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UNIVERSITY OF TORONTO
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INSTITUTE OF FINANCIAL
LEGAL STUDIES

30643

In The Privy Council

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.*

APPENDIX

TO THE CASE FOR THE RESPONDENT MONTREAL TRUST
COMPANY

INDEX OF REFERENCE

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THE WINDING-UP ACT, R. S. C., 1927,

Appendix.

CHAPTER 213

Staying Proceedings.

17. The court may, upon the application of the company, or of any creditor or contributory, at any time after the presentation of a petition for a winding-up order and before making the order, restrain further proceedings in any action, suit or proceeding against the company, upon such terms as the court thinks fit. R.S., c. 144, s. 18.

Actions against company may be stayed.

18. The court may, upon the application of any creditor or contributory, at any time after the winding-up order is made, and upon proof, to the satisfaction of the court, that all proceedings in relation to the winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as the court thinks fit. R.S., c. 144, s. 19.

Court may stay winding-up proceedings.

* * * *

D. M. M. M.

21. 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. R.S., c. 144, s. 22.

After winding-up order, actions against company stayed.

* * * *

Meetings of Creditors

63. The court may, if it thinks expedient, direct meetings of the creditors, contributors, shareholders or members to be summoned, held and conducted in such manner as the court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the court. R.S., c. 144, s. 61.

Meetings of creditors for ascertaining their wishes.

64. In such case regard shall, as to creditors, be had to the amount of the debt due to each creditor and as to shareholders or members, to the number of votes conferred on each shareholder or member by law or by the regulations of the company.

Votes according to amount of claim.

2. The court may prescribe the mode of preliminary proof of creditors' claims for the purpose of the meeting. R.S., c. 144, s. 62.

Preliminary proof.

65. Where any compromise or arrangement is proposed between a company in course of being wound up under this Act and the creditors of the company, or by and between any such creditors or any class or classes of such creditors and the company, the court, in addition to any other of its powers, may, on the application, in a summary way, of any creditor, or of the liquidator, order that a meeting of such creditors or class or classes of creditors shall be summoned in such manner as the court shall direct. R.S., c. 144, s. 63.

Court may summon creditors to consider any proposed compromise.

Appendix.
Sanction of
compromise.

66. If a majority in number, representing three-fourths in value, of such creditors, or class or classes of creditors, present either in person or by proxy at such meeting, agree to any arrangement or compromise, such arrangement or compromise may be sanctioned by an order of the court, and in such case shall be binding on all such creditors, or on such class or classes of creditors, as the case may be, and also on the liquidator and contributories of the company. R.S., c. 144, s. 64.

Chairman of
meeting.

67. In directing meetings of creditors, contributories, shareholders or members of the company to be held as provided in this Act, the court may either appoint a person to act as chairman of such meeting, or direct that a chairman be appointed by the persons entitled to be present at such meeting; and, in case the appointed chairman fails to attend the said meeting, the persons present at the meeting may elect a chairman qualified who shall perform the duties prescribed by this Act. R.S., c. 144, s. 65.

Voting to be
in person or
by proxy.

68. No contributory, creditor, shareholder, or member shall vote at any meeting unless present personally or represented by some person acting under a written authority, filed with the chairman or liquidator, to act as such representative at the meeting, or generally. R.S., c. 144, s. 66.

20

* * * *

Secured Claims.

Duty of
creditor
holding
security.

78. If a creditor holds security upon the estate of the company, he shall specify the nature and amount of such security in his claim, and shall therein, on his oath, put a specified value thereon. R.S., c. 144, s. 76.

Option of
liquidator as
to security.

79. The liquidator, under the authority of the court, may either consent to the retention by the creditor of the property and effects constituting such security or on which it attaches, at such specified value, or he may require from such creditor an assignment and delivery of such security, property and effects, at such specified value, to be paid by him out of the estate so soon as he has realized such security, together with interest on such value from the date of filing the claim till payment. R.S., c. 144, s. 77.

Ranking of
secured
creditor.

80. In case of such retention, the difference between the value at which the security is retained and the amount of the claim of such creditor shall be the amount for which he may rank as aforesaid. R.S., c. 144, s. 78.

Security by
negotiable
instrument.

81. If a creditor holds a claim based upon negotiable instruments upon which the company is only indirectly or secondarily liable, and which is not mature or exigible, such creditor shall be considered to hold security within the meaning of the three last preceding sections, and shall put a value on the liability of the person primarily liable thereon as being his security for the payment thereof.

2. After the maturity of such liability and its non-payment, he shall be entitled to amend and revalue his claim. R.S., c. 144, s. 79. *Appendix.*
Revaluation.

82. If the security consists of a mortgage upon ships or shipping, or upon real property, or of a registered judgment, or an execution binding real property which is not by some other provision of this Act invalid for any purpose of creating a lien, claim or privilege upon the real or personal property of the company, the property mortgaged or bound by such security shall only be assigned and delivered to the creditors, *Security by mortgage on real property or a ship.*

- 10 (a) subject to all previous mortgages, judgments, executions, hypothecs and liens thereon, holding rank and priority before his claim; *Assignment with defective title.*
- and
- (b) upon his assuming and binding himself to pay all such previous mortgages, judgments, executions, hypothecs and liens; and *Under obligation.*
- (c) upon his securing the estate of the company to the satisfaction of the liquidator against any claim by reason of such previous mortgages, judgments, executions, hypothecs and liens. R.S., c. 144, s. 80. *Subject to indemnity.*

83. If there are mortgages, judgments, executions, hypothecs, or liens upon such ships or shipping or real property subsequent to those of such creditor, he shall only obtain the property *In case of subsequent claims by:*

