

Between

THE MINISTER OF RAILWAYS }
AND CANALS FOR THE } PLAINTIFF;
DOMINION OF CANADA..... }

1905
Nov. 8.

AND

THE QUEBEC SOUTHERN RAIL- }
WAY COMPANY AND THE }
SOUTH SHORE RAILWAY }
COMPANY, BOTH CORPORATIONS }
EXISTING UNDER FEDERAL STAT- }
UTES, AND HAVING THEIR HEAD }
OFFICES IN THE CITY AND DISTRICT }
OF MONTREAL } RESPONDENTS.

Railways—Sale of—Jurisdiction under special Act—4-5 Edward VII, c. 158—Interpretation.

By 4-5 Edward VII, c. 158, respecting the South Shore Railway Company and the Quebec Southern Railway Company; the Parliament of Canada, among other things, provided that the Exchequer Court might order the sale of the railways mentioned and their accessories as soon as possible and convenient after the passing of the Act, and that such railways and their accessories, respectively, should be sold separately or together as in the opinion of the Exchequer Court, would be best for the interests of the creditors of the said companies. An order for such sale was made and tenders received in accordance therewith.

Held, that in respect of the tenders so received the statute left it to the Court to determine which of them it was in the best interests of the creditors to accept.

2. That, inasmuch as if the property were sold in part to one purchaser and in part to another, two new and diverse interests would arise, and it would be necessary to divide the property both real and personal and to make two transfers instead of one, it was in the best interests of the creditors, as well as of the public, to accept a tender for the property as a whole, although such tender was for a less sum, by some \$3,000, than the aggregate of two separate tenders for distinct portions of the whole property.

THIS was a proceeding under the provisions of a private Act, 4-5 Edw. VII, c. 158, for the sale of the

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South Shore Railway and the Quebec Southern Railway, such railways being in the hands of a Receiver.

An order for the sale of the said railways having been made,

November 3rd, 1905,

The court now sat for the reception of tenders.

Statement
 of Facts.

The parties interested as creditors and otherwise were represented by counsel, as follows :

A. Geoffrion, K.C., for the Minister of Railways and Canals; *F. L. Beique, K.C.*, for the Bank of St. Hyacinthe; *T. Brosseau, K.C.*, for the Bank of Hochelaga; *J. E. Martin, K.C.*, for the Rutland Railway and the George Hall Coal Company; *E. A. D. Morgan*, for Hon. R. Préfontaine; *F. H. Markey* for Hanson Brothers; *P. H. Roy* for the East Richelieu Valley Railway Company.

The court having directed the tenders received to be opened by the Registrar, he declared that he had received the following :

1. *P. H. Roy*, for the East Richelieu Valley Railway, \$105,000.

2. *E. A. D. Morgan*, for the South Shore Railway, \$503,000.

3. *George E. Foster*, for the Quebec Southern Railway, as comprising the railways heretofore known as the South Shore Railway, the United Counties Railway and the East Richelieu Valley Railway, *en bloc*, \$1,006,000.

4. *F. L. Beique*, for the United Counties Railway and the East Richelieu Valley Railway, \$551,000.

5. *F. L. Beique*, for the Quebec Southern Railway as comprising the railways heretofore known as the South Shore Railway, the United Counties Railway and the East Richelieu Valley Railway, *en bloc*, \$1,051,000.

All parties interested having been heard, the court was adjourned after his lordship had announced that when the court met the following morning at nine o'clock he would give his decision as to which of the tenders should be excepted.

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After his lordship had entered upon the pronouncement of his judgment. Mr. George E. Foster, K.C., asked permission, on behalf of certain of the creditors, to make an application to the court to file a notice with the Registrar that he was prepared to give the creditors \$31,000 more than they would get by the acceptance of any of the present tenders, but the application was refused on the ground that it was made too late, the only matter then before the court being the judgment upon the questions that had been heard.

THE JUDGE OF THE EXCHEQUER COURT delivered judgment as follows :—

By an Act of the Parliament of Canada, 4-5 Edw. VII, ch. 158, respecting the South Shore Railway Company and the Quebec Southern Railway Company, it was, among other things, provided that the Exchequer Court might order the sale of the railways mentioned, and their accessories, as soon as possible and convenient after the passing of the Act, and that such railways and their accessories, respectively, should be sold separately or together as in the opinion of the Exchequer Court would be best for the interests of the creditors of the said companies. The order for such sale has been made and tenders have been received in accordance therewith as follows :

First. A tender for \$105,000 for the East Richelieu Valley Railway ;

Secondly. A tender of \$503,000 for the South Shore Railway ;

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Thirdly. A tender for \$1,006,000 for all the said railways together.

