history of the mortgage and the legal proceedings that have taken place; a reference to the agreement between the Provincial Government and the plaintiffs respecting pulp wood cut- 10 ting agreements; the setting up of a Royal Commission to inquire into the affairs of the company "with a view to recommending an equitable plan for solving the financial difficulties of the company so that the company may be in a position to meet conditions, regulations and restrictions which the Lieutenant-Governor in Council may consider necessary upon the granting or renewal of the hereinbefore recited leases, licenses, water power rights, flooding rights, licenses of occupation and other rights, powers or privileges; and generally to make such recommendations in the premises as appear to be in the best interests of all parties concerned, including the Province of Ontario; that the said company is dependent 20 for its supply of pulpwood upon the Crown lands of the Province of Ontario; that it also requires large quantities of power in respect of which it is dependent upon leases from the Province of Ontario; and the assistance of the Government must be a largely contributing factor in the success of the enterprise.

On the other hand, the recitals contain certain portions which might indicate that the object of the Act was, in part at least, looking to some disposition of the affairs and assets of the insolvent company, other than that provided by existing legislation. Such recitals are the following: "the said Royal Commission has reported to The Honourable the Lieut- 30 enant-Governor in Council, inter alia that existing legislation relevant to the reorganization of companies is inadequate to meet the situations that arise when companies are in financial difficulties . . . .

" . . . and that the Government would be justified in trying to secure the carrying out of the purposes which led to the making of the various agreements and to protect the legitimate interests of persons who have contributed to or are bound up with the conduct of the enterprise . . . "

"That, whatever the potential value of the undertaking and assets of 'said Company' may be, no price could be obtained for the undertaking and assets under present conditions which would begin to approach the 40 amount of the outstanding bonds with interest thereon . . . "

"That if the present rate of earnings maintains for some time to come, the shareholders may well have a substantial equity in the property."

It was pointed out that this is the largest undertaking of its kind in the Province; that the company holds more leases, licenses and rights of similar kind than any other company in Ontario; that its affairs are

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therefore the intimate concern of the Government, and that the legislation is, as indicated by the recitals concerned with and directed to the management of public lands and rights within the Province and is not legislation respecting a compromise or distribution of the company's assets among its creditors, but is mainly directed to the rights of the Province which is the owner of the property rights and licenses on which the continued operation of the company is so largely dependent.

It may possibly be that the creditors of the Abitibi Company will gain some benefit from the delay imposed by the Act, but if it is not legislation actually invading bankruptcy and insolvency, and its pith and substance is to deal with property and civil rights in the Province and the management of Crown lands and property, then, although incidentally some benefit may accrue to the creditors of the company, as a whole I think the expression of that charitable hope among the recitals does not affect the substance of the legislation.

If the legislation lies within the powers given to the Legislature by section 92 of the British North America Act, the question whether the effect of the act is equitable or inequitable is not open to consideration here. It has been held that within the ambit of its authority the power of the Legislature is supreme. Florence Mining Co. Limited v. Cobalt Lake Mining Co. Limited (1909), 18 O.L.R. 275; Hodge v. The Queen (1883), 9 App. Cas. 132.

For the reasons indicated I think with respect the appeal should be allowed and the order for sale set aside.

The constitutional validity of Provincial legislation being in question the Crown in the right of the Province was properly and ably represented on the appeal, but the Crown is not a party to the actions and the relief should be confined to such as might be awarded between the parties; Florence Mining Co. Limited v. Cobalt Lake Mining Co. Limited (supra). The defendants should have their costs of this appeal from the plaintiff, otherwise no order as to costs.

No. 29
Order of the Court of Appeal for Ontario.
May 16, 1942.

No. 29

Order of the Court of Appeal for Ontario

The Honourable the Chief Justice of Ontario The Honourable Mr. Justice Masten The Honourable Mr. Justice McTague	Saturday, the 16th day of May, 1942.

UPON motion made unto this Court on the 10th, 13th, 16th and 17th days of April and the 16th day of May, 1942, by counsel for the Defend-

ant Abitibi Power & Paper Company Limited, in the presence of counsel for the Attorney-General for the Province of Ontario, counsel for the Plaintiff, counsel for the Defendants other than the Defendant Abitibi Power & Paper Company Limited, counsel for the Protective Committee for General Creditors, counsel for the Preferred Shareholders' Protective Committee and counsel for the Common Shareholders' Protective Committee; upon hearing read the Notice of Motion herein dated the 31st day of March, 1942, the Judgment of the Court of Appeal for Ontario dated the 21st day of March, 1942, the Notice to the Attorney-General for
10 Canada and to the Attorney-General for Ontario dated the 18th day of April, 1942, the Notice of Motion dated the 12th day of May, 1942, the Bond of the United States Fidelity and Guaranty Company dated the 12th day of May, 1942, filed, and the Affidavit of William Goldwin Carrington Howland, filed; and upon hearing what was alleged by counsel aforesaid, and the Defendant Abitibi Power & Paper Company Limited by its counsel undertaking to expedite its appeal to His Majesty in His Privy Council;

1. IT IS ORDERED that the said Bond be and the same is hereby approved as good and sufficient security that the Defendant, Abitibi
20 Power & Paper Company Limited, will effectually prosecute its appeal to His Majesty in His Privy Council from the Judgment of the Court of Appeal for Ontario dated the 21st day of March, 1942, and will pay such costs as may be awarded in the event the said Judgment is affirmed.

2. AND IT IS FURTHER ORDERED that an appeal by the Defendant Abitibi Power & Paper Company Limited to His Majesty in His Privy Council from the Judgment of the Court of Appeal pronounced herein on the 21st day of March, 1942, be and the same is hereby admitted.

3. AND IT IS ORDERED that leave be reserved to any party to apply in the event of default in carrying out the undertaking to expedite
30 the appeal hereinbefore recited.

4. AND IT IS FURTHER ORDERED that the costs of this application of the parties to this action shall be costs in the said appeal and this Court doth not see fit to make any further order as to costs.

CHAS. W. SMYTH,
Registrar, S.C.O.

Entered O.B. 184 Page 16-7
June 24, 1942.
P.H.

In the Supreme Court of Ontario

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No. 30
Reasons for Judgment of the Court of Appeal for Ontario.
Robertson, C.J.O.,
April 28, 1942.

No. 30

Reasons for Judgment of the Court of Appeal for Ontario

C.A.

MONTREAL TRUST COMPANY

v.

ABITIBI POWER & PAPER COMPANY LIMITED et al.

Copy of Reasons for Judgment of Court of Appeal (Robertson C.J.O., Masten and McTague JJ.A.) delivered April 28th, 1942.

D. L. McCarthy, K.C., for defendant Company, appellant.

A. M. Stewart, K.C., and C. R. Magone, K.C., for the Attorney-General of Ontario. 10

A. G. Slaght, K.C. for Committee of Preference Shareholders.

W. Judson, for Committee of Common Shareholders.

J. L. Stewart, for Committee of General Creditors.

W. N. Tilley, K.C. and R. W. S. Johnston, for plaintiff, respondent.

R. C. H. Cassels, K.C., and D. G. Guest, for individual defendants, respondents. 20

28th April 1942. Robertson C.J.O.:—This is an application to admit an appeal to the Judicial Committee of the Privy Council from the order of the Court of Appeal dated 21st March 1942, which dismissed an appeal from an order of Middleton J.A. dated 4th December 1941, whereby he ordered that all the real and personal property, assets and effects of the defendant company be sold under the direction of the Master by public auction, subject to a reserve bid. The sale directed is for the purpose of carrying out the judgment in this action dated 3rd November 1937, after the trial of the action, which declared that the plaintiff and the holders of bonds of the defendant company issued under an indenture 30 and mortgage dated as of 1st June 1928, are entitled to a first charge upon the undertaking, property and assets of the defendant company for payment of the moneys secured thereby, and that the trusts of the said indenture and mortgage ought to be performed and carried into execution, and did order and adjudge the same accordingly.

The defendant company was incorporated on 9th February 1914 by Letters Patent of the Dominion of Canada, and took over at that time the undertaking and assets of Abitibi Pulp & Paper Co. Ltd. In 1928 the defendant company acquired the assets of several other companies, and its capital structure was altered and the bond mortgage in question 40 in this action was made. Early in September 1932, default having been made in the payment of interest on the bonds, this action was commenced and a receiver was appointed. There were bonds and shares of the defendant company outstanding as follows:—

First mortgage bonds secured by the mortgage of 1st June, 1928 ....$	48,267,000.00
10,000 shares of 7% cumulative preferred stock	1,000,000.00
348,818 shares of 6% cumulative preferred stock	34,818,000.00
1,088,117 common shares having no par value but a book value of	18,964,935.43
There were also claims of unsecured creditors to the amount of	757,611.00

On 26th September 1932 the defendant company was declared bankrupt and on the same day, leave having been obtained in the bankruptcy proceeding, an order was made for winding-up the company under the provisions of The Winding-up Act, R.S.C. 1927, c. 213, and a liquidator was appointed. Somewhat later the plaintiffs obtained leave in the winding-up to proceed with this action notwithstanding the winding-up order.

The property of the defendant company is still in the hands of the receiver appointed in this action, who has carried on the business of the company throughout his receivership. In the earlier years of the receivership the operation of the company was not profitable, but in more recent years, owing in part to an increase in the market price of newsprint, there has been a marked improvement. By order dated 7th June 1941 the receiver was directed to pay to the plaintiff the sum of $6,274,710 for distribution pro rata among the bondholders on account of principal moneys due on the bonds. An order has lately been made for the payment of a further sum to be similarly applied. No interest, however, has been paid upon the bonds during the receivership.