- 20 (a) by consent of the subsequently secured creditors; *Consent.*
- (b) upon their filing their claims specifying their security thereon as of no value; *Claims filed.*
- (c) upon his paying them the value by them placed thereon; or *Value paid.*
- (d) upon his securing the estate of the company to the satisfaction of the liquidator against any claim by reason of such subsequent mortgages, judgments, executions, hypothecs and liens. R.S., c. 144, s. 81. *Company indemnified.*

84. Upon a secured claim being filed, with a valuation of the security, the liquidator shall procure the authority of the court to consent to the retention of the security by the creditor, or shall require from him an assignment and delivery thereof. R.S., c. 144, s. 82. *Authority to retain necessary.*

* * * *

Distribution of Assets

93. The property of the company shall be applied in satisfaction of its debts and liabilities, and the charges, costs and expenses incurred in winding up its affairs. R.S., c. 144, s. 91. *Distribution of property of company.*

94. All costs, charges and expenses properly incurred in the winding up of a company, including the remunerations of the liquidator, shall be payable out of the assets of the company, in priority to all other claims. *Winding-up expenses payable out of estate.*
40 R.S., c. 144, s. 92.

Appendix.
—
Distribution
of surplus
of property
of company.

95. The court shall distribute among the persons entitled thereto any surplus that remains after satisfaction of the debts and liabilities of the company, and the winding-up charges, costs and expenses, and unless otherwise provided by law or by the Act, charter or instrument of incorporation, any property or assets remaining after such satisfaction shall be distributed among the members or shareholders according to their rights and interests in the company. R.S., c. 144, s. 93.

THE COMPANIES' CREDITORS ARRANGEMENT ACT

Appendix.

23-24 GEORGE V, CHAPTER 36

An Act to facilitate Compromises and Arrangements between Companies and their Creditors

[Assented to 23rd May, 1933].

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. This Act may be cited as *The Companies' Creditors Arrangement Act, 1933*. Short title.

10 2. In this Act, including this section,— Definitions.

(a) "Court" means in Ontario, the Supreme Court; in Quebec, the Superior Court; in Nova Scotia, New Brunswick, British Columbia, Prince Edward Island and Alberta, the Supreme Court for each of those provinces; in Manitoba, the Court of King's Bench; in Saskatchewan, the Court of King's Bench; and in the Yukon Territory, the Territorial Court; "Court".

(b) "Company" means any company or corporation incorporated by or under the authority of an act of the Parliament of Canada or by or under the authority of an act of any province of Canada and any incorporated company having assets or doing business in Canada, wheresoever incorporated, except banks, railway or telegraph companies, insurance companies and trust companies organized under or governed by the *Trust Companies Act* and loan companies organized under or governed by the *Loan Companies Act*; "Company".

(c) "Debtor company" means any company which is bankrupt or insolvent or which has committed an act of bankruptcy within the meaning of the *Bankruptcy Act* or which is deemed insolvent within the meaning of the *Winding-up Act*, whether or not proceedings in respect of such company have been taken under either the *Winding-up Act* or the *Bankruptcy Act*, or which has made an authorized assignment or against which a receiving order has been made under the *Bankruptcy Act*, or which is in course of being wound up under the *Winding-up Act* because the company is insolvent; "Debtor company".

(d) "Shareholder" means a shareholder or member of any company to which this Act applies; "Shareholder".

(e) "Province" means a province or territory of the Dominion of Canada; "Province".

(f) "Secured creditor" means a holder of a mortgage, hypothec, pledge, charge, lien or privilege on or against, or any assignment, cession or transfer of, all or any property of a debtor company as security for indebtedness of the debtor company, or a holder of any bond, debenture, debenture stock or other evidence of indebtedness of a debtor company secured by a mortgage, hypothec, "Secured creditor".

Appendix.

“Secured
creditor”.

pledge, charge, lien or privilege on or against, or an assignment, cession or transfer of, or a trust in respect of, all or any property of the debtor company, whether any such holder or beneficiary be resident or domiciled within or without Canada; and a trustee under any trust deed or other instrument securing any such bonds, debentures, debenture stock or other evidences of indebtedness shall be deemed to be a secured creditor for all purposes of this Act except voting at a creditors' meeting in respect of any such bonds, debentures, debenture stock or other evidences of indebtedness;

10

“Unsecured
creditor”.

(g) “Unsecured creditor” means any creditor of a company who is not a secured creditor, whether resident or domiciled within or without Canada.

PART I.

Compromise
with
unsecured
creditors.

3. Where a compromise or arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the Company, order a meeting of such creditors or class of creditors, and, if the court so determines, of the shareholders of such company, to be 20 summoned in such manner as the court directs.

Compromise
with secured
creditors.

4. Where a compromise or arrangement is proposed between a debtor company and its secured creditors or any class of them, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of such creditors or class of creditors, and, if the court so determines, of the shareholders of such company, to be summoned in such manner as the court directs.

Compromises
to be
sanctioned
by Court.

5. If a majority in number representing three-fourths in value of the creditors, or class of creditors, as the case may be, present and voting 30 either in person or by proxy at the meeting or meetings thereof respectively held pursuant to sections three and four of this Act, or either of such sections, agree to any compromise or arrangement either as proposed or as altered or modified at such meeting or meetings, the compromise or arrangement may be sanctioned by the court, and if so sanctioned shall be binding on all the creditors, or the class of creditors, as the case may be, and on any trustee for any such class of creditors, whether secured or unsecured, as the case may be, and shall also be binding on the company, and in the case of a company which has made an authorized assignment or against which a receiving order has been 40 made under the *Bankruptcy Act* or which is in course of being wound up under the *Winding-up Act*, shall also be binding on the trustee in bankruptcy or liquidator and contributories of the company.

