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Appeal Court Rules Against Abitibi Plan

Move for Reorganization of Paper Co. Stayed by Judgment.

Despatcher this week from Toronto give the finding of the Supreme Court in the case of the proposal for the re-organization of the Abitibi Power and Paper Co. on what is known as the Ripley plan. In a written judgment the court dismissed a motion for steps to enable the reorganization of the company.

The Montreal Trust Company, acting for a group of bondholders of the company which is now in receivership, asked in a motion before Mr. Justice Charles McTague for approval of the Ripley Plan, a plan to sell the company's assets to a company to be formed. These assets are now covered by a \$50,000,000 bond mortgage.

The motion was dismissed chiefly because the court found the Judicature Amendment Act, 1935, Ontario, under which the motion was brought was not applicable to the Abitibi, the company being Dominion chartered. The court said the end sought could have been obtained under Dominion legislation.

Mr. Justice McTague, without declaring the Ontario legislation ultra-vires, said it could not be applied to insolvent companies as they were governed by Dominion legislation. A constitutional issue was raised.

Plan Challenged

The Ripley Plan was challenged on several points. Attacking it for groups of bondholders, the Sir Henry Drayton committee of bondholders contended the Ontario Judicature Act, under which reorganization was planned, was ultra-vires so far as the Abitibi Company was concerned.

Senator Arthur Meighen called the Ripley Plan the most indefensible proposal ever addressed to bondholders of a company.

Under the plan, the holder of a \$100 bond, with interest arrears of \$30, would exchange it for a \$50 second mortgage, \$70 third mortgage debenture and a half share of common stock.

Abitibi, an \$85,000,000 corporation in receivership for five years, has subsidiaries in Manitoba, Ontario and

Quebec. Principal subsidiaries are Sleanne Paper Company, Limited, which has two subsidiaries, Ste. Anne Power Company and Bale St. Paul Lumber Company and Provincial Paper, Limited.

Other principal subsidiaries are Abitibi Electric Development Company Limited, Kaminstiquia Power Company Limited, Mattagami Railway Company, Thunder Bay Paper Company Limited, Spanish River Pulp and Paper Mills, which controls Lake Superior Paper Company, Limited, Fort William Power Company, Limited, Abitibi Lands and Forests, Limited, and Iroquois Merchandising Company, Limited.

Dominion Matter

Mr. Justice McTague found that the application for approval of the Ripley Plan should have been made under Dominion legislation instead of under the Ontario Judicature Amendment Act, 1935.

"I am forced to the view, without declaring the legislation to be ultra-vires, that the Judicature Amendment Act, 1935, cannot be applied in the case of insolvent companies, since that field now is covered by existing Dominion legislation," he said.

In the event that appeal to a higher court resulted in the Judicature Act being found applicable, Mr. Justice McTague also found that 49 per cent. of bondholders in favour of the plan was not sufficient under the act. "I do believe the court should be very slow and cautious about sanctioning a scheme which results in the confiscation of contractual rights at the will of the majority, when the majority is at least less than the legislation fixed," he commented.

"I can see no circumstances here which justifies me in exercising my discretion to relieve the proponents of the plan from failure to obtain the statutory majority."

Opposition Justified

"It is my view that the opposition is justified and very properly taken," Mr. Justice McTague's lengthy judgment started with this observation: "The action is the usual bondholders' action brought by the plaintiff as trustee against the defendant company for declaration that the holders of bonds are entitled to a first charge."

Turning to proposed sale, the judge proceeded: "The court is empowered to sanction such a sale providing that the bondholders holding not less than

50 per cent. of the outstanding bonds are in favour. There is given to the court an additional right of distributing the proceeds as among the persons whose interests are affected by order. The most important issue here is whether such legislation can be made applicable to a plan of reorganizing a company which is in bankruptcy and in process of winding up. It raises a constitutional issue and involves consideration of the legislation of the Parliament of Canada.

"I refer to certain sections of the Companies Creditors Arrangement Act, 1935. (Here the court cited sections of the act.)

"There can be no doubt that the Ripley Plan of sale of the assets and reorganization brought before me for sanction under the Judicature Amendment Act, 1935, Ontario, could have been carried forward under the Companies Creditors Arrangement Act and section 123 of the Dominion Companies Act. The company involved is one incorporated under the Dominion Companies Act and is a debtor company as defined by the Companies Creditors Arrangement Act.

"The scheme is essentially a scheme of compromise and arrangement to be brought about through the medium of a sale to a new company, but a scheme of compromise and arrangement never-theless.