Fourthly. A tender for \$551,000 for what was formerly known as the United Counties Railway and the East Richelieu Valley Railway together; and

Fifthly. A tender for \$1,051,000 for all the said railways together.

The question now is which tender or tenders it is for the best interest of the creditors to accept? That is a question that the statute leaves to the opinion of the court.

In answering that question it is not necessary to consider the first tender or the third tender mentioned. Obviously it would not be in the interests of the creditors to accept either of these. The question lies between the acceptance of the second and fourth tenders, which would give a price of \$1,054,000 for the whole property, or of the fifth tender which would give therefor the somewhat smaller sum of \$1,051,000. By accepting the second and fourth tenders the property would realize for the creditors \$3,000 more than would be realized therefor by accepting the fifth tender. That course would have another advantage. It is easy to foresee that in the distribution of the moneys arising from the sale of the property in question, and probably in other connections, it may be necessary to attribute a portion of such moneys to each railway, and if the second and fourth tender is accepted, that question so far as the South Shore Railway interests are concerned will be eliminated, leaving only the question as to the distribution of the sum of \$551,000 between the United Counties Railway interests and the East Richelieu Valley Railway interests. It is suggested that the latter question ought not to present any serious difficulty, seeing that the value of the East Richelieu Valley Railway may be taken to be

The tenders having been read, the court directed the hearing to stand over until the 7th November, 1905, when the parties interested would be heard upon the question of which of the tenders should be accepted.

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BY THE COURT: The present sitting of the court is to enable any one to offer suggestions before a decision is given in the matter of the tenders.

Argument
 of Counsel.

F. H. Markey, on behalf of the Great North-Western Telegraph Company, filed an opposition asking that the telegraph system upon the Quebec South Shore Railway be exempted from the sale.

The Registrar stated that he had received a letter, protesting against the sale, from E. N. Armstrong, on behalf of the Atlantic and Lake Superior Railway Company.

G. E. Foster, K.C., one of the tenderers as above set forth and solicitor for the Rutland Railway, asked, that in view of the opposition filed by the Great North Western Telegraph Company and the protest of the Atlantic and Lake Superior Railway Company, that the court's decision as to which of the tenders should be accepted should not be made at this date, but that an opportunity be allowed to the parties interested to look into the question of title raised by the protests filed and to afford time to certain people interested in the proceedings to submit a proposition to the court looking to the attainment for the creditors of a larger price for the property than any represented by the tenders before the court.

[BY THE COURT: I do not think I should delay the matter further for the reasons mentioned to me this morning. I shall hear any one who has anything to offer in regard to any of the tenders. If any one has

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anything to say in the interest of the creditors I shall hear him.]

A. Geoffrion, K.C.: I am instructed by the Minister of Railways to state that in view of what he considers to be the public interest he holds the opinion that the tender which is accepted by the court ought to be that which transfers the whole property to one person, in preference to any tender that would divide the property as a whole among several persons.

T. Brosseau, K.C., objected that the opinion of the Minister of Railways did not appear to be justified, and ought not to be heeded by the court. There was nothing to show that if portions of the property were sold to different persons the road as a whole would not be kept open. This sale is really in the nature of a sheriff's sale for the benefit of the creditors, and the rule is that the highest bid shall be accepted. If you add together the amounts of the several bids for separate portions of the property they will amount to more than one of the consolidated tenders.

F. H. Markey supported Mr. Brosseau's view.

T. Chase Casgrain, K.C., on behalf of the trustees and bondholders of the Atlantic and Lake Superior Railway Company said that he made no objection to the sale of the property in these proceedings.

F. L. Beique, K.C., asked that the property be sold *en bloc*.

E. A. D. Morgan contended that the property should be sold to the highest bidder, as by that means the largest amount of money would be secured to the creditors.

J. E. Martin, K.C. and the *Honourable R. Préfontaine, K.C.* (the latter being a creditor of the South Shore Railway) supported the view expressed by Mr. Brosseau.

determined by the bid of \$105,000 made therefor. But if that view is correct, then equally it might be contended that the value of the South Shore Railway is determined by the bid of \$503,000 made for that railway and its accessories, and that would leave the balance, whatever it might be, for the United Counties Railway. For example, if the second and fourth tenders were accepted we should have:

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| The South Shore Railway..... | \$503,000 |
| The United Counties Railway..... | 446,000 |
| The East Richelieu Valley Railway..... | 105,000 |

Total.....\$1,054,000

and if the fifth tender were accepted we would have on the basis of division mentioned, for

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| The South Shore Railway..... | \$503,000 |
| The United Counties Railway..... | 443,000 |
| The East Richelieu Valley Railway..... | 105,000 |

Total.....\$1,051,000

In that way the difference of \$3,000 would fall upon the United Counties Railway interests.