6. If an alteration or modification of any compromise or arrangement is proposed at any time after the court has directed a meeting or meetings to be summoned such meeting or meetings may be adjourned on such term as to notice and otherwise as the court may direct, and such directions may be given as well after as before adjournment of any meeting or meetings, and the court may in its discretion direct that it shall not be necessary to adjourn any meeting or to convene any further meeting of any class of creditors or shareholders which in the opinion of the court is not adversely affected by the alteration or modification proposed, and a compromise or arrangement so altered or modified may be sanctioned by the court and have effect under section five of this Act.

Appendix.

Court may give directions.

7. The provisions of this Act shall be in extension and not in limitation of the provisions of any instrument now or hereafter existing governing the rights of creditors or any class of them and shall have full force and effect notwithstanding anything to the contrary contained in any such instrument.

Scope of Act.

PART II.

8. (1) Any application under this Act may be made to the court having jurisdiction in the province within which the head office or chief place of business of the company in Canada is situate, or, if the company has no place of business in Canada, in the province within which any assets of the company may be situate.

Jurisdiction of Court to receive applications.

(2) The powers conferred by this Act upon the court may, subject to appeal as in this Act provided for, be exercised by a single judge thereof; and such powers may be exercised in chambers and either during term or in vacation.

Single judge may exercise powers, subject to appeal.

9. Applications shall be made by petition or by way of originating summons or notice of motion in accordance with the practice of the court in which the application is made.

Form of applications.

10. Notwithstanding anything in the *Bankruptcy Act* or in the *Winding-up Act* contained, whenever an application shall have been made under this Act in respect of any company, the court, on the application of any person interested in the matter, may, on such notice to any other person, or without notice as it may see fit, make an order staying until such time as the court may prescribe or until further order all proceedings taken or which might be taken in respect of such company under the *Bankruptcy Act* and the *Winding-up Act* or either of them, and the court may restrain further proceedings in any action, suit or proceeding against the company upon such terms as the court sees fit, and the court may also make an order that 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 shall impose.

Court may restrain proceedings under Bankruptcy Act, or Winding-up Act.

Determina-
tion of
amount of
claim.

"Claim."

Amount of
unsecured
claim.

Amount of
secured
claim.

Admission
of claims.

Leave to
appeal.

Court of
appeal.

11. (1) For all purposes of this Act the amount represented by a claim of any secured or unsecured creditor shall be determined as follows:

(a) "claim" shall mean any indebtedness, liability or obligation of any kind which if unsecured would be a debt provable in bankruptcy within the meaning of the *Bankruptcy Act*;

(b) the amount of an unsecured claim shall be the amount

(i) in the case of a company in course of being wound up under the *Winding-up Act* proof of which has been made in accordance with the *Winding-up Act*, or

(ii) in the case of a company which has made an authorized 10 assignment or against which a receiving order has been made under the *Bankruptcy Act*, proof of which has been made in accordance with the *Bankruptcy Act*, or

(iii) in the case of any other company, proof of which might be made under the provisions of the *Bankruptcy Act*, provided that in such case if the amount so provable is not admitted by the company, such amount shall be determined by the court on summary application by the company or by the creditor;

(c) the amount of a secured claim shall be the amount proof of which might be made in respect thereof under the provisions of 20 the *Bankruptcy Act* if such claim were unsecured, provided that such amount if not admitted by the company shall in the case of a company subject to pending proceedings under the *Winding-up Act*, or the *Bankruptcy Act*, be established by proof in the same manner as an unsecured claim under the *Winding-up Act* or the *Bankruptcy Act*, as the case may be, and in the case of any other company such amount shall be determined by the court on summary application by the company or by the creditor.

(2) Notwithstanding anything contained in subsection one the company may admit the amount of a claim for voting purposes under reserve 30 of the right to contest liability on the claim for other purposes, and nothing contained in this Act or the *Winding-up Act* or the *Bankruptcy Act* shall prevent a secured creditor from voting at a meeting of secured creditors or any class of them in respect of the total amount of a claim as admitted.

12. Except in the Yukon Territory, any person dissatisfied with an order or decision made under this Act may appeal therefrom upon obtaining leave of the judge appealed from or upon obtaining leave of the court or a judge of the court to which the appeal lies and upon such terms as to security and in other respects as such judge or court shall direct. 40

13. Such appeal shall lie to the highest court of final resort in or for the province in which the proceeding originated. All appeals shall be regulated as far as possible according to the practice in other cases of the court appealed to, but no appeal herein authorized shall be entertained unless, within twenty-one days from the rendering of the order or decision, or within such further time as the court appealed from, or, in the Yukon

Territory, a judge of the Supreme Court of Canada, allows, the appellant has taken proceedings therein to perfect his appeal, nor unless within such time he has made a deposit or given sufficient security according to the practice of the court appealed to that he will duly prosecute the said appeal and pay such costs as may be awarded to the respondent and comply with any terms as to security or otherwise imposed by the judge giving leave to appeal.

Appendix.
Court of appeal.
(Continued).

14. (1) An appeal shall by leave of a judge of the Supreme Court of Canada lie to that Court from the highest court of final resort in or for
10 the province or territory in which the proceeding originated.

Appeals.

(2) The Supreme Court of Canada shall have jurisdiction to hear and to decide according to its ordinary procedure any appeal so permitted and to award costs.

Jurisdiction of Supreme Court of Canada.

(3) No such appeal to the Supreme Court of Canada shall operate as a stay of proceedings unless the judge who permits such appeal shall so order, and to the extent to which he shall order, and the appellant shall not be required to provide any security for costs, but unless he provides security for costs, in an amount to be fixed by the judge permitting the appeal, he shall not be awarded costs in the event of his success upon such
20 appeal.

Stay of proceedings.

(4) The decision of the Supreme Court of Canada on any such appeal shall be final and conclusive.

Decision final.