"Under the plan the bondholders compromise their rights to be paid in cash the principal owing on the bonds and their right to be paid in cash their interest coupons as well.

"The preferred shareholders are compromising certain rights in order to take common stock in a new company. The term 'compromise' perhaps, is not applicable to common shareholders but at least these are accepting a reduction in the number of shares.

"While it is true the plan did not state that the preferred and common shareholders were to receive a certain definite number of shares in the new company, it plainly suggested that the court should distribute shares as to bring about that result.

"It is my view that the essence of the plan is a compromise or arrangement and the means of carrying out a compromise or arrangement.

"It is quite evident, I think, that the Dominion Parliament has legislated and furnished a complete code by which the result sought here could be obtained.

"There can be no doubt that such legislation is intra-vires under section 91, item 21, of the British North America Act. The question is whether effect has such legislation once enacted in the same field.

"I think the correct conclusion is that the Dominion Parliament has provided a code by which a compromise or arrangement can be arrived at in case of companies falling within the definition of debtor companies under the Companies Creditors Arrangement Act.

"No provincial statute can be utilized in case of that class company to bring about the same result.

"To admit that would be to admit that a provincial legislature has the right to legislate respecting companies in a field already specifically covered by Dominion statutes on bankruptcy and insolvency."

Another Plan Likely in Regard to Abitibi

Move Now Looked for After Court Decision

(From Globe and Mail)
Following dismissal Monday by Mr. Justice McTague of the bondholders' application for the sale of assets of Abitibi Power and Paper Company, the next most likely move, according to information from the financial Street will be for the liquidator to form a new plan of reorganization which will meet the approval of all classes of security-holders. In the meantime, it is contended that the move should give every type of holder a fair deal.

The bondholders' plan of reorganization, which took the form of calling for sale of Abitibi's assets to a new company, yet to be formed, was dismissed primarily on the ground that the matter did not come under the Ontario Judicature Act, but properly fell within the jurisdiction of the Dominion Companies' Creditors' Arrangement Act.

New Plan Held Likely
The next logical step, as outlined by those in close touch with the Abitibi situation, will be for somebody—more probably the liquidator—to work out a new plan of reorganization and then call groups of holders of each class of security and obtain their approval. At the same time there does not seem to be any reason why a group of holders of any definite class of security should not get together and work out their own plan.

Mr. Justice McTague pointed out, in his decision, that he was not entirely convinced that a plan more fair to the bondholders could not be worked out. The stand of the opposition, he added, was justified; and that leaves the way open for those who opposed the bondholders' plan to work out a new scheme of their own and present it to the various classes of security-holders.

It was stated there need not be approval of all groups before a plan can be submitted under the Dominion Companies' Creditors Arrangement Act. Negotiations last year, spread over many months, failed to produce such a situation.

"There is no certainty that anybody can get all security-holders to see alike," was the observation last night of the representative of a local house interested in developments. "But surely no person will want to go through the whole thing again."

Exchange:—It is much easier to forget what you ought to know than it is to know what you ought to forget.

Problems Much the Same 60 Years Ago

Railways, Liquor, Yes, and Unemployment, Were Issues

(By Judith Robinson in The Globe and Mail)

A stray volume of The Weekly Globe slid off the filing cabinet, landed with a bang on the desk and opened itself at Jan. 18, 1878.

Things like that can happen in an old newspaper office if a person hangs around long enough after the last edition has been put to bed.

But it was a little damping to discover at the first look that railways and liquor were this country's problem sixty years ago, too; that an 1878 politician was suffering from misquotation; and that the Third Parliament of Ontario was being warned to get to work on a general plan of unemployment relief, "to prevent municipalities from getting rid by improper means of their own poor and increasing the burden of their neighbours."

No use waiting around all night for the spirit in the back files to start moving if it isn't going to turn up anything you cannot find in this morning's paper. However . . .

The misquoted politician was Mr. Robinson (John Beverley). He "characterized the Mail's report of his speech on the Orange Bills as utterly incorrect and gave a correct version" at length. After that Mr. Preston, M.L.A., accused the government (Mr. Mowat's, remember, not Mr. Hepburn's) of making political capital out of liquor in Leeds county. But Mr. Fraser, M.L.A. (for Leeds?) said he never did.

He had merely, it seems, deprecated undue pre-election harshness in the administration of the Crooks Act.