Attempts were made following the judgment entered after the trial of the action in 1937, to carry out a sale of the mortgage property for a consideration other than cash, under the provisions of s. 15 (i) of The Judicature Act, R.S.O. 1937, c. 100. The proposals that were submitted to the Court for its order and approval included, as an essential part of them, provisions for the distribution of the consideration to be received, not only among the bondholders, but among unsecured creditors and shareholders of the several classes upon a specified basis. The proposals had the sanction of the majority of the bondholders, but the Court was of the opinion that it was not within its power to order the carrying out of the proposed sale, involving as it did the distribution of the assets of the company in liquidation otherwise than under The Winding-up Act. In the end nothing came of these attempts.

By order of Middleton J.A. of 10th June 1940 it was ordered, on the plaintiff's application, that the mortgaged property of the defendant company be sold under the direction of the Master, and that the purchase money be paid into Court. Bondholders were given leave to bid at the sale and to become purchasers, and there were reserved to them all powers and privileges conferred by the bond mortgage, including the rights and privileges conferred by para. 34 of the mortgage. Under para. 34 a purchaser, on a sale of the mortgaged premises, is entitled to turn in

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bonds or matured coupons in place of cash on account of the purchase price, to the amount which would, upon distribution of the net proceeds of the sale, be payable thereon. Only one bid was made when the property was offered for sale by the Master under this order. That bid was made by Mr. H. J. Symington, who is Chairman of a committee said to represent the holders of approximately sixty per cent. of the outstanding bonds. The amount bid was $30,000,000 and as this was less than the reserve bid fixed by the Master, no sale was made. A motion was then made for an order that the property be offered for sale without a reserve bid. This motion came on before Middleton J.A. on the 29th November 1940, when it was adjourned sine die with leave to any party to bring the motion on at any time upon one week's notice. The motion was not brought on again until November 1941. In the meantime an Act of the Legislature of the Province of Ontario entitled "An Act respecting a certain Bond Mortgage made by the Abitibi Power & Paper Company Limited to the Montreal Trust Company", and being c. 1 of 5 Geo. VI, was passed and assented to on 9th April 1941. The validity of this statute was one of the principal matters considered by the Court of Appeal in making its order, from which an appeal to the Judicial Committee is now sought to be admitted.

By the statute referred to it is enacted that in so far as any porperty, real or personal, in Ontario is concerned, no further proceedings shall be taken or continued under the order made by Middleton J.A. on 10th June 1940, directing the sale of the defendant company's undertaking, property and assets under the mortgage made by the plaintiff as trustee for bondholders. It is further enacted that no further step shall be taken or order made in this action without the consent in writing of the Attorney-General. The Act provides that it shall come into force on a day to be named by the Lieutenant-Governor by proclamation, and when so proclaimed the Lieutenant-Governor in Council may, at any time, terminate the operation of this Act, but, subject to the operation of any order-in-council terminating its operation, the Act shall remain in force until 31st December 1942.

There had been no proclamation of the Lieutenant-Governor bringing this statute into operation at the time notice was given that the motion before Middleton J.A. would be brought on again in November 1941, but before the motion was disposed of a proclamation was issued bringing the Act into force. Middleton J.A., however, held that the Act was ultra vires of the Ontario Legislature for reasons stated by him in writing, and on 4th December 1941 he made an order that the mortgaged property be sold on 18th February 1942 under the direction of the Master, subject to a reserve bid. By leave granted by Roach J., an appeal from this order was taken in the name of the company by the liquidator, to the Court of Appeal. The appeal was heard by a Court composed of Riddell, Fisher, Henderson and Gillanders JJ.A. and Hogg J., and on 21st March 1942 the appeal was dismissed, Gillanders J.A. dissenting.

The majority of the Judges of the Court of Appeal were of the opinion that the Act of the Legislature of 1941, already referred to, was ultra vires.

The Legislature thereupon passed an Act entitled "The Abitibi Moratorium Constitutional Question Act, 1942", c. 2, which was assented to on 27th March 1942. This Act in its preamble refers to the order of Middleton J.A. of 4th December 1941, ordering a sale under the mortgage, and to the judgment of the Court of Appeal of 21st March 1942 dismissing the defendant company's appeal from that order, and to the fact that 10 in these proceedings the constitutional validity of The Abitibi Power & Paper Company Limited Moratorium Act, 1941 (Ont.), c. 1, was brought in question, and that the Act was held to be invalid. It is further recited that pursuant to the provisions of s. 32 of The Judicature Act, notice was duly given to the Attorney-General that the constitutional validity of the last-mentioned Act would be brought in question in the said proceedings, and that the Attorney-General, personally and by counsel, appeared in the said proceedings, but that neither the Attorney-General nor His Majesty in right of the Province of Ontario was or is formally a party to the said action, and that it is desirable that the question of 20 the constitutional validity of the said Act be passed upon by the Court of last resort. It was therefore enacted that:

"1.—(1) Notwithstanding anything contained in The Privy Council Appeals Act, The Judicature Act or any other Act or any rules or regulations made thereunder an appeal shall lie to His Majesty in His Privy Council from the judgment of the Court of Appeal for Ontario in a certain action in the Supreme Court of Ontario between Montreal Trust Company, as plaintiff, and Abitibi Power & Paper Company Limited, Joseph P. Ripley, Stanton Griffis, Milton C. Cross, W.H. Somerville, Robert H. Reid, Andrew Fleming and W. A. Arbuckle, as 30 defendants, such judgment being dated the 21st day of March, 1942, and being a judgment dismissing an appeal from an order of the Honourable Mr. Justice Middleton, dated the 4th day of December 1941, whereby amongst other things there was ordered the sale of all the real and personal property, assets and effects of the defendant Abitibi Power & Paper Company Limited.

"(2) Such appeal may be taken by the defendant Abitibi Power & Paper Company Limited and notwithstanding anything contained in The Privy Council Appeals Act, The Judicature Act or any other Act or any rules or regulations made thereunder such appeal by such 40 defendant shall be allowed and admitted and thereupon all proceedings under the said order or the said judgment and all execution of, on or under the said order or the said judgment shall be stayed pending the determination of such appeal, the whole without the giving of any security; and the provisions of section 8 of The Constitutional Questions Act shall apply to such appeal in all respects as though such appeal were an appeal by His Majesty in right of the Province of Ontario from

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a judgment of a Court on a reference under The Constitutional Questions Act."

An application was made to me by the liquidator in the name of the defendant company to admit an appeal from the judgment of the Court of Appeal to the Judicial Committee. After hearing argument I directed that the application be referred to the Court of Appeal, considering that an appeal would, in any event, be taken from any order I might make. The application therefore came before this Court.

There was much argument before us with respect to the power of the Legislature to pass this last-mentioned Act, and the provisions 10 heretofore made for appeals as of right to His Majesty in Council, beginning with the Proclamation of 1763, and continuing down to The Privy Council Appeals Act, R.S.O. 1937, c. 98, were carefully reviewed and discussed.

In the view that I take of the matter it is not necessary to determine on this application the broad question whether or not it is within the jurisdiction of the Provincial Legislature to extend the area of the right of appeal as defined in s. 1 of The Privy Council Appeals Act, which has long existed.

The Abitibi Moratorium Constitutional Question Act, 1942 is not, in 20 my opinion, one that it is within the power of the Legislature of Ontario to enact. The Court of Appeal, the highest Court in the Province, having already given its judgment on the matter in controversy, the Legislature by this Act assumes to grant to one of the parties to the action a right of appeal to the Judicial Committee from that judgment. As appears by the preamble, the purpose of the Act is to obtain the opinion of the Judicial Committee upon a constitutional question that the Attorney-General cannot conveniently bring before it under The Constitutional Questions Act, R.S.O. 1937, c. 130. This insolvent company is therefore placed in the favoured position of not being required to give any security 30 as other appellants are required to do, and is relieved from all the restrictions of The Privy Council Appeals Act as if this were an appeal under The Constitutional Questions Act. Nothing is to be done by any Court in Ontario except to perform the function, which the Act makes in this case a mere clearical one, of transmitting the case to the Judicial Committee for its opinion. This Act does not, in my opinion, come within the description of a law relating to the administration of justice in the Province, in respect of which the Legislature of the Province has jurisdiction under s. 92 (14) of The British North America Act, and no attempt was made to support it under any other head. 40

That does not, however, dispose finally of the question whether the appeal of the defendant company is not one that can be admitted. The provisions of The Privy Council Appeals Act must be considered, and in my opinion the proposed appeal is one that we both can admit and ought to admit under that Act, upon the terms contained in it.

Objection was taken that the order of Middleton J.A. and the order

of the Court of Appeal dismissing the defendant company's appeal from it are not final orders, but are interlocutory. That may be true as these terms are commonly applied to legal proceedings. The sale of the mortgaged premises in the event of default, appears to be one of the trusts of the bond mortgage which the judgment in this action of 3rd November 1937 declared ought to be performed and carried into execution. The order of Middleton J.A. that the property be sold by the Master merely implements what the judgment in the action had declared to be the right of the plaintiff and of the bondholders. It is not a final order either in
10 the sense that it effects a change in the ownership of the mortgaged property. Notwithstanding the order, there may be no sale, as there was no sale under the similar order of 10th June 1940. Is it, however, a fatal objection to the admitting of an appeal to the Judicial Committee that the order or judgment sought to be appealed from is one that is classified as interlocutory?