15. Every order made by the court in any province in the exercise of jurisdiction conferred by this Act in respect of any compromise or arrangement shall also have full force and effect in all the other provinces and shall be enforced in the court of each of the other provinces in the same manner in all respects as if the order had been made by the court so enforcing it.

Order of court of one province to be enforced by courts of other provinces.

16. All courts having jurisdiction under this Act and the officers of
30 such courts respectively shall severally act in aid of and be auxiliary to each other in all matters in this Act provided for, and an order of the court seeking aid with a request to another of the said courts shall be deemed sufficient to enable the latter court to exercise in regard to the matters directed by the order such jurisdiction as either the court which made the request or the court to which the request is made could exercise in regard to similar matters within their respective jurisdictions.

Courts having jurisdiction under Act shall aid each other on request.

17. (1) The Governor in Council may make, alter or revoke and may delegate to the judges of the several courts exercising jurisdiction under this Act the power to make, alter or revoke General Rules not in-
40 consistent with the terms of this Act for carrying into effect the objects thereof.

Governor in Council may make General Rules.

(2) Such rules shall not extend the jurisdiction of the court.

Limitation.

(3) All General Rules, as from time to time made, by the Governor in Council, shall be laid before Parliament within three weeks after made, or if Parliament is not then sitting within three weeks after the beginning of the next session.

General Rules to be laid before parliament.

Appendix.
Judicial
notice.

(4) All such rules shall be judicially noticed and shall have effect as if enacted by this Act.

PART III.

Certain
sections of
Winding-up
Act shall
not apply.

18. Sections sixty-five and sixty-six of the *Winding-up Act*, chapter two hundred and thirteen of the Revised Statutes of Canada, 1927, shall not apply to any compromise or arrangement to which this Act applies.

Act to be
applied
conjointly
with other
Acts.

19. The provisions of this Act may be applied conjointly with the provisions of any Act of the Dominion of Canada or of any province, authorizing or making provision for the sanction of compromises or arrangements between a company and its shareholders or any class of them. 10

Application
of section 145
of Companies
Act.

20. For the purpose of applying the provisions of this Act conjointly with the first and second subsections of section one hundred and forty-five of the *Companies Act*, the words "the *Winding-up Act*," where the same appear in the first and second subsections of section one hundred and forty-five of the *Companies Act*, shall be deemed to mean and include the *Winding-up Act* or *The Companies' Creditors Arrangement Act, 1933*

THE COMPANIES' ACT, 1934

24-25 GEORGE V, CHAPTER 33

*Arrangements and Compromises**Appendix.*

122. (1) Where a compromise or arrangement is proposed between a company and its shareholders or any class of them affecting the rights of shareholders or any class of them, under the company's letters patent or supplementary letters patent or by-laws, the chief justice or acting chief justice of the court, or a judge of the said court designated by either of them, of the province in which the head office of the company is situated may, on application in a summary way of the company or of any shareholder, order a meeting of the shareholders of the company or of any class of shareholders, as the case may be, to be summoned in such manner as the said judge directs.

Meeting of shareholders to consider compromise.

(2) If the shareholders or class of shareholders, as the case may be, present in person or by proxy at the meeting, by three-fourths of the shares of each class represented and voted agree to the compromise or arrangement either as proposed or as altered or modified at such meeting, called for the purpose, such compromise or arrangement may be sanctioned by the said judge, and if so sanctioned such compromise or arrangement and any reduction or increase of share capital and any provisions for the allotment or disposition thereof by sale or otherwise as therein set forth, may be confirmed by supplementary letters patent, which shall be binding on the company, and the shareholders or class of shareholders, as the case may be.

When compromise binding on shareholders.

(3) Where at a meeting called as hereinbefore provided dissentient votes are cast by shareholders of one or more classes affected, and where, notwithstanding such dissentient votes, the compromise or arrangement is agreed to by the shareholders or each class of shareholders represented as aforesaid, it shall be necessary, unless the said judge in his discretion otherwise orders, that the company notify each dissentient shareholder in such manner as may be prescribed by the said judge of the time and place when application will be made to the judge for the sanction of the compromise or arrangement.

Notice to shareholders.

(4) The expression "arrangement" as used in this section and section one hundred and twenty-three shall be construed as extending to any reorganization of the share capital of the company including without limiting the foregoing the consolidation of shares of different classes, the division of shares into shares of different classes, the conversion of shares into shares of another class or classes and the modification of the provisions attaching to shares of any class or classes and as including an amalgamation or reconstruction as hereinafter defined. The expression "amalgamation or reconstruction" means an arrangement pursuant to which a company (in this subsection called "the transferor company") transfers or sells or proposes to transfer or sell to any other company (in this subsection called "the transferee company"), the whole or a sub-

Extension of section to certain reorganizations of share capital, etc.

Appendix.

Extension
of section to
certain
reorganiza-
tions of
share
capital, etc.
(Continued).

stantial part of the business and assets of the transferor company for a consideration consisting in whole or in part of shares, debentures or other securities of the transferee company and, either, any part of such consideration is proposed to be distributed among shareholders of the transferor company of any class, or, the transferor company proposes to cease carrying on the business or part of its business so sold or transferred or proposed to be sold and transferred. 1930, c. 9, ss. 37 and 38, am.

Meeting of
shareholders
ordered by
Court if
company is
subject to
proceedings
under
*Winding-up
Act.*

123. (1) Where a compromise or arrangement is proposed between a company which is subject to any pending proceedings under the *Winding-up Act* or *The Companies' Creditors Arrangement Act, 1933*, and its creditors or any class of them or its shareholders or any class of them, affecting or cancelling conditionally or otherwise, the rights of shareholders or any class of them under the company's letters patent or supplementary letters patent, or by-laws, the court having jurisdiction in such pending proceedings as aforesaid may on application in a summary way of the company or any shareholder or liquidator, order a meeting of the shareholders or class of shareholders to be summoned in such manner as the court directs.

