

contest and as a favour to the Company, I vacate the consent judgment and allow an amendment of the pleadings to set up this defence in law as of the 20th March, and I now give judgment upon that amended record directing a sale of the road. The relief can only be granted upon payment of all costs occasioned by the application of the company to be allowed to defend.

As to the form of the judgment, it should be referred to the Master to inquire who are the debenture holders and what is due to each of them and to sell the road to satisfy their claims. If there is undue delay in taking the accounts, leave to apply to expedite the sale. The rival bondholders to have the right to attend on settling advertisement and conditions of sale and to have leave to bid—though this is, perhaps, not necessary to be mentioned in the judgment. The costs heretofore occasioned by advertising the immediate sale to be paid by the company as a part of the costs above referred to.

So far as the attack made upon the proceedings is based upon fraud or other like ground, it fails, and I dismiss that branch of the litigation with costs to be paid by Ritchie.

There is another branch of contestation involving the status of directors and as to who is the solicitor of the railway company. Having regard to this judgment, and the fact that the receiver already appointed will continue in possession till the sale, and is a person satisfactory to all the litigants, it does not appear to me essential to make nice critical discrimination as to legal rights in the present directorate. The voice of the shareholders has been heard, and the large majority are in favour of what I may call the Ritchie nominees, and they ask for this amendment.

The normal body of directors of the company is 7, of whom 4 form a quorum. By the resignation of the 4 directors whose places became vacant on the acquisition of Payne's interest by Ritchie, there were but three left—less than a quorum. According to *Newhaven v. Newhaven*, 30 Ch. D. 350, these, being less than a quorum, were unable to transact any business or even to fill the vacancies.

Under a direction that "the continuing directors might act notwithstanding any vacancy in their body," it was held that less than a quorum might validly act: *Re Ross*, [1901] 1 Ch. 117. That is a more helpful provision than is found in the Railway Act providing for vacancies to be filled by death, etc. But, if such appointment is not made, such death, absence, or resignation shall not invalidate the acts of the remaining directors: 61 Vict. ch. 29, sec. 51. . . . But should not those who remain be sufficient to form a