Neither in the Proclamation of 1763, nor in The Privy Council Appeals Act, R.S.O. 1937, c. 98, nor in any of the several statutes and ordinances that come between, defining the right of appeal to the Privy Council, are there any words that draw a line between such judgments
20 or orders as are final and such as are interlocutory. In the Proclamation of 1763 the words are "with Liberty to all Persons who may think themselves aggrieved by the Sentences of such Courts, in all civil cases, to appeal, under the usual Limitations and Restrictions, to Us in our Privy Council." The Constitutional Act of 1791, which divided what had been called Quebec into the two Provinces of Upper Canada and Lower Canada, was even more indefinite than the Proclamation of 1763 in defining the cases in which an appeal should lie as of right to His Majesty in Privy Council. One goes to ordinances and statutes made in Canada under authority that has varied from time to time, for any more par-
30 ticular definition of the appeal as of right. None of them contains anything to the present purpose that is not to be found in s. 1 of The Privy Council Appeals Act, which is as follows:

"1. Where the matter in controversy in any case exceeds the sum or value of $4,000, as well as in any case where the matter in question relates to the taking of any annual or other rent, customary or other duty, or fee, or any like demand of a general and public nature affecting future rights, of what value or amount soever the same may be, an appeal shall lie to His Majesty in His Privy Council, and, except as aforesaid, no appeal shall lie to His Majesty in His Privy Council."

40 No one would contend that from every interlocutory order in an action that involves more than $4,000 in amount or value an appeal lies as of right to the Privy Council under this statute. Interlocutory orders, even in such an action, do not commonly answer to the description in the statute of what may be appealed, as the statute is properly interpreted. But I do not think there is anything in the statute that excludes an appeal upon the simple ground that the order or judgment

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sought to be appealed from is interlocutory, where there are exceptional circumstances and the matter to be determined is of importance and one proper for submission to the Privy Council.

In an Indian appeal, where the matter in controversy related to the appointment of an interim receiver, and to a discharge in part of the order appointing a receiver, after discussing the appeal and concluding that the appeal failed, Lord Sumner said:

"Their Lordships remark that it was with some doubt in the mind of at least one of the judges of the High Court that leave to appeal to His Majesty in Council was given in this case, and they think it right to add that, as a general rule and in the absence of special circumstances or some unusual occasion for its exercise, the power of making interlocutory orders is one which is not a suitable subject for review by the Judicial Committee. Not only are the practice of the Court and the manner in which experience has shown that it is wise to apply it, better known to the High Courts in India than they can be to their Lordships, but the delay occasioned by taking this additional appeal adds gravely to the procrastination, which is already the bane of Indian litigation." (Benoy Krishna Mukherjee v. Satish Chandra Giri (1927), L.R. 55 Ind. App. 131 at pp. 134-135).

Appeals to His Majesty in His Privy Council from India are not governed by the proclamation and ordinances and statutes that apply to Canadian appeals, and the right of appeal has had a different history, but, if with great respect I may presume to say so, the observations of Lord Sumner that I have quoted in relation to granting leave to appeal to His Majesty in Council from interlocutory orders in the case of Indian appeals may well be applied to the admitting of appeals under the Ontario statute from which I have quoted.

While the value of the mortgaged premises that Middleton J.A. has ordered to be sold is enormous, and the amounts invested by shareholders of the several classes, and owing to unsecured creditors, that are in jeopardy if a sale is made as ordered, are very great, the matter that is particularly in controversy at the moment is the validity of The Abitibi Power & Paper Company Limited Moratorium Act, 1941 (Ont.), c. 1. The defendant company, through its liquidator, claims that this statute gives it the right to have the sale deferred while the statute is in force. Presumably by reason of the fact that the duration of that Act as fixed by s. 4 will come to an end before, in the ordinary course, another meeting of the Legislature will be held, the Legislature at its 1942 session, lately closed, passed an Act further extending the period in which there shall be no sale. This new right set up by the defendant company under the Act of 1941 is disputed by the plaintiff and by the individual defendants, and it has been decided by the Courts of this Province that no such right exists because the statute is not within the legislative powers of the Legislature.

Although I have not formed an opinion one way or another as to the

powers of the Ontario Legislature to enact the statute in question, it is, I think, of some importance to a full appreciation of the present position to know something of the special interest of the Province in the property proposed to be sold.

An essential part of the property covered by the mortgage consists of leases, licenses, agreements, water power rights, privileges, franchises and concessions granted by the Province of Ontario. As is stated in the report of a Royal Commission that inquired into the affairs of the defendant company, whose report is before us and was referred to in 10 argument, "Abitibi is dependent for its supply of pulpwood upon the Crown lands of the Province of Ontario. It also requires large quantities of power, in respect of which it is dependent upon leases from the Province." These licenses, leases and other rights are granted in most, if not in all, cases for fixed terms of years, and some of these have expired or are about to expire. As to some others the company is in default either in payment or in the performance of its covenants. If the Province of Ontario should exercise its rights strictly, the mortgaged premises would hardly be saleable at any price. Mills in which large sums of money are invested would be worthless without power to run them or pulpwood 20 to supply them. In the report of the Royal Commission to which I have referred there is set forth on pages 10 and 11 a long list of the defendant company's further requirements from the Province, as given by the receiver. No doubt the Province is in the habit of co-operating fairly with persons who invest their money in establishing and developing industries on the lands of the Crown and in opening them up to settlement, and improving them, but when, as here, there may be danger that many persons who have invested largely will lose their investment, the Government of the Province may have some concern. It may well be that on a sale for cash none but bondholders who can turn in their 30 bonds in payment, will be in a position to buy, especially in view of the difficulty of raising large amounts of capital for such investment in war time. To avoid a result that may wipe out the investment of a great many people and that in such an event may cause some embarassment to the Government in dealing with the property rights and interests of the Province, it is, to say the least, understandable that the proposed sale for cash should be the subject of some concern to the Legislature, whatever opinion one may have as to the power of the Legislature to enact the statute in question.

It may well be that even if the statute is found to be valid, it will 40 at best do no more than postpone the inevitable. However that may be, it seems improbable that a sale for cash will be carried to completion without some way being found to fulfil the desire of the Legislature "that the question of the constitutional validity of the Act be passed upon by the Court of last resort."

The question of the power of the Provincial Legislature to pass an Act to prevent a sale at this time, notwithstanding the terms of the

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mortgage and the judgment for its enforcement, is a new issue in this action. Of its importance there can be no doubt, and under these special circumstances I am of the opinion that the application to admit this appeal to the Judicial Committee should be granted. As the order can only be made under the provisions of The Privy Council Appeals Act, the appeal can only be admitted upon the terms set forth in that statute. Proper security must be provided, and when it is provided an order should go approving the security and admitting the appeal. Counsel for the applicant undertook on the argument of the motion that if leave were granted the appeal would be expedited. 10

The costs of the application should be costs in the appeal.

McTague, J.A., April 28, 1942.

McTAGUE J.A.: I agree.

Masten, J.A., April 29, 1942.

MASTEN J.A.: I agree in the result reserving my right to state hereafter my reasons.

29th April 1942. MASTEN, J.A.:—This is an application to admit an appeal to the Judicial Committee of the Privy Council from the order of the Court of Appeal dated 21st March 1942, which dismissed an appeal from an order of Middleton J.A. dated 4th December 1941, whereby a sale under the direction of the Master of the assets and undertaking of the defendant company was directed. 20

The history of the events and proceedings leading up to the present application have been fully stated in the reasons for judgment of my Lord, the Chief Justice, and I do not propose to repeat them.

I may say at once that with some doubt I agree with my Lord's conclusion that the Company's motion to admit an appeal to the Privy Council ought to be granted on proper terms, and I arrive at that conclusion by a process of reasoning similar to, though not identical with, that adopted by my Lord.

I find the Abitibi Moratorium Constitutional Question Act, 1942, ultra vires, invalid and inapplicable to the determination of the present 30 application. It provides as follows:

"Sec. 1. Notwithstanding anything contained in The Privy Council Appeals Act, The Judicature Act or any other Act or any rules or regulations made thereunder an appeal shall lie to His Majesty in His Privy Council from the judgment of the Court of Appeal for Ontario in a certain action (describing the present action) . . . . such judgment being dated the 21st day of March, 1942."

"Sec. 2. Such appeal may be taken by the defendant Abitibi Power & Paper Company Limited and notwithstanding anything contained in The Privy Council Appeals Act, The Judicature Act or any other 40 Act or any rules or regulations made thereunder such appeal by such defendant shall be allowed and admitted and thereupon all proceedings under the said order or the said judgment and all execution of, on or under the said order or the said judgment shall be stayed pending the

determination of such appeal, the whole without the giving of any security."

If the Act were valid and effective, this Court would be shorn of any right to consider judicially whether the proposed appeal ought or ought not to be admitted, for it is peremptorily directed to sign an order admitting the appeal. The judicial function of determining whether the appeal ought or ought not to be admitted has always hitherto been vested in the Court appealed from. I direct attention in the first instance to Rule 2 of the Rules of the Judicial Committee of the Privy
10 Council, which reads as follows:

"(2) All appeals shall be brought either in pursuance of leave obtained from the Court appealed from, or in the absence of such leave in pursuance of special leave to appeal granted by His Majesty in Council upon a petition in that behalf presented by the intending appellant."

In *E. W. Gillett & Co. Limited v. Lumsden* (1905) A.C. 601, Lord Macnaghten spoke as follows:

". . . . On considering the 'Act respecting Appeals to Her Majesty in Her Privy Council,' it seems clear to their Lordships that an allowance
20 of the appeal is contemplated, and such an allowance must be one by the Court of Ontario. Having regard to the consequences that would follow from admitting an appeal, their Lordships think it is essential that the appeal should be admitted by the Court, and that the Court is bound to exercise its judgment in considering whether any particular case is appealable or not."

Subsequently, in the case of *Davis et al. v. Shaughnessy et al.*, (1932) A.C. at page 111, Viscount Dunedin spoke as follows:

"Their Lordships wish to repeat what Lord Macnaghten said as to its being the duty of the Court to come to a conclusion and either to
30 allow the appeal or not. If they allow it, the result usually will not be questioned. If they do not allow it, then the wishful appellant can always present a petition for special leave to appeal . . ."