Compromise
agreed to,
and sanc-
tioned by
Court, to be
confirmed
by letters
patent.

(2) If the shareholders or class of shareholders, as the case may be, present in person or by proxy at the meeting by three-fourths of the shares of each class represented and voted agree to the compromise or arrangement, either as proposed or as altered or modified at such meeting, and if the requisite majority of the creditors or class of creditors under any relative provisions of the *Winding-up Act* or *The Companies' Creditors Arrangement Act, 1933*, also agree to such compromise or arrangement, the court having jurisdiction in such pending proceedings as aforesaid may sanction such compromise or arrangement, and if so sanctioned by the court, a certified copy of such compromise or arrangement as so sanctioned and of the order or judgment of the court sanctioning the same shall be deposited in the office of the Secretary of State, and such compromise or arrangement and any reduction or cancellation of share capital and any increase or creation of new share capital and any provisions for the allotment or disposition thereof by sale or otherwise as therein set forth, may be confirmed by supplementary letters patent, which shall be binding upon the company and upon all the creditors or class of creditors and shareholders or class of shareholders, and on any liquidator or contributories concerned.

Compromise
where
company
subject to
proceedings
under
*Bankruptcy
Act.*

(3) Where a compromise or arrangement proposed between a company which is subject to any pending proceedings under the *Bankruptcy Act*, and its creditors or any class of them or its shareholders or any class of them, affecting or cancelling conditionally or otherwise the rights of shareholders or any class of them under the company's letters patent or supplementary letters patent or by-laws, has been approved by the court having jurisdiction in such pending proceedings under the *Bankruptcy Act*, a certified copy of such compromise or arrangement as so approved

and of the order or judgment of the court approving the same shall be deposited in the office of the Secretary of State, and such compromise or arrangement and any reduction or cancellation of share capital and any increase or creation of new share capital and any provisions for the allotment or disposition thereof by sale or otherwise as therein set forth may be confirmed by supplementary letters patent, which shall be binding upon the company and upon all the creditors or class of creditors and shareholders or class of shareholders and on any custodian or trustee concerned.
R.S., c. 27, s. 145, am.

Appendix.
—
To be
approved by
Court and
confirmed
by letters
patent.

Appendix.

THE BANKRUPTCY ACT, R.S.C., 1927, CHAPTER 11

*Composition, Extension or Scheme of Arrangement*Composition,
extension,
or scheme of
arrangement.

11. Where an insolvent debtor intends to make a proposal for
- (a) a composition in satisfaction of his debts; or
 - (b) an extension of time for payment thereof, or
 - (c) a scheme of arrangement of his affairs;

he may, after the making of a receiving order against him or the making of an authorized assignment by him, require in writing the trustee duly appointed to convene at the office of such trustee a meeting of such debtor's creditors for the consideration of such proposal. 10

Proceedings
by debtor.

2. The debtor shall at the time when he requires the convening of such meeting, or before, lodge with the trustee

- (a) a true statement of the debtor's affairs, including a list of his creditors, which list shall show the post office address of and the amount payable to each creditor, the whole statement being verified by the debtor by statutory declaration; and
- (b) a proposal in writing signed by the debtor, embodying the terms of the proposed composition, extension or scheme and setting out the particulars of any sureties or securities proposed. 1919, c. 36, s. 13; 1923, c. 31, s. 15. 20

Proceedings
by trustee.

12. As soon as possible after a trustee has been required to convene a meeting of creditors to consider a proposal of a composition, extension or scheme of arrangement, he shall submit the proposal to the inspectors and if authorized by a majority of them shall forthwith fix a date for such meeting and send by registered mail to every known creditor

- (a) at least ten days' notice of the time and place of meeting, the day of mailing to count as the first day's notice;
- (b) a condensed statement of the assets and liabilities of the debtor;
- (c) a list of his creditors; and
- (d) a copy of his proposal. 30

In case of
a prior
meeting.

2. If any meeting of his creditors whereat a statement or list of the debtor's assets, liabilities and creditors was presented has been held before the trustee is so required to convene such meeting to consider such proposal and at the time when the debtor requires the convening of such meeting the condition of the debtor's estate remains substantially the same as at the time of such former meeting, the trustee may omit observance of the provisions identified as (b) and (c) in the preceding subsection. 1923, c. 31, s. 15; 1932, c. 39, s. 7.

When
scheme
deemed to
be accepted.

13. If at the meeting so convened to consider such proposal or at any subsequent meeting of creditors a majority of all the creditors and 40 holding three-fourths in amount of all proved debts present in person or by proxy at such meeting resolve to accept the proposal either as made or as altered or modified at the request of the meeting, it shall be deemed to be duly accepted by the creditors.

2. The trustee shall forthwith, if the proposal is accepted by the creditors, apply to the court to approve it, and if the trustee does not make such application within ten days, the debtor or any creditor may do so.

Application by trustee for approval of composition.

3. If approved by the court such extensions, composition or scheme of arrangement shall be binding on all the creditors.

4. No such proposal or any security or guarantee tendered therewith may be withdrawn pending the decision of the creditors and the court with respect thereto. 1923, c. 31, s. 15; 1925, c. 31, s. 6; 1932, c. 39, s. 8.

10 14. Any creditor who has proved his debt may assent to or dissent from the proposal by a letter to that effect addressed postage prepaid and registered to the trustee, prior to the meeting, and any such assent or dissent if received by the trustee at or prior to the meeting shall have effect as if the creditor had been present and had voted at the meeting. 1919, c. 36, s. 13.

Creditor may assent or dissent by letter

15. If creditors who hold ten per cent or more in amount of proved debts request the examination of the debtor, the trustee shall cause him to be examined under oath before the registrar or other officer appointed for that purpose by General Rules and his testimony to be taken down
20 in writing.

