

possession of the ties restored to him, or to recover their value from the Crown.

J. A. Chisholm and McLellan, for suppliant. *Mellish*, K.C., for respondent.

Burbidge, J.]

[Jan. 18.

IN RE THE ATLANTIC AND LAKE SUPERIOR RY. CO.

*Scheme of arrangement—Motion to restrain pending action—
Grounds for refusal.*

In proceedings taken to confirm a scheme of arrangement, filed by a railway company under the provisions of s. 285 of the Railway Act, 1903, an application was made on behalf of the railway company for an order to restrain further proceedings in an action against such company begun in the Superior Court for the District of Montreal, by certain creditors, before the filing of the scheme of arrangement, but which had not proceeded to judgment:

Held, that as there were real and substantial issues to be tried out between the parties in the action pending in the Superior Court, the same ought to be allowed to proceed pending the maturing of the scheme of arrangement. *In re Cambrian Railway Company's Scheme*, L.R. 3 Ch. App. 280, n. 1, referred to.

F. S. MacLennan, K.C., in support of motion. *T. Chase-Casgrain*, K.C., contra.

Burbidge, J.]

BEACH v. THE KING.

[Feb. 15.

Lease of water power—Stoppage of power on improvement of canal — Damages — New lease — Waiver — Surrender — Measure of damages.

The suppliant was the owner of a flouring mill at Iroquois, Ont., which was built upon a portion of the Galops Canal reserve, and, prior to Dec. 12, 1898, was operated by water power taken from the surplus water of the canal. The site upon which the mill was built, as well as the water power sufficient to drive four runs of ordinary mill stones, equal to a ten horse power for each run, were held by the suppliant under a lease from the Crown. On that date the canal was unwatered to facilitate the construction of certain works that were being carried out by the Government of Canada for its enlargement and improvement. At that time it was not intended that the stoppage of the supply of such surplus water to the mill should be permanent, but temporary