In *Patton et al. v. Yukon Consolidated Gold Corporation Ltd. et al.*, (1936) O.R. 308; *E. W. Gillett & Co. Limited v. Lumsden* and *Davis et al. v. Shaughnessy et al.* were quoted and applied by Middleton J.A. as imposing on the Court that hears the application to admit the appeal the duty of disposing of all questions relating to its competency.

Another reason amply supported by the highest authority is to be found in the principles and rules laid down by the Privy Council in the
40 case of *British Coal Corporation et al. v. The King,* (1935) A.C. 500 and developed and elaborated by the Supreme Court of Canada in the case of a "Reference as to the legislative competence of the Parliament of Canada to enact Bill No. 9 entitled "An Act to amend the Supreme Court Act", (1940) S.C.R. 49, (1940) 1 D.L.R. 289.

In the case last mentioned Duff, C.J.C. sums up his conclusions as follows: (See pages 69 and 70):

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"My opinion, therefore, is:

First, that since, by the Statute of Westminster, the obstacles have been removed which prevented the Parliament of Canada giving full effect to legislation for objects within its powers affecting the appeal to His Majesty in Council, there is now full authority under the powers of Parliament in relation to the peace, order and good government of Canada in respect of the objects within the purview of section 101 to enact the Bill in question.

Secondly, that neither the prerogative power of His Majesty to admit appeals from Canadian courts, nor the exercise of that power in admitting such appeals, nor the jurisdiction of the statutory tribunal, the Judicial Committee of the Privy Council, in respect of such appeals, or in respect of appeals as of right, is subject matter for the legislative jurisdiction of the provinces as comprised within the local matters assigned to the legislatures by section 92, and all such matters are, therefore, within the general authority in relation to peace, order and good government,"

and Rinfret, J., at page 73, uses the following language:

"We must conclude that *a fortiori* the provincial legislatures could not effectively legislate with regard to the abolition of appeals to the Privy Council as the law stood before the Statute of Westminster; and, as they continue as before to have no legislative capacity to make any law having extra-territorial operation, they have no power to deal with the matter of appeals to the Privy Council."

Counsel for the intervenant Province seeks to support the validity of the statute in question as legislation respecting the "administration of justice in the Province", being Head 14 of section 92 of the B.N.A. Act. But the statute in question does not relate in any sense to the general administration of justice, but is an adjudication between the parties to this action on the facts of this case, and thus becomes an intrusion by the Legislature into the judicial province in respect of a matter not within but without the Province.

If the Act of 1942 were to be held valid, the judicial discretion hitherto exercised by this Court would be abolished and it would be usurped by the Legislature, the Court being demoted to the position of a clerical automaton. Such a result appears to me to be contrary to the fundamental basis of the Constitution, and therefore ultra vires and invalid.

The considerations above mentioned suffice, in my opinion, to eliminate from further consideration the Ontario statute of 1942.

The statute of 1942 being eliminated, the next step in my opinion is to consider whether a direct right of appeal to the Privy Council from the highest Provincial Court existed "as of right" immediately prior to the enactment of the British North America Act, and whether that right was preserved by section 129 of that Act and is applicable to this case. After careful consideration I am of the opinion that the answer

to that question is in the affirmative. Section 129 reads as follows:

"129. Except as otherwise provided by this Act, all Laws in force in Canada, Nova Scotia, or New Brunswick at the Union, and all Courts of Civil and Criminal Jurisdiction, and all legal Commissions, Powers and Authorities, and all Officers, Judicial, Administrative, and Ministerial, existing therein at the Union, shall continue in Ontario, Quebec, Nova Scotia, and New Brunswick respectively, as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of 10 the Parliament of the United Kingdom of Great Britain and Ireland), to be repealed, abolished, or altered by the Parliament of Canada, or by the Legislature of the respective Province, according to the Authority of the Parliament or of that Legislature under this Act."

As I understand the matter, both parties to the present application concur in the view that down to the passing of the British North America Act, the right of appeal to the Privy Council was governed by Imperial authority acting through its delegates in Canada, that is, either through the Governor-in-Council or through the Governor and the Provincial Legislature.

20 When the British North America Act was passed the power to deal with the appeal to the Privy Council by delegated Imperial authority was superseded by the powers of direct legislation conferred by sections 91 and 92 of that Act, but unless and until the powers so conferred were exercised, section 129 preserved the existing situation.

Unless the Ontario statutes of 1941 and 1942 above-mentioned can be so regarded, no legislation that interferes with the appeal as of right in civil cases has ever been proposed and that right which then became crystallized and stabilized as it then stood, continued to exist for our consideration on the present application.

30 In other words, we are to consider the present application to admit this appeal pursuant to the established practice under The Privy Council Appeals Act, R.S.O. 1937, c. 98, disregarding the Ontario statutes of 1941 and 1942.

I think that the order of Middleton J.A. directing the sale is an interlocutory and not a final order, as it is directed only to working out the rights of the parties as declared in the final judgment of Kingstone, J., pronounced in 1937, *Norton v. Norton* (1908) 99 L.T.R. 709; *Clarke v. Huron County Flax Mills,* (1922) 51 O.L.R. 560, 69 D.L.R. 589.

The order of Middleton J.A. being interlocutory, the question next 40 arises whether an appeal to the Privy Council from an interlocutory order exists "as of right." Mr. Tilley's contention is that final orders only are appealable; that the several enactments from 1763 down to 1867 establishing the appeal "as of right", the limitations and conditions attaching thereto, and more particularly the limitation requiring a definite sum of money to be in question, establish by necessary implication that

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the only existing appeal is from a final judgment, and that interlocutory orders are excluded.

I find myself unable to agree with Mr. Tilley's argument. The original proclamation of 1763 is broad enough in its terms to include every judgment and order whether final or interlocutory, and after careful consideration I arrive at the conclusion that neither expressly nor by necessary implication did the subsequent Imperial statutes and orders establish a limitation excluding a right of appeal from interlocutory orders.

The observation of Lord Sumner in delivering the judgment of the Privy Council in *Benoy Krishna Mukherjee v. Salish Chandra Giri* (1927), L.R. 55 Ind. Ap. 131, seems to me to be of a general character and applicable to the present case where he says, at page 134 (see *supra,* p. 336).

"Their Lordships remark that it was with some doubt in the mind of at least one of the judges of the High Court that leave to appeal to His Majesty in Council was given in this case, and they think it right to add that, as a general rule and in the absence of special circumstances or some unusual occasion for its exercise, the power of making interlocutory orders is one which is not a suitable subject for review by the Judicial Committee. Not only are the practice of the Court and the manner in which experience has shown that it is wise to apply it, better known to the High Courts in India than they can be to their Lordships, but the delay occasioned by taking this additional appeal adds gravely to the procrastination, which is already the bane of Indian litigation."

In the present case I think that there exist such special circumsances as warrant this Court in admitting the appeal though the order in question is interlocutory. In this aspect I adopt the grounds assigned by my Lord, the Chief Justice, to which I would add the following. Not only has the whole situation become most confused and difficult, but also a situation has arisen where widespread public interests are involved, and where, if allowable in law, the disentangling assistance of the Judicial Committee should be invoked. The appeal is earnestly desired not only by the junior security holders, but also by the Crown, which is involved not only as the holder of the Crown domain and water powers, but also because it not only owes a duty to the junior security holders and to the public, but also the obligation to see that the contractual obligations held by the bond-holders are not lightly disregarded.

For these reasons I have, with grave doubts, concurred in an order admitting this appeal.

I desire to add an observation that is not strictly relevant to the disposition of the present motion to admit the appeal. Having been interested for many years in company law, including the reorganization of insolvent companies, I have been strongly impressed by the unfortunate, extravagant, and futile course of the present litigation; and, on the other hand, with the value and importance of the statement contained

in the Report of the Royal Commission (which formed part of the material before us). It is there said: "We have considered the proceedings taken and the existing legislation relevant to the reorganization of companies, and are impressed with the inadequacy of existing legislation to meet the situations that arise when companies find themselves in financial difficulties." The report then proceeds to discuss the provisions contained in sub-section (i) of section 15 (*i*) of the Judicature Act, R.S.O. 1937, c. 100; The Companies' Creditors Arrangement Act, 1933, (Dom.), c. 36, and s. 123 of The Companies Act, 1934 (Dom.), c. 33 and then pro-
10 ceeds as follows: "In practice, compliance with the requirements of these Acts is often difficult and sometimes impossible. It has been held that any disposition made by a Court on such an application should be just and equitable, but there is no provision in our procedure for ascertaining what the property of the company is worth or what its probable earnings may be or what equity is available for the various classes interested."

The suggestions so made are, in my opinion, most valuable, and the difficulty could easily be met by a provision in the Companies' Creditors Arrangement Act, 1933 (Dom.), c. 36, conferring jurisdiction on the Court, where a scheme of reorganization is brought before it, to consider
20 the plan, to take evidence and hear the contentions of the several interested classes of holders of securities, to settle their priorities and interests, to vary the plan as proposed, and to sanction the plan as modified by it.

I may add that the American Bankruptcy Act contains provisions which might afford valuable suggestions for such an enactment.

In the Supreme Court of Ontario

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No. 1
Affidavit of John F. Hobkirk, May 20, 1940.

PART II.