Examination of debtor.

2. The testimony so taken may be read upon the hearing of the application for the approval of the composition or scheme of arrangement.

3. The court if not satisfied with such testimony as so taken, may direct that the debtor attend before the court for the purpose of further examination. 1919, c. 36, s. 13.

16. The court shall, before approving the proposal, hear a report of the trustee as to the terms thereof, and as to the conduct of the debtor and any objections which may be made by or on behalf of any creditor.

Court to hear report of trustee.

2. If the court is of the opinion that the terms of the proposal are
30 not reasonable or are not calculated to benefit the general body of creditors, the court shall refuse to approve the proposal, and the court shall refuse to approve the proposal whenever it is established that the debtor has committed any one of the offences mentioned in section one hundred and ninety-one of this Act.

Court may refuse to approve the proposal.

3. If any of the facts mentioned in section one hundred and forty-three of this Act are proved against the debtor, the court shall refuse to approve the proposal unless it provides reasonable security for payment of not less than fifty cents in the dollar on all the unsecured debts provable against the debtor's estate: Provided that if a composition, extension or
40 scheme, is proposed by the debtor before the expiration of any previous extension or of any renewal or extension thereof no such previous extension or renewal or extension thereof shall be deemed to have been made on a previous occasion within the meaning of paragraph (j) of section one hundred and forty-three.

Reasonable security.

4. In any other case the court, subject to the provisions of subsection five of this section, may either approve or refuse to approve the proposal.

Power of court.

Appendix.

Priority of debts.

5. No composition, extension or scheme shall be approved by the court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt or authorized assignor. 1919, c. 36, s. 13; 1923, c. 31, s. 15.

Evidence of approval.

17. If the court approves the proposal, the approval may be testified by the seal of the court being attached to the instrument containing the terms of the proposed composition, extension or scheme, or by the terms being embodied in an order of the court. 1919, c. 36, s. 13.

Approval binding on creditors, but does not release debtor from judgments.

18. A composition, extension or scheme accepted and approved shall be binding on all the creditors so far as relates to any debts due to them 10 from the debtor and provable under this Act, but shall not release the debtor from any liability under a judgment against him in an action for seduction, or under an affiliation order or for alimony, or under a judgment against him as co-respondent in a matrimonial case or for necessities of life or alimentary debts, except to such an extent and under such conditions as the court expressly orders in respect of such liability.

Composition not binding in certain cases without assent.

2. Notwithstanding anything herein contained, a composition, extension or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Act, the debtor would not be discharged by an order of discharge in bankruptcy, 20 unless the creditor assents (as, for the purposes solely of proceedings relating to a composition, extension or scheme he may, notwithstanding any thing in this Act, so assent) to such composition, extension or scheme.

Effect of acceptance.

3. The acceptance by a creditor of a composition, extension or scheme shall not release any person who under this Act would not be released by an order of discharge if the debtor had been adjudged bankrupt. 1919, c. 36, s. 13.

Provisions may be enforced.

19. The provisions of a composition, extension or scheme under this Act may be enforced by the court on application by any person interested, and any disobedience of an order of the court made on the application 30 shall be deemed a contempt of court.

Proceedings in case of default.

2. If default is made in payment of any instalment due in pursuance of the composition, extension or scheme, or if it appears to the court, on satisfactory evidence, that the composition, extension or scheme cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by the trustee or by any creditor, adjudge the debtor bankrupt, make a receiving order against him and annul the composition, extension or scheme.

Not to invalidate things done.

3. Such adjudication shall be made without prejudice to the validity of any sale, disposition or payment duly made, or thing duly done, under or in pursuance of the composition, extension or scheme.

Debts provable.

4. Where a debtor is adjudged bankrupt under this section any debt provable in other respects, which has been contracted before the adjudication, shall be provable in the bankruptcy proceedings.

5. If the court approves the composition, extension or scheme, it may make an order annulling the bankruptcy or authorized assignment and vesting the property of the debtor in him or in such other person as the court may appoint on such terms and subject to such conditions, if any, as the court may declare. 1919, c. 36, s. 13; 1923, c. 31, s. 15. Court may make order annulling bankruptcy or assignment.
20. Any scheme of arrangement under which the right of participation therein of any creditor, or of any shareholder of a debtor which is a corporation, is made conditional upon the purchase by such creditor or shareholder of any new securities or upon any other payment or contribution by such creditor or shareholder shall provide that the claim of any creditor or shares of any such shareholder who elects not to participate in the scheme shall be valued by the court at the amount, if any, realizable thereon upon a sale by the trustee of all the property and assets of the debtor to wind up his estate. If right of creditor or shareholder is conditional on purchase of new securities and he elects not to participate, the Court will decide value of his claims.
2. The value so determined shall within ninety days after the determination thereof or such further time as may be allowed by the court be paid to such creditor or shareholder either in money or in such securities as shall be specified pursuant to such scheme of arrangement and approved by the court and such payment shall be in full satisfaction of his claim or payment upon his shares as the case may be. Payment in ninety days.
3. For the purpose of assisting the court so to value the claims of any creditors and shares of any shareholders of a corporation debtor who elect not to participate in the scheme, the court may appoint a qualified person to examine into the value thereof as aforesaid and report the same to the court. Valuation.
4. In case of request therefor by creditors or shareholders who do not elect to participate in the scheme holding one-fifth in amount of all proved debts, or one-fifth in interest of all the shares of any such corporation debtor, hereinafter referred to as "the minority creditors" or "the minority shareholders" as the case may be, the court shall appoint three persons; one to be nominated by the minority creditors to assist the court in valuing the claims of the minority creditors, one by the minority shareholders to assist the court in valuing the shares of the minority shareholders, and the third by the creditors and shareholders who elect to participate in the scheme. Arbitration upon application, and proceedings thereupon.
5. A majority of the minority creditors or shareholders shall have the right to agree with the creditors and shareholders who elect to participate in the scheme upon one or two persons only being appointed. One or two arbitrators.
6. Such person or persons shall be entitled to reasonable compensation to be fixed by the court which together with the necessary expenses in connection with the examination into the value of such claims and shares shall be paid from the estate of the debtor. Compensation to arbitrators.
7. No secret arrangement shall be made with any creditors or shareholders to induce them to participate in any such scheme. 1922, c. 8, s. 12. No secret arrangement.