But whether in case the one tender rather than the two were accepted, the whole difference should fall upon the United Counties Railway or be distributed between the three railways is a question that need not now be determined. The matter may be left for future consideration, but upon the main question I see no reason to doubt that a fair distribution of the total price may be made between the three railways without any considerable expense.

There is, however, another consideration. If the property is sold and part sold to one purchaser and part to another, two new and diverse interests will at once arise, and it will be necessary to divide the property both real and personal and to make two trans-

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fers. It is also to be seen that these interests may be adverse and perhaps hostile, and the expense of determining any controversies that may arise between them is likely in the main to fall upon the funds that will be brought into court as the price of the several railways. What the amount of that expense may be it is of course not possible to foresee, but experience suggests that it may very easily exceed a sum of three thousand dollars. I am therefore of opinion that it is better for the creditors of the said companies, and in their best interests, not to create any such diverse interests, but to avoid that difficulty by accepting the single tender of \$1,051,000 for the whole property.

So far I have dealt with the matter wholly from what, in my opinion, is the best interests of the creditors of the said companies, as I agree that under the statute that is the proper test to apply.

But we cannot overlook the fact that it is a question in which the public have a large and direct interest. That interest in the present proceedings is represented by the Minister of Railways and Canals, and counsel for the minister has stated that in the Minister's opinion the public interests will be best served by a sale of the whole property to one person or company. The interest of the public is that the several roads be kept open and be duly operated for the public convenience, and it seems reasonable to conclude that that is more likely to happen where the property passes into the hands of one person or company, than where it passes into the hands of two persons or companies. If in this case the public interest and the best interests of the creditors of the several companies were opposed, I should think that in accordance with the statute under which the sale is made the interests of the creditors should prevail; but in my opinion they are not opposed. It appears to me to be both in the

best interests of the creditors and in the public interest, that the highest tender for the property as a whole should be accepted.

That brings me to another matter. There has been filed with the Registrar of this court a letter or notice purporting to come from the Atlantic and Lake Superior Railway Company protesting against the sale of the properties in question here. It purports to be signed by the secretary of the latter company and has been read in open court so that all parties interested may have notice of it. There is also an opposition filed on behalf of the Great North Western Telegraph Company against including in the sale of the property of the several companies mentioned its interest in the equipment of the telegraph system along their said lines. I do not propose at present to deal with the question raised by the letter or notice mentioned, nor with the petition of the Great North Western Telegraph Company; neither do I think that I should delay action with respect to the tenders. I shall leave these matters largely with the purchaser, and he must satisfy himself as to what weight or consideration is to be attached to the communication of the Atlantic and Lake Superior Railway Company. If in that respect there should be any defect in the title that the court can give under the statute, the loss, if any, must fall upon the purchaser and not upon the creditors of the said companies. I shall also expect the purchaser to give a satisfactory undertaking to protect the creditors and the Receiver and Registrar, and those acting under the authority of the court from any just claim of the Telegraph Company mentioned. There was, I am sure, no intention on the part of any one to include in the sale any property of the Great North Western Telegraph Company, nor am I aware that any of its property has been so

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included. But there may be some question as to what its real interests and rights are in the matter, and as to that the purchaser must in the first instance satisfy himself. If under these circumstances he wishes to withdraw his tender and deposit rather than go on with the purchase, leave is given him to make an application for such withdrawal. If, however, notwithstanding the notice and petition he is willing to go on with the purchase on the terms and conditions I have mentioned, I ought not, I think, under all the circumstances of the case to defer action.

Subject to the terms and conditions I have mentioned the order and direction of the court will be that Mr. F. L. Beique's tender of \$1,051,000 for the property as a whole be accepted, and that the several railways mentioned with their accessories, be sold to him for that price, and that steps be taken to give effect and to carry out such sale.

*Judgment accordingly.**

Solicitors for the plaintiff: *A. Geoffrion and J. L. Perron.*

Solicitors for the respondents: *Greenshields, Greenshields & Heneker.*

*REPORTER'S NOTE.—On appeal, taken by E. A. D. Morgan, the Rutland Railroad Co., and Frank D. White, the Supreme Court of Canada unanimously affirmed this judgment.