Affidavits Filed on Motions for Sale

Affidavits Filed by Plaintiff

No. 1

Affidavit of John F. Hobkirk

May 20, 1940

I, JOHN F. HOBKIRK, of the City of Toronto, in the County of York and Province of Ontario, Manager, MAKE OATH AND SAY as follows:

1. I am the Manager of the Toronto Office of the Plaintiff, Montreal Trust Company, the Canadian Trustee under an Indenture of Mortgage dated as of June 1, 1928, made between the Defendant, Abitibi Power & Paper Company Limited of the first part, Montreal Trust Company, Canadian Trustee, of the second part and The National City Bank of New York, Authenticating Trustee, of the third part, securing the First Mortgage Gold Bonds of the Defendant, Abitibi Power & Paper Company Limited. A copy of the said Indenture of Mortgage is now shown to me and marked Exhibit "A" to this my affidavit. 10

2. Now shown to me and marked Exhibit "B" to this my affidavit is a copy of an Order of the Honourable Mr. Justice Riddell dated September 10, 1932, appointing Geoffrey Teignmouth Clarkson Receiver and Manager of the property, assets and undertaking of the Defendant, Abitibi Power & Paper Company Limited. 20

3. I am advised and verily believe that on the 26th day of September, 1932, the Defendant Company was declared insolvent and liable to be wound up and that by further Order of the same date under the winding-up proceedings, Frederick Curzon Clarkson was appointed Provisional Liquidator and that by an Order dated November 25, 1932, Frederick Curzon Clarkson was appointed Liquidator and that Mr. Frederick Curzon Clarkson subsequently resigned as Liquidator and by an Order dated September 20, 1935, Mr. R. S. McPherson was appointed Liquidator. 30

4. The property and business of the Company have remained and still are in the possession of the said Receiver and Manager, Geoffrey Teignmouth Clarkson.

5. Now shown to me and marked Exhibit "C" to this my affidavit is a copy of an Order of the Honourable Mr. Justice Middleton dated September 13, 1935, adding the individual defendants above named parties defendant to this cause.

6. Now shown to me and marked Exhibit "D" to this my affidavit is a copy of the Statement of Claim in this action. 40

7. Now shown to me and marked Exhibit "E" to this my affidavit is a copy of the Statement of Defence of the Defendant Company filed and delivered by the Solicitors for the Liquidator, R. S. McPherson, and now shown to me marked Exhibit "F" is a copy of the Statement of Defence of the individual defendants.

8. Now shown to me and marked Exhibit "G" to this my affidavit is a copy of the Judgment on the Honourable Mr. Justice Kingstone in the trial of this action.

9. Now shown to me and marked Exhibit "H" to this my affidavit
10 is a copy of the Reasons for Judgment of the Honourable Mr. Justice Kingstone.

10. Now shown to me and marked Exhibit "I" to this my affidavit is a copy of the admissions on the part of the Plaintiff and the Defendants put in at the trial, expressed to be for the purposes of the trial only of this action. I am advised and verily believe that the statements contained in the said admissions are true in substance and in fact.

11. Now shown to me and marked Exhibits "J", "K", "L", "M", "N", "O", "P" and "Q" respectively to this my affidavit are printed copies of eight annual reports of the Receiver and Manager, and now
20 shown to me marked Exhibit "R" to this my affidavit is a printed copy of a report dated October 7, 1937, of the said Receiver and Manager to Bondholders, Creditors and Shareholders of the Defendant Company.

12. Now shown to me and marked Exhibits "S", "T", "U" and "V" are memoranda of the said Geoffrey Teignmouth Clarkson, Receiver and Manager as aforesaid, showing the operating results of the defendant, Abitibi Power & Paper Company Limited, for the months of January, February, March and April, 1940.

13. Now shown to me and marked Exhibit "W" to this my affidavit is a copy of an Agreement dated June 24, 1937, between His Majesty the
30 King in the Right of the Province of Ontario, The Hydro-Electric Power Commission of Ontario, Montreal Trust Company, Geoffrey Teignmouth Clarkson and Abitibi Power & Paper Company Limited.

14. Now shown to me and marked Exhibit "X" to this my affidavit is a copy of an Order-in-Council approved by the Honourable the Lieutenant-Governor of the Province of Ontario, dated the 9th day of March, 1939.

15. On or about the 1st day of June, 1932, the Defendant Company made default in payment of the interest due on the said Bonds on that date and such default has continued up to the present time. On or about
40 27th August, 1932, the Plaintiff and The National City Bank of New York demanded from the Defendant Company payment of the principal amount of all the Bonds outstanding, together with other moneys. There are now outstanding Bonds to the principal amount of $48,267,000.00, and the Defendant Company has, since 1st June, 1932, made no payment of any kind either in respect of principal or interest.

16. A Committee claiming to represent the holders of approximately

In the Supreme Court of Ontario

No. 1
Affidavit of John F. Hobkirk, May 20, 1940.

—continued

sixty per cent. of the outstanding Bonds of the Defendant Company has requested the Plaintiff to take and prosecute such proceedings in this action as may be required or advisable to cause the undertaking, property and assets of the Defendant Company subject to the said Indenture of Mortgage to be sold by order of and in this Court at as early a date as possible.

17. I am informed by the said Receiver and verily believe that the operating mills of or controlled by Abitibi Power & Paper Company Limited are now operating to an extent of between 90 and 95 per cent. of their aggregate capacity, and I am of opinion that the present time 10 affords a proper opportunity for the inspection of the various mills and properties of the said Company, and that in the circumstances above mentioned and on the facts disclosed in the exhibits to this my affidavit, an immediate sale is desirable to obtain an advantageous realization of the property, assets and undertaking of the said Company.

SWORN BEFORE ME at the City
of Toronto, in the County of York "J. F. HOBKIRK"
this 20th day of May, 1940.
"C. MINTO PYLE"
A Commissioner, &c. 20

No. 2
Affidavit of John F. Hobkirk, November 25, 1940.

No. 2

Affidavit of John F. Hobkirk

November 25, 1940

I, JOHN F. HOBKIRK, of the City of Toronto, in the County of York and Province of Ontario, Manager, MAKE OATH AND SAY as follows:

1. I am the Manager of the Toronto Office of the Plaintiff, Montreal Trust Company.

2. I refer to my affidavit in this cause sworn by me on the 20th day of May, 1940, and to the Exhibits therein referred to. 30

3. Now shown to me marked Exhibit 1 to this my affidavit is a copy of the Order of the Honourable Mr. Justice Middleton dated the 10th day of June, 1940.

4. Now shown to me marked Exhibit 2 to this my affidavit is a copy of the Report on Sale made by the Master of the Supreme Court of Ontario dated the 24th day of October, 1940.

5. I am advised by the Plaintiff's Solicitors that the said Report was duly filed in the Registrar's Office, Osgoode Hall, Toronto, on the 24th day of October, 1940, and that notice of filing such Report was duly served on the Solicitors for all the Defendants on the said 24th day of October, 40 1940.

6. The Plaintiff has been requested by Mr. H. J. Symington, Chairman of the Committee mentioned in my previous affidavit above referred to, to take immediate proceedings to move the Court for another sale by public auction but without reserve bid.

SWORN before me at the City of Toronto, in the County of York, this 25th day of November, 1940.
"DONALD F. HALL"
A Commissioner, &c.

"JOHN F. HOBKIRK"

No. 3
Affidavit of John F. Hobkirk, October 9, 1941.

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No. 3

Affidavit of John F. Hobkirk

October 9, 1941

I, JOHN F. HOBKIRK, of the City of Toronto, in the County of York and Province of Ontario, Manager, MAKE OATH AND SAY as follows:

1. I am the Manager of the Toronto Office of the Plaintiff, Montreal Trust Company.

2. I refer to my affidavit in this cause sworn by me on the 20th day of May, 1940, and to the Exhibits therein referred to. I also refer to my
20 affidavit in this cause sworn by me on the 25th day of November, 1940, and to the Exhibits therein referred to.

3. The Plaintiff has been requested by Mr. H. J. Symington, K.C., Chairman of the Committee mentioned in my previous affidavits above referred to, which Committee now represents the holders of approximately Eighty-eight per cent. (88%) of the outstanding Bonds of the Defendant Company, to take immediate proceedings to continue the motion made unto this Court on the 29th day of November, 1940, which said motion was by Order made by the Honourable Mr. Justice Middleton on Friday, the 29th day of November, 1940, adjourned sine die with leave
30 to any party to bring it on upon one week's notice at any time.

4. Now shown to me and marked Exhibit "A" to this my affidavit is a printed copy of the Report dated the 17th day of March, 1941, of The Royal Commission enquiring into the affairs of the Defendant Company. I am advised by the Solicitors for the Plaintiff and verily believe that the parties interested in the Defendant Company have not agreed to apply for special legislation to make effective the Plan set forth in the said Report, nor has any application been made to this Court under The Companies' Creditors' Arrangement Act for sanction of the said Plan by the Liquidator of the said Defendant Company, nor by any other person.

40 5. Now shown to me and marked Exhibit "B" to this my affidavit is a printed copy of the Ninth Annual Report of Geoffrey Teignmouth

In the Supreme Court of Ontario

No. 3
Affidavit of John F. Hobkirk, October 9, 1941.

—continued

Clarkson, Receiver and Manager of the property, assets and undertaking of the Defendant Company.

6. Now shown to me and marked Exhibit "C" to this my affidavit is the monthly statement for the month of August, 1941, prepared by the said Geoffrey Teignmouth Clarkson, Receiver and Manager as aforesaid, showing the operating results of the Defendant Company for the eight months ending the 31st day of August, 1941, and the Balance Sheet as at the same date. I am advised by the said Geoffrey Teignmouth Clarkson and verily believe that such statements are prepared monthly, but in normal course of affairs such statements are not available for some three (10) or four weeks after the end of each month. Accordingly, the monthly statement for the month of September is not presently available. I am also advised by the said Geoffrey Teignmouth Clarkson and verily believe that no changes have occurred in the financial affairs of the said Defendant Company since the 31st day of August, 1941, other than in the ordinary course of business, and save and except that the said Geoffrey Teignmouth Clarkson as Receiver and Manager as aforesaid did on the 10th day of September, 1941, pay to the Plaintiff, Montreal Trust Company, the sum of $6,274,710. in Canadian funds to be applied on account of all principal moneys due on the First Mortgage Gold Bonds of the (20) Defendant Company pursuant to the Order made in this cause by the Honourable Mr. Justice Middleton on the 7th day of June, 1941, copy whereof is now shown to me and marked Exhibit "D" to this my affidavit.