Appendix.

Documents to be sent to creditors and shareholders.

21. In the case of a meeting to consider a proposal of a scheme of arrangement of the affairs of a corporation debtor of a nature that any change is made in the rights of the shareholders under the letters patent or other instrument of incorporation of the company or the right of participation in such scheme of any shareholder is made conditional upon the purchase by such shareholder of any new securities or upon any other payment or contribution by such shareholder, every shareholder of such corporation shall be notified in the manner prescribed by section twelve of this Act.

Filed with Secretary of State.

2. If at the meeting so convened shareholders representing three-fourths in value of the holders of each class of shares present in person or by proxy at such meeting, resolve to accept the proposal either as made or as altered or modified at the request of the meeting, it shall be deemed to be accepted by the shareholders.

3. If approved by the court such scheme of arrangement shall be binding upon all the shareholders

(a) In the case of a corporation incorporated by or under an Act of the Parliament of Canada, upon the filing in the office of the Secretary of State of a certified copy of the scheme and of the court's approval thereof, and

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(b) in the case of a corporation incorporated other than by or under an Act of the Parliament of Canada, upon any necessary steps being taken to give effect thereto under the laws by or under which such company is incorporated. 1923, c. 31, s. 15.

Definitions.

22. All parts of this Act shall, so far as the nature of the case and the terms of the composition, extension or scheme admit, apply thereto as if the terms "trustee," "bankruptcy," "bankrupt," "assignment," "authorized assignment," "assignor," "authorized assignor," "order" and "order of adjudication" included respectively a composition, extension or scheme of arrangement, a compounding, extending or arranging debtor and an order approving the composition, extension or scheme. 1919, c. 36, s. 13.

* * * *

Stay of Proceedings

Stay of proceedings.

24. On the making of a receiving order or authorized assignment, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor or shall commence or continue any action, execution or other proceedings for the recovery of a debt provable in bankruptcy unless with the leave of the court and on such terms as the court may impose.

Secured creditors.

2. Subject to the provisions of sections one hundred and six to one hundred and thirteen inclusive, any secured creditor or person holding security on the property of the debtor may realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed, unless the court otherwise orders.

3. The court shall not, however, in so ordering have power to postpone the right of any such secured creditor or person holding security on the property of the debtor as aforesaid to realize or otherwise deal with his security as aforesaid, except as hereinafter provided, namely:—

Proviso as to rights of secured creditor or person holding security.

(a) In the case of a security for a debt due at the date of the receiving order or authorized assignment or which becomes due not later than six months thereafter, such right shall not be postponed for more than six months from such date;

10 (b) In the case of a security for a debt which does not become due until more than six months from the date of the receiving order or authorized assignment, such right shall not be postponed for more than six months from such date, unless all instalments of interest which are more than six months in arrears are paid and all other defaults of more than six months' standing are cured, and then, only so long as no instalment of interest remains in arrears or defaults remain uncured for more than six months, but, in any event, not beyond the date at which the debt secured by such security becomes payable under the instrument or law creating the security, except under paragraph (a) hereof. 1923, c. 31, s. 10.

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* * * *

Proof by Secured Creditors

106. If a secured creditor realizes his security, he may prove for the balance due to him, after deducting the net amount realized.

Proof by secured creditor.

2. If a secured creditor surrenders his security to the trustee for the general benefit of the creditors, he may prove for his whole debt. 1919, c. 36, s. 46; 1921, c. 17, s. 37.

May prove whole debt on surrender.

107. If a secured creditor does not either realize or surrender his security he may if he wishes to rank for dividend and he shall within thirty days after demand in writing made upon him by the trustee or within such further time as may be allowed by the inspectors or the court, file with the trustee an affidavit stating therein full particulars of his security, or securities, the date when each security was given and the value at which he assesses each thereof.

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Secured creditor to value securities.

2. A creditor shall be entitled to receive a dividend in respect only of the balance due to him after deducting the assessed value of his security.

3. Where a security is so valued the trustee may at any time redeem it on payment to the creditor of the assessed value. 1919, c. 36, s. 46; 1923, c. 31, s. 28; 1932, c. 39, s. 36.

Power of trustee.

108. If the trustee is dissatisfied with the value at which a security is assessed, or if a secured creditor who has neither realized nor surrendered his security, fails to assess said security within the period above mentioned, the trustee may require that the property comprised in the security be offered for sale at such time and on such terms and conditions, as may be agreed on between the creditor and the trustee, or as, in default of such agreement the court may direct.

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May order security to be sold.

Appendix.

Sale by public auction. Securities in Quebec.

2. If the sale be by public auction the creditor or the trustee on behalf of the estate may bid or purchase.

3. In the province of Quebec if the security consists of a hypothec or privilege upon immovable property, the sale, when directed by the court, shall be made in accordance with the provisions of section forty-five of this Act, and said sale shall have the effect mentioned in said section.

Costs of sale.

4. The costs and expenses of any sale made under this section shall be in the discretion of the court. 1923, c. 31, s. 28.

Creditor may require trustee to elect to exercise power.

109. Notwithstanding subsection three of section one hundred and seven and section one hundred and eight the creditor may at any time, 10 by notice in writing, require the trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realized, and if the trustee does not, within one month after receiving the notice or such further time or times as the court may allow, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the trustee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued. 1919, c. 36, s. 46.

