

The issue and the second action were tried together.

A. B. Aylesworth, K.C., and W. Barwick, K.C., for plaintiff Ritchie.

W. R. Riddell, K.C., T. P. Galt, and R. McKay, for defendants.

D. L. McCarthy, for plaintiffs the Toronto General Trusts Corporation.

BOYD, C.—The important question here discussed was, whether the judgment directing the sale of the railway was well founded in law.

The railway of defendants, a company of Provincial incorporation, has been declared to be a work for the general advantage of Canada, and has been since 1884 subject to the law of the Dominion (47 Vict. ch. 60, D.). In 1882 the company made the issue of first bonds, now sought to be enforced, under statutory powers, by which the lands, tolls, revenues, franchises, and other property, real and personal, of the company, were hypothecated, mortgaged, and pledged in security for the due payment of the amount of the bonds: 45 Vict. ch. 61, sec. 7 (O.), and R. S. O. 1877 ch. 165, sec. 9, sub-sec. 11. The form of the transaction was, that the issue of these mortgage bonds was secured by a deed of trust whereby was conveyed to the Toronto General Trusts Corporation the railway, its lands, rolling stock, present and future property and effects, franchises, and appurtenances, subject to the payment of the working expenses of the railway. This mortgage conveyance was subject to conditions before default and after default in payment. The condition now relevant is that which applies to default in payment of the principal of the bonds. Thereupon, upon request of the bondholders representing 75 per cent. in amount, the trustees shall elect and declare all the bonds to be due and shall take proceedings to enforce payment of the principal of the bonds as speedily as possible instead of operating the road and conducting the business thereof as is provided in case of default being made in the payment of interest. That is, if default is made in the principal moneys, the trustees are to intervene, not to take control of the road for the purpose of conducting the business, but are to take proceedings in the Courts to enforce payment. The suit has been rightly instituted under this requirement.

Now, the situation of the bondholder as chargee of the land of the railway company was first considered in this Province by Spragge, V. C., in *Galt v. Erie, etc., R. W. Co.*, 14 Gr. 439. He pointed out that the cases of mortgagees of