SWORN before me at the City of Toronto, in the County of York, this 9th day of October, A.D. 1941.
"A. MURRAY GARDEN"
A Commissioner &c.

"JOHN F. HOBKIRK"

No. 4
Affidavit of John F. Hobkirk, November 25, 1941.

No. 4

Affidavit of John F. Hobkirk (30)

November 25, 1941

I, JOHN F. HOBKIRK, of the City of Toronto, in the County of York, and Province of Ontario, Manager, MAKE OATH AND SAY as follows:

1. I am Manager of the Toronto Office of the Plaintiff, Montreal Trust Company.

2. Now shown to me and marked Exhibit "A" to this my Affidavit is the monthly statement for the month of September, 1941, prepared by Geoffrey Teignmouth Clarkson, the Receiver and Manager of the property, assets and undertaking of the Defendant Company, showing the (40) operating results of the Defendant Company for the nine months ending

the 30th day of September, 1941, and the Balance Sheet as at the same date.

3. Now shown to me and marked Exhibit "B" to this my Affidavit is the monthly statement for the month of October, 1941, prepared by the said Geoffrey Teignmouth Clarkson, Receiver and Manager as aforesaid showing the operating results of the Defendant for the ten months ending the 31st day of October, 1941, and the Balance Sheet as at the same date.

In the Supreme Court of Ontario
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No. 4
Affidavit of John F. Hobkirk, November 25, 1941.
—continued

SWORN before me at the City of
10 Toronto, in the County of York,
this 25th day of November, A.D. 1941.
"KENNETH C. STANBURY"
A Commissioner &c.

"J. F. HOBKIRK"

No. 5

Affidavit of Roderick Walter Strachan Johnston

December 1, 1941

No. 5
Affidavit of Roderick Walter Strachan Johnston, December 1, 1941.

I, RODERICK WALKER STRACHAN JOHNSTON, of the City of Toronto, in the County of York, Solicitor, MAKE OATH AND SAY:

1. That I am a member of the firm of Johnston, Heighington, Tory
20 & Johnston, Solicitors herein for the Plaintiff, and also Solicitors for Geoffrey Teignmouth Clarkson, Receiver and Manager of the Defendant, Abitibi Power & Paper Company Limited.

2. Now produced and shown to me and marked Exhibit "A" to this my affidavit is a letter addressed to me by the said Geoffrey Teignmouth Clarkson, bearing date the 25th day of November, 1941.

SWORN before me at the City of
Toronto, in the County of York,
this first day of December, A.D. 1941.
"DONALD F. HALL"
30 A Commissioner &c.

"R. W. S. JOHNSTON"

Affidavits Filed by Defendant Abitibi Power & Paper Company Limited

No. 6

No. 6
Affidavit of G. Harold Fisk, May 30, 1940.

Affidavit of G. Harold Fisk

May 30, 1940

I, G. HAROLD FISK, of the City of Montreal in the Province of Quebec, Secretary, MAKE OATH AND SAY THAT:

In the Supreme Court of Ontario

No. 6
Affidavit of G. Harold Fisk, May 30, 1940.
—continued

1. I am Secretary of the Protective Committee for the General Creditors of Abitibi Power & Paper Company Limited (hereinafter called "the Company") and as such have personal knowledge of the matters herein stated.

2. The said Protective Committee is constituted under an agreement dated the 15th day of April, 1939, between such of the unsecured creditors of the Company as become parties thereto of the first part and Clement Tremblay, A. L. Sanderson, this deponent and B. V. Atkinson of the second part. A copy of the said agreement is now produced and shown to me and marked as Exhibit "A" to this my affidavit. The members of 10 the said Protective Committee are the said Tremblay, the said Sanderson, the said Atkinson and this deponent. The depositary under the said agreement is Guardian Trust Company, 618 St. James Street, Montreal, and Guaranty Trust Company of Canada, 70 Richmond Street, West, Toronto, is an agent of the depositary.

3. The said Protective Committee has been advised by R. S. McPherson, the liquidator of the Company, that the admitted claims of unsecured creditors of the Company to the number of about 584 amount to approximately $749,855.32.

4. Unsecured creditors of the Company to the number of 398 whose 20 claims as admitted by the liquidator amount to an aggregate of $191,841.01 have become parties to the said deposit agreement in the manner provided therein and have assigned to the members of the said Protective Committee their claims against the Company under the terms of the said deposit agreement.

5. Unsecured creditors of the Company to the number of 9 whose claims as admitted by the liquidator aggregate $26,697.12 (such creditors being creditors other than those referred to in paragraph 5 of this my affidavit) have authorized the said Protective Committee to represent them in making any representations on behalf of unsecured creditors to 30 any committees, bondholders or other parties interested.

6. I have read over a copy of the affidavit of John F. Hobkirk herein dated the 20th day of May, 1940.

7. In the opinion of the said Protective Committee and bearing in mind existing conditions in the pulp and paper industry and economic conditions generally the present is not an opportune time to attempt any immediate sale of the assets of the Company. In the opinion of the said Protective Committee any such attempt and any such sale would be prejudicial to the interests of the unsecured creditors of the Company.

SWORN BEFORE ME at the City of 40
Montreal, in the Province of Quebec,
this 30th day of May, 1940.
"RALPH C. LEES"
Commissioner of the Superior Court
District of Montreal.

"G. H. FISK"

No. 7

Affidavit of Richard G. Meech

June 1, 1940

I, RICHARD G. MEECH, of the City of Toronto in the County of York, Solicitor, make oath and say:

1. I am the Chairman of a Joint Committee duly appointed to represent and co-ordinate the interests of the following Committees:—
   (a) The Protective Committee for the General Creditors (which Committee represents more than 29% of the unsecured creditors' 10 claims proven in the winding-up of the Defendant Company);
   (b) The 6% Preferred Shareholders' Committee (which represents the holders of more than 60% in par value of the 6% Preferred Stock of the Defendant Company);
   (c) The Common Stockholders' Committee (which represents the holders of more than 50% of the Common Shares of the Defendant Company).

I am also Chairman of the aforesaid Common Stockholders' Committee, and am familiar with the matters involved in the proceedings in this action.

20 2. I have read the affidavit of John F. Hobkirk, dated the 20th day of May, 1940, and filed in support of a motion for an order that all the real and personal property, assets and effects of the Defendant Company, be immediately sold.

3. Now produced and shown to me and marked Exhibit "A" to this my affidavit is a copy of a letter which I wrote and sent to R. S. McPherson, Liquidator of the Defendant Company, on May 22nd, 1940.

4. Now produced and shown to me and marked Exhibit "B" to this my affidavit is a copy of a telegram sent to the said Liquidator by D. H. Gibson a co-member with me of the said Joint Committee.

30 5. Now produced and shown to me and marked Exhibit "C" to this my affidavit is a document purporting to be a "Plan of Procedure on behalf of bondholders for the purchase of assets of Abitibi Power & Paper Company Limited by a New Company", which Plan is dated March 15th, 1939, and for convenience of reference is hereinafter referred to as "the Symington Plan."

6. The Committee, (herein called "the Bondholders' Committee") referred to in paragraph 16 of the said affidavit of John F. Hobkirk, is the same Committee as prepared and sponsored the Symington Plan, and H. J. Symington, Vice-President of the Royal Securities Corporation, is 40 the Chairman of the said Committee. All of the individual Defendants in this action, except Milton C. Cross, are also Members of the said Bondholders' Committee. The Defendant Joseph P. Ripley was Chairman of the Bondholders' Committee from its inception in 1932 until the appoint-

In the Supreme Court of Ontario

No. 7
Affidavit of Richard G. Meech,
June 1, 1940.
—continued

ment of the said H. J. Symington some time prior to the preparation of the said Symington Plan.

7. Now produced and shown to me and marked Exhibit "D" to this my affidavit is a publication containing on pages 109 and 110 thereof copies of two prospectuses or circulars issued by The National City Company Limited and Royal Securities Corporation Limited among others and offering to the public $16,000,000 and $10,000,000 respectively, of the 6% Preferred Stock of the Defendant Company. The National City Company Limited was the Canadian subsidiary of the National City Company of New York, of which the said Joseph P. Ripley was at the date of issue of the said prospectuses or circulars a Vice-President. In the said prospectus or circular on page 110 of Exhibit "D", it is stated as follows: 10

"ASSETS AND EQUITY"

"Based on a pro forma consolidated balance sheet of Abitibi Power & Paper Company Limited and subsidiary companies as at December 31, 1927, with certain adjustments to give effect to this financing and other transactions in connection with the acquisition of the subsidiary companies, the net tangible assets, after deducting all liabilities including funded debt and all prior securities, amount to more than $100,000,000 as compared with $34,976,400, par value of 6 per cent. Cumulative Preferred Stock. The Common Stock of the Abitibi Company is at present quoted on the New York Stock Exchange at over $70 per share." 20

Since the date of issue of the said last mentioned prospectus or circular the funded indebtedness of the Defendant Company, including arrears of interest and interest on arrears, has been increased by approximately $30,000,000, so that for comparative purposes the net tangible assets available for the 6% Preferred Shareholders of the Defendant Company would be reduced to $70,000,000, or approximately $200 of equity value for each $100 share of 6% Preferred Stock outstanding. 30

8. In the said Symington Plan sponsored by the said Bondholders' Committee including the said H. J. Symington and the said Joseph P. Ripley among others, it is stated that "there appears to be no equity whatever for junior claimants", or, in other words, that over $70,000,000 of the net tangible assets of the Defendant Company have disappeared since the issue of the said last mentioned prospectus or circular.