On behalf of the Tory Opposition, Mr. Cameron thereupon declared that attempts such as the Crooks Act to restrict the liquor traffic had caused no diminution, but an increase in crime. On behalf of the Reform Government, Mr. Mowat differed entirely, attributing the increased numbers of commitments for crime in Ontario to "increased vigilance and energy in enforcing the law." This reporter skipped hurriedly to the railway problem.

Discussion of railway problems was around and about a railway called Toronto and Ottawa Railway. There were gentlemen not above hinting dark hints at something suspicious in the way provincial revenues collected east of Toronto had been wasted by a past Administration on railway-building west of Toronto. . . . A discouraged skipper skipped a whole page.

And landed on railways and liquor, mixed. George Stubbs of Niagara was reported to have mixed them by throwing a glass bottle at a passing train of the Canada Southern Railway." In St. Catharines, in due course, His Honour Judge Senkler found George guilty of the deed and sentenced him to a year in jail. Though the prosecution could only produce one witness to identify George as the bottle thrower, Judge Senkler found him guilty. That's the sort of justice they were handing out in St. Catharines sixty years ago.

Yet it may have mirrored its times as well as the current article. Throwing a glass bottle at a railway train near Niagara, Ont., in 1878 would be about equivalent in impiety to promoting a C.I.O. union in Algoma, Ont., say, in 1938. The mere suspicion of such an act would put a man outside the protection of rules of evidence. To throw a glass bottle at the cast-iron symbol of the Nineteenth Century's hopes would be as wicked as staging a sit-down strike amid the twentieth century wreckage of the same. To throw a glass bottle at the travelling triumph of capitalism sixty years ago, now in Ontario would be blasphemy as grave as throwing doubts on the beneficence of capitalism itself in Quebec now. Look at it that way and it is easy to see that accused got all the justice that was likely to be coming to him in St. Catharines Court House on Jan. 15, 1878.

Recognition of that truth came with sighs gusty enough to turn a leaf.

The leaf turned and revealed that The Eastern War Still Raged and the Shipka Army Was Captured. Closer study showed the war to be raging between Russia and Turkey, not between Japan and China. In Napanee, Amos Schermehorn, aged 82, a veteran of 1812, had fallen down a flight of steps and rendered himself unconscious. It was thought probable that he would recover. Paris sent biggy news. The Weekly Globe's Paris informant informed that a special jury had been appointed "to inspect the several electrical inventions presented for competition" in the Paris Exposition of 1878. The most sanguine expectations, he wrote, were entertained in France, of "the complete victory of electric lighting over the old-fashioned illuminating gas, which it is predicted will soon be abolished and superseded by the better and cheaper product of modern science."

In Rome King Victor Emmanuel was dead. In London, Baron Nathaniel de Rothschild, an habitual user of omnibuses despite his wealth, had presented to each driver and conductor on the line he used a hare, a pheasant, and a bottle of wine. In rural Ontario hog gussing had become the fashionable diversion.

The Weekly Globe noted that it differed greatly from the crude gussing done at old-time hog-slaughtering. In Manitoba settlers on railway lands had been given a year's grace in making their first payment of one dollar an acre. Moreover the Land Agent had received instructions to accept scrip in payment for Settlement Belt Lands, thus cutting their price to \$2.50 an acre since "\$160 in scrip is now worth not more than \$80 in cash." But the Manitoba Parliament was content with neither concession. It wanted rail-

ways and wanted them quick.

Railways again you see. There's no escape.

Except in the features the only feature published in The Globe of sixty years ago this morning was an illustrated column on horseshoeing. Bringing all the nails out in a line, it says, is generally recognized as a piece of good work. A nail for which there is no need should never be put in, and high holds should be deprecated. There you have a feature that is a feature; concise, authoritative and to the point. Not like this stuff.

It almost looks as if The Globe of Jan. 18, 1878, slid down when it did to promote humility hereabouts. If so, it has succeeded. This reporter is both humbled and discouraged. But where is there a place in Canada now where an industrious and frugal person who can't think of anything more to write about "can start farming with \$1000?"

In Manitoba in 1878 such a person could do it easily. The Weekly Globe said so, only sixty years ago this morning.

Exchange:—Every time a man has a cold in his head he is expected to take a lot of advice.

National Committee for Relief of War Victims

621 Jarvis St., Toronto, Jan. 18, 1938
To the Editor of The Advance, Timmins.

Dear Sir:—Both Japan and China were tendered medical and relief assistance by the International Red Cross, representing all National Societies. Japan declined, stating that she had already made necessary provision. China accepted, with a gratitude that reflects her terrible need. China is suffering.