Equitable interest vests.

Amended valuation by creditor.

110. If a creditor after having valued his security, subsequently 20 realizes it, or it is realized under the provisions of section one hundred and eight the net amount realized shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor. 1923, c. 31, s. 28.

Secured creditor may amend.

111. If the trustee has not elected to acquire the security as hereinbefore provided, a creditor may at any time amend the valuation and proof on showing to the satisfaction of the trustee, or the court, that the valuation and proof were made *bona fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation. 30

Amendment at cost of creditor.

2. Such amendment shall be made at the cost of the creditor, and upon such terms as the court shall order, unless the trustee allows the amendment without application to the court.

Rights and liabilities of creditor where valuation amended.

3. Where a valuation has been amended in accordance with this section, the creditor shall

- (a) forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or
- (b) be entitled to be paid out of any money, for the time being available for dividend, any dividend or share of dividend which 40 he may have failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment. 1919, c. 36, s. 46; 1923, c. 31, s. 28.

112. If a secured creditor does not comply with sections one hundred and six to one hundred and eleven, inclusive, he shall be excluded from all share in any dividend. 1919, c. 36, s. 46. Exclusion
for non-
compliance.

113. Subject to the provisions of sections one hundred and seven, one hundred and eight and one hundred and nine, a creditor shall in no case receive more than one hundred cents in the dollar and interest as provided by this Act. 1919, c. 36, s. 46. No creditor
to receive
more than
100 cents
on dollar.

Appendix.

THE JUDICATURE AMENDMENT ACT, 1935

25 GEORGE V, CHAPTER 32

An Act to amend The Judicature Act.

Assented to April 18th, 1935.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Short title.

1. This Act may be cited as *The Judicature Amendment Act, 1935*.

Rev. Stat.,
c. 88, s. 15,
cl. i,
re-enacted.

2. Clause *i* of section 15 of *The Judicature Act* is repealed and the following substituted therefor:

(i) (i) In case bonds or debentures are secured by a mortgage or charge by virtue of a trust deed or other instrument and whether or not provision is contained in the trust deed or other instrument creating such mortgage or charge giving to the holders of such bonds or debentures or a majority, or a specified majority of them, power to sanction the sale, transfer or exchange of the mortgaged or charged premises for a consideration other than cash, and in case any action shall have been brought or shall be brought for the purpose of enforcing or realizing upon any such mortgage or charge, or for the execution of the trusts in any such trust deed or other instrument with or without other relief, the court may order a meeting or meetings of the holders of such bonds or debentures to be summoned and held in such manner as the court may direct, and if the holders of such bonds or debentures shall sanction or approve the sale, transfer or exchange of the property so mortgaged or charged for a consideration wholly or in part other than cash, the court may in such action order and approve such sale on such terms in all respects as the court shall think fair and reasonable having regard to the interests of all parties interested in the premises and property so mortgaged or charged, and in such order or by any subsequent order may make provision in such manner, on such terms in all respects as to the court may seem proper, for the transfer to and vesting in the purchaser or his or its assigns of the whole or any part of the premises and property so mortgaged or charged and so sold, and for the payment of the proper costs, charges and expenses and remuneration of any trustee or trustees under such trust deed or other instrument and of any receiver or receiver and manager appointed by the court, and of any committee or other persons representing holders of such bonds or debentures, and for the distribution or other disposition of the proceeds of such sale, and for the protection of any or all persons whose interests are affected by such order, and for all such incidental, consequential and supplemental matters as the court may deem just.

(ii) The approval of the holders of any such bonds or debentures may be given by resolution passed at a meeting, by the votes of the holders of a majority in principal amount of such bonds or debentures, represented and voting in person or by proxy, and holding not less than fifty per centum in principal amount, or such lesser amount as the court under all the circumstances may approve, of the issued and outstanding bonds or debentures in question.

3. This Act shall come into force on the day upon which it receives Commence-
ment of Act.
10 the Royal Assent.

THE ABITIBI POWER & PAPER COMPANY LIMITED MORATORIAM ACT, 1942, 6 GEORGE VI, CHAPTER 3

Assented to March 27th, 1942.

Session Prorogued April 16th, 1942.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows.

Operation of 1941, c. 1 extended.

1. Notwithstanding anything contained in section 4 of *The Abitibi Power & Paper Company Limited Moratorium Act, 1941*, all the other provisions of the said Act shall be and remain in force and shall have effect until the 30th day of June, 1943.

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No proceedings without consent.

2. Until after the 30th day of June, 1943, in so far as any property, real or personal, in Ontario is concerned, without the consent in writing of the Attorney-General,—

(a) no proceedings shall be taken or continued under any order heretofore made in the Supreme Court of Ontario for the purpose of realizing on the security of the mortgage referred to in section 1 of *The Abitibi Power & Paper Company Limited Moratorium Act, 1941*,

(b) no further step shall be taken or order made for the purpose of realizing on the security of the said mortgage in any action now pending in the Supreme Court of Ontario, and

(c) no further action shall be brought in the Courts of Ontario for the purpose of realizing on the security of the said mortgage.

Termination of Act.

3. The Lieutenant-Governor in Council may at any time terminate the operation of this Act.

Commencement of Act.

4. This Act shall come into force on the day upon which it receives the Royal Assent.

Short title.

5. This Act may be cited as *The Abitibi Power & Paper Company Limited Moratorium Act, 1942*.

No. 58 of 1942.

In The Privy Council

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*

APPENDIX
TO THE CASE FOR THE RESPONDENT
MONTREAL TRUST COMPANY

Johnston, Heighington & Johnston,
80 King Street West,
Toronto, Ontario, Canada.