9. Now produced and shown to me and marked Exhibit "E" to this my affidavit is, "A Plan of Sale of Assets and Reorganization, dated Toronto, Ontario, July 21st, 1937", which for convenience of reference is hereinafter referred to as "the Ripley Plan". This Plan was prepared and sponsored by the said Bondholders' Committee for the reorganization of the Defendant Company in the year 1937. The said Joseph P. Ripley 40

was then a member of the said Bondholders' Committee, but the said H. J. Symington did not become a member until a later date. The said Ripley Plan set apart 1,379,675 shares of Common Stock of the reorganized Abitibi Company for the shareholders referred to as junior claimants in the Symington Plan.

10. The following figures compiled from the reports of Mr. G. T. Clarkson, Receiver and Manager of the Defendant Company, show the current position of the Defendant Company at the time the Ripley Plan was prepared in July, 1937, as compared with the current position on
10 April 30th, 1940, a short time prior to the pending application of the Bondholders' Committee:—

	June, 30, 1937	April 30, 1940
Current Assets	$ 7,890,431.02	$13,745,381.57
Sundry Liabilities	4,000,072.01	678,391.13
	$ 3,890,359.01	$13,066,990.44

indicating an improvement in the Company's current position of over $9,000,000 during the period from June 30th, 1937, to April 30th, 1940. During the years 1937, 1938 and 1939 the Company's sales of newsprint were as follows:—

20 For 1937	485,217	tons
1938	293,444	"
1939	323,889	"
1940 for 4 months	107,237	"

For the month of April, 1940, on sales of 30,798 newsprint tons the net profit amounted to $525,116.33, or at the rate of over $6,000,000 a year. The aggregate capacity of the Defendant Company's mills is approximately 600,000 tons per annum or 50,000 tons per month. It is therefore evident that since 1937 on an average tonnage of less than 60% of capacity the Company has improved its current position by over $9,000,000. Ac-
30 cording to the said affidavit of John F. Hobkirk filed on behalf of the Plaintiff herein the Defendant Company's mills are now operating at 90% to 95% of their aggregate capacity, or at the rate of over 45,000 tons per month. As an operation of approximately 30,000 tons for the month of April, 1940, has produced a profit of over $525,000 it is obvious that the profit for the current month of May will be approximately $800,000, or at the rate of approximately $10,000,000 per annum. The requirements for depreciation and bond interest, including arrears and interest on arrears, are approximately $5,000,000 per annum. Operations at the current rate would therefore exceed by 100% the annual requirements
40 for bond interest and depreciation. The financial position of the Company notwithstanding the slump in tonnage sold during the years 1938 and 1939 has greatly improved over its position at the time the Ripley Plan was prepared by the Bondholders' Committee in 1937.

11. While the arrears of the bond interest from the date of default in 1932 to June 1st, 1940, amount to approximately $24,000,000, the gross

In the Supreme Court of Ontario

No. 7
Affidavit of Richard G. Meech, June 1, 1940.
—*continued*

earnings of the Company in receivership for the same period amount to over $18,000,000 and of that amount over $6,500,000 has been expended on capital improvements of the Company's properties.

12. The Ripley Plan recognized in July, 1937, that an equity then existed for the junior claimants, and the above mentioned figures indicate that an increased equity now exists for such junior claimants.

13. It is stated in paragraph 17 of the said affidavit of John F. Hobkirk that an immediate sale is desirable to obtain an advantageous realization of the property, assets and undertaking of the Defendant Company. The fact is, however, that any sale made at the present time will be disadvantageous both to the bondholders of the Defendant Company and to its unsecured creditors and shareholders for the following reasons:—

(a) The Bondholders under the terms of the indenture securing their bonds are entitled to payment of the principal thereof in United States Funds. By virtue of the regulations of the Foreign Exchange Control Board the Plaintiff, I believe, will not be permitted to distribute the proceeds of such sale to bondholders in United States funds.

(b) It appears from the material filed on the pending application for sale that such sale is tied in with the Symington Plan and the Court is merely asked to order such sale as a step in giving effect to the Symington Plan. That Plan provides for the raising of cash on the security of a mortgage on the Defendant Company's properties to an extent not exceeding $10,000,000, of which an amount not exceeding $8,000,000 is to be used for retiring the bonds of the dissenting bondholders of the Company who may demand cash. At the present time such dissenting bondholders hold bonds aggregating in principal amount and interest approximately $28,000,000. In view of the present world conditions it would appear to be impossible for the Defendant Company or its successor Company to raise $8,000,000 for the aforesaid purpose, not to mention $28,000,000, and therefore it would appear to be impossible to give effect to the Symington Plan and a sale will leave the bondholders in worse position than at present.

(c) From the figures set forth in paragraph 10 of this affidavit, I believe that in view of present conditions in the industry the earning power of the Company and the value of its undertaking, are just now entering on a period of rapid increase. It would, therefore, I believe, be disadvantageous to the bondholders, as well as to the shareholders, to have an immediate realization of the undertaking.

14. In the opinion of the said Joint Committee the Bondholders' Committee are asking for an immediate sale with the object of securing control of the Company's undertaking for the interests which they repre-

sent to the exclusion of dissenting bondholders, unsecured creditors and shareholders of the Company.

SWORN before me at the City of Toronto, in the County of York, this 1st day of June, 1940.
"T. H. WICKETT"
A Commissioner, &c.

"R. G. MEECH"

No. 8

Affidavit of Richard George Meech

10

June 5, 1940

I, RICHARD GEORGE MEECH, of the City of Toronto, in the County of York, Solicitor, make oath and say:—

1. That I wish to amplify the statement made in paragraph 1 of my Affidavit filed herein sworn on June 1st, 1940, as to the extent to which the 6% Preferred Shareholders' Committee represents the holders of the 6% Preferred Stock of the Defendant Company and the Common Stockholders' Committee represents the holders of Common Shares of the Defendant Company.

2. That I am informed by the Chairman of the said 6% Preferred Shareholders' Committee and believe that in or about the month of July, 1939, the said Preferred Shareholders' Committee requested and subsequently obtained the approval of approximately Sixty per centum (60%) in par value of the then holders of said 6% Preferred Shares to a Plan of Reorganization of the Defendant Company prepared by the said Preferred Shareholders' Committee in opposition to the Plan of Procedure prepared by the Bondholders' Committee more particularly referred to in my said Affidavit. Athough the said Preferred Shareholders' Committee has not had occasion since to request any further authorizations from said Preferred Shareholders and I cannot say that all of the said Preferred Shareholders who approved the Plan of the Preferred Shareholders' Committee at that time are now Shareholders of the Defendant Company, I have no reason to believe that the said Preferred Shareholders' Committee represents the views of the said Preferred Shareholders to any less extent than at that time.

3. That in or about the month of April, 1939, the said Common Stockholders' Committee requested and subsequently obtained the approval of approximately Fifty per centum (50%) in amount of the then holders of said Common Shares to a Plan of Reorganization of the Defendant Company prepared by the said Preferred Shareholders' Committee and approved by the said Common Stockholders' Committee in opposition to the Plan of Procedure prepared by the Bondholders' Com-

In the Supreme Court of Ontario
—
No. 8
Affidavit of Richard George Meech, June 5, 1940.
—continued

mittee more particularly referred to in my said Affidavit. Although the said Common Stockholders' Committee has not had occasion since to request any further authorization from said Common Shareholders and I cannot say that all of the said Common Shareholders who at that time opposed the said Plan of Procedure of the said Bondholders' Committee are now Shareholders of the Defendant Company, I have no reason to believe that the said Common Stockholders' Committee represents the views of the said Common Shareholders to any less extent than at that time.

3. Now produced and shown to me marked Exhibit "A" to this my affidavit is a Compilation of Statements and Information obtained by the individual defendants herein and used by them on an application for an order calling meetings of the Bondholders of the Defendant Company to approve of a Plan of Reorganization of the said Company proposed by the said individual defendants, which Plan constitutes Exhibit "E" to my affidavit sworn and filed herein on Saturday the 1st day of June, 1940, and is therein referred to as the Ripley Plan. Schedule "P" annexed to the said Compilation of Statements and Information so prepared by the individual defendants herein is a statement of expenses of the said individual defendants in their capacity as a Bondholders' Protective Committee from April 19th, 1932, to December 31st, 1936. I am informed and believe that the said Bondholders' Protective Committee has since December 31st, 1936, incurred further expenses in a very considerable amount. It is provided in the Plan of Procedure constituting Exhibit "C" to my said affidavit dated June 1st, 1940 (which Plan is therein referred to as the Symington Plan) that—

> "19. When the Plan of Procedure is consummated the New Company will assume and pay all expenses in connection with the Plan of Procedure, the depositary expenses of the Committee since its organization, and so much of the other expenses of the Committee and of any other bondholders' committees as shall be determined by this Committee to have contributed to the interests of the bondholders. The Committee may in its sole discretion fix what, if any, expenses of the Liquidator are to be paid by the New Company unless such expenses shall have been otherwise provided for."

The Committee referred to in the above quoted clause 19 of the Symington Plan is the Bondholders' Protective Committee which proposed the Ripley Plan and which is now proposing the Symington Plan. The individual defendants in this action at whose request the present application for sale is being made to this Honourable Court were members of the Bondholders' Protective Committee and with the exception of the said Milton C. Cross are still members of the said Bondholders' Committee. It would therefore appear that the said Bondholders' Protective Committee propose under the Symington Plan to make their own expenses

from 1932 to the present time a prior claim over the claims of the present bondholders in the Abitibi Company who may become shareholders in the New Company.

SWORN before me at the City of Toronto, in the County of York, this 5th day of June, A.D. 1940.
"J. M. DUFF"
A Commissioner, etc.

"R. G. MEECH".

No. 9
Affidavit of Roy Sharvell McPherson, November 28, 1940.