The extent and severity of that suffering has seldom, if ever, found equal in the history of nations.

The shelling and bombing of cities, bringing terror, death, disablement and destitution, not alone to soldiers, but to countless women and little children helplessly caught in the maelstrom of war, have created distress of unparalleled proportions.

At the expressed wish of Canadian citizens in many parts of the Dominion, the Red Cross and the Religious Bodies of Canada, in affiliation, are creating a fund, through which our people may

express their sympathy in tangible form.

No brief is needed for this appeal. Lay by day, press and radio are laying the stark facts of this great tragedy before us. The need for kindly assistance will never be greater. In the face of suffering such as theirs, our sympathy and help can know no barriers of race or creed.

We feel confident that Canada will meet this need promptly with generous hand and heart.

Sincerely yours,
Sir Henry Drayton, Chairman.

Huntingdon Gleaner: Back in 1931, Mr. and Mrs. Earl P. Cady were divorced and Cady was ordered to pay his wife \$7 a week alimony. Cady soon married again, this time a widow with a twelve-year-old son. Times coming harder, Cady was unable to pay the alimony and as his first wife had no other means of support, she just moved in with her former husband and Mrs. Cady No. 2. It is a strange relationship, but the "family" of four have now lived together in apparent peace and happiness for five years.

THE MUTUAL LIFE Assurance Company OF CANADA

Established 1869

68th Annual Statement Continues Record of Progress and Stability

PROFIT AND LOSS ACCOUNT for the year ending December 31st, 1937

Surplus Funds as at December 31st, 1936, consisting of:

| | |
|--------------------------------|------------------------|
| General Investment Reserve | \$ 2,000,000.00 |
| Policy Reserve Adjustment Fund | 900,000.00 |
| Free Surplus for Contingencies | 4,834,822.38 |
| | <u>\$ 7,734,822.38</u> |

INCOME

| | |
|--|------------------------|
| Premiums (net) | \$17,965,613.74 |
| Interest and Rents (after provision for possible losses) | 7,451,116.15 |
| Supplementary Contracts | 3,083,100.97 |
| Profit on Sale of Ledger Assets | 55,440.60 |
| | <u>\$28,555,271.46</u> |

EXPENDITURES AND RESERVES

| | |
|--|------------------------|
| Death and Disability Claims, Matured Endowments, Surrendered Policies, Supplementary Contracts, etc. | \$12,283,279.93 |
| Increase in Actuarial Reserve and Amounts left on Deposit | 7,826,359.09 |
| Commissions, Taxes and General Expenses | 3,406,699.74 |
| Depreciation on Ledger Assets | 472,719.46 |
| Amount Written off Head Office Premises | 50,000.00 |
| | <u>\$24,039,058.22</u> |

Surplus Earnings for year - - - - - \$ 4,516,213.24

Special Charges:

| | |
|---|----------------------|
| Provision for Depreciation in value of Bonds and Stocks | \$ 270,172.89 |
| Specific Reserve against loss of principal on Mortgages and Sale agreements | 99,338.44 |
| Staff Pensions | 150,688.00 |
| | <u>\$ 520,199.33</u> |

Net Amount Transferred to Surplus Funds - - - - - \$ 3,996,013.91

Total - - - - - \$11,730,836.29

Deduct:

Surplus Paid or Allotted to Policyholders - - - - - \$ 3,316,099.87

Surplus Funds as at December 31st, 1937, consisting of:

| | |
|--------------------------------|------------------------|
| General Investment Reserve | \$ 2,000,000.00 |
| Policy Reserve Adjustment Fund | 1,200,000.00 |
| Free Surplus for Contingencies | 5,214,736.42 |
| | <u>\$ 8,414,736.42</u> |

In addition to these Surplus Funds the Company holds Special Reserves, including \$3,500,000 for dividends payable in 1938, of 6,142,869.45

Total Special Reserves and Surplus Funds - - - - - \$14,557,605.87

(An Increase of \$803,702.64)

Outstanding Features of 1937 Statement

Assets (all owned by the policyholders)

Increased by \$8,780,870 to \$169,887,078

Insurance in force (excluding Annuities)

Increased by \$12,683,119 to \$550,578,406

New assurances paid for in 1937

(excluding annuities and revivals) \$44,697,412

The 68th Annual Meeting of the Policyholders will be held on Thursday, February 3rd, at 11 a.m., at the Head Office, Waterloo, Ontario.

R. O. McCULLOCH, President. W. H. SOMERVILLE, General Manager.



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