No. 9

10

Affidavit of Roy Sharvell McPherson

November 28, 1940

I, ROY SHARVELL McPHERSON, of the City of Toronto, in the County of York, Chartered Accountant, MAKE OATH AND SAY as follows:

1. I am the Liquidator of the Defendant Abitibi Power & Paper Company, Limited.

2. On the 24th day of October, 1940, an Order-in-council was passed by the Lieutenant-Governor in Council of Ontario, a copy of which is marked as Exhibit "A" to this my affidavit, rescinding the previous Order-
20 in-council date the 9th day of March, A.D. 1939, whereby the Government of the Province of Ontario consented to an extension of time for the carrying into effect of the provisions of an agreement made the 24th day of June, A.D. 1937, in reference to Abitibi Power & Paper Company, Limited.

3. On the 1st day of November, 1940, an Order-in-council, a copy of which is marked as Exhibit "B" to this my affidavit, was passed by the Lieutenant-Governor in Council for the Province of Ontario authorizing the appointment of a Royal Commission under the Public Inquiries Act to inquire into the affairs of the Defendant Company.

30 4. On the 1st day of November, 1940, a Commission was issued under the Public Inquiries Act to the Honourable Mr. Justice McTague, Mr. A. E. Dyment and Sir James Dunn, Bart., appointing them a Commission with powers particularly enumerated in the said Commission, a copy of which is marked Exhibit "C" to this my affidavit.

5. The Royal Commission above referred to commenced its sittings on the 4th day of November, A.D. 1940, and adjourned on the 15th day of November, 1940, to reconvene on December 2nd, 1940.

6. Now shown to me and marked as Exhibit "D" to this my affidavit is a true copy of part of the evidence given before the said Royal
40 Commission by Alexander Smith, the President of the Defendant Company, at the time of the Receivership appearing on pages 909 and 910 of

In the Supreme Court of Ontario

No. 9
Affidavit of Roy Sharvell McPherson, November 28, 1940.

—continued

the official transcript of the evidence given before the said Commission.

7. The earnings of the Defendant Company prior to depreciation and bond interest but exclusive of Provincial Paper Company Limited and the G. H. Mead Company, for the ten months of 1940 ending on October 31st last as taken from the statements of the Receiver and Manager, were $6,626,896.95, and the working capital of the Company as at October 31st, 1940, as appears from the statements of the Receiver and Manager, was $17,154,275.10.

8. According to the Balance Sheet of the Company as at October 31st, 1940, as prepared by the Receiver and Manager, the Company had at that date cash in hand and in deposit and Dominion of Canada bonds amounting in the aggregate to $6,809,388.39. 10

9. The above referred to Royal Commission has asked Mr. G. T. Clarkson, Receiver and Manager of the Company, to prepare and present a Plan of Reorganization and in addition has requested me, as Liquidator of the Company, to prepare and present to the said Commission a Plan of Reorganization of the Defendant Company.

SWORN before me at the City of Toronto, in the County of York, this 28th day of November, A.D. 1940. "R. S. McPHERSON" 20

"G. H. GILDAY"
A Commissioner &c.

No. 10
Affidavit of G. Harold Fisk, October 16, 1941.

No. 10

Affidavit of G. Harold Fisk

October 16, 1941

I, G. HAROLD FISK, of the City of Montreal in the Province of Quebec, Secretary, MAKE OATH AND SAY THAT:

1. I am Secretary of the Protective Committee for the general creditors of Abitibi Power & Paper Company, Limited (hereinafter called "the Company") and as such have personal knowledge of the matters herein stated. 30

2. I refer to my affidavit in this action sworn by me on the 30th day of May, 1940, and to the exhibits therein referred to.

3. The said Protective Committee now represents through assignments of claims or otherwise 411 unsecured creditors of the Company with claims aggregating $223,111.04.

SWORN before me at the City of Montreal, in the Province of Quebec, this 16th day of October, 1941. "G. H. FISK"

"RALPH C. TEES" 40
A Commissioner of the Superior Court,
District of Montreal.

No. 11

Affidavit of Joseph Corti Boland

October 24, 1941

I, JOSEPH CORTI BOLAND, of the City of Toronto, in the County of York, Barrister-at-Law, MAKE OATH AND SAY:—

1. I am of the firm of Slaght, Ferguson & Carrick and as such have knowledge of the facts hereinafter deposed to.

2. In the year 1940 a Royal Commission was appointed by the Ontario Government to enquire into the affairs of the Abitibi Power and Paper Company Limited. On the hearing of this motion Counsel will refer to the evidence of Alexander Smith which appears in the official report of the proceedings of the said Royal Commission enquiring into the affairs of the Abitibi Power and Paper Company at Volume 8 at pages 889 to 926 inclusive and this evidence is an exhibit to this my affidavit.

3. In the official report of the proceedings of the said Royal Commission appears the evidence of Arthur D. Cobban at Volume 9 at pages 1031 to 1148 inclusive and this evidence is an exhibit to this my affidavit.

4. In the official report of the proceedings of the said Royal Commission appears the evidence of Arthur G. Slaght at Volume 6 at pages 697 to 751 inclusive and at Volume 14 at pages 1534 to 1553 inclusive and this evidence is an exhibit to this my affidavit.

5. Chapter 4 of the Statutes of Ontario, 1 Geo. 6, 1937, is an act respecting the Abitibi Power and Paper Company Limited. This act was assented to on March 25th, 1937, as appears by a notice in the said act. This act was assented to by the Honourable the Lieutenant-Governor of Ontario on March 25th, 1937, as appears in the Ontario Gazette of the issue of April 3rd, 1937, Volume LXX, No. 14, and therefore came into force on this day pursuant to the provisions of the said Act.

6. The Abitibi Power and Paper Company Limited Moratorium Act is Chapter 1 of the Statutes of Ontario, 1941, 5 Geo. 6. This act was assented to on April 9th, 1941, as appears from a notice in the said Act. This Act was assented to by the Honourable the Lieutenant-Governor of Ontario on April 9th, 1940, as appears in the Ontario Gazette of the issue of April 12th, 1941, Volume LXXIV, No. 15. This act came into force on October 11th, 1941, by proclamation of the Honourable the Lieutenant-Governor of Ontario dated October 9th, 1941, as appears in the Ontario Gazette of the issue of October 11th, 1941, Volume LXXIV, No. 41.

SWORN before me at the City of Toronto, in the County of York, this 24th day of October, A.D. 1941.

"J. CORTI BOLAND"

"A. M. ECCLESTONE"
A Commissioner, etc.

In the Supreme Court of Ontario

No. 12
Affidavit of
Roy Sharvell
McPherson,
October 29,
1941.

No. 12

Affidavit of Roy Sharvell McPherson

October 29, 1941

I, ROY SHARVELL McPHERSON, of the City of Toronto, in the County of York, Chartered Accountant, make oath and say:

1. I am the Liquidator of the Defendant Abitibi Power & Paper Company Limited.

2. I refer to my affidavit in this cause sworn by me on the 28th day of November, 1940, and to the exhibits therein referred to.

3. The earnings of the Defendant Company prior to depreciation and bond interest for the nine months of 1941 ending on September 30th last but exclusive of the earnings of Provincial Paper Company, Limited and the G. H. Mead Company as taken from the statements of the Receiver and Manager were $6,577,684.15. 10

4. The working capital of the Company as at September 30th, 1941, as appears from the statements of the Receiver and Manager was $18,810,687.85, in addition to which the Receiver and Manager has paid to the Plaintiff Montreal Trust Company the sum of $6,274,710.00, Canadian funds, to be applied on account of principal moneys due on the First Mortgage Gold Bonds of the Defendant Company. 20

5. According to the Balance Sheet of the Company as at September 30th, 1941, prepared by the Receiver and Manager, the Company had at that date cash on hand and on deposit and Dominion of Canada Bonds amounting in the aggregate to $7,047,222.55, after the aforementioned payment to the Plaintiff of the sum of $6,274,710.00.

SWORN before me at the city of
Toronto, in the County of York,
this 29th day of October, A.D. 1941.

"R. S. McPHERSON"

"G. H. GILDAY"
A Commissioner &c. 30

No. 13
Affidavit of
Roy Sharvell
McPherson,
November 26,
1941.

No. 13

Affidavit of Roy Sharvell McPherson

November 26, 1941

I, ROY SHARVELL McPHERSON, of the City of Toronto, in the County of York, Chartered Accountant, make oath and say:—

1. I am the Liquidator of the Defendant Abitibi Power & Paper Company Limited.

2. I refer to my affidavit in this cause sworn by me on the 28th day of November, 1940, and to the exhibits therein referred to.

3. The earnings of the Defendant Company prior to depreciation and bond interest for the ten months of 1941 ending on October 31st last, but exclusive of the earnings of Provincial Paper Company, Limited and the G. H. Mead Company as taken from the statements of the Receiver and Manager, were $7,721,626.07.

4. The working capital of the Company as at October 31st, 1941, as appears from the statements of the Receiver and Manager was
10 $20,029,216.66, in addition to which the Receiver and Manager has paid to the Plaintiff Montreal Trust Company the sum of $6,274,710.00, Canadian funds, to be applied on account of principal moneys due on the First Mortgage Gold Bonds of the Defendant Company.

5. According to the Balance Sheet of the Company as at October 31st, 1941, prepared by the Receiver and Manager, the Company had at that date cash on hand and on deposit and Dominion of Canada Bonds amounting in the aggregate to $7,537,080.76 after the aforementioned payment to the Plaintiff of the sum of $6,274,710.00.

6. Now produced and shown to me and marked as Exhibit "A" to
20 this my affidavit is a copy of the Report of the Royal Commission inquiring into the affairs of Abitibi Power & Paper Company, Limited, dated the 17th day of March, 1941.

SWORN before me at the City of Toronto, in the County of York, this 26th day of November, A.D. 1941.
"R. K. LOGAN"
A Commissioner &c.

"R. S. McPHERSON"