Supreme Court of the United States.

CANADA SOUTHERN RAILROAD CO. *v.* GEBHARD.

Every person who deals with a foreign corporation impliedly subjects himself to such laws of the foreign government affecting the powers and obligations of the corporation, as the known and established policy of that government authorizes; and whatever is done by such government in furtherance of that policy which binds subjects of the government in like situation with himself, will necessarily bind him.

Except in the states of the United States where the passage of laws impairing the obligation of contracts is forbidden, a statutory provision for binding the minority of the holders of railroad bonds by the will of the majority is valid, and there is no reason why such provision may not be made as to existing as well as to prospective obligations.

An act of the Parliament of Canada approving a scheme of arrangement of the affairs of a railroad company, which scheme had received the assent of a majority of the bondholders, enacted that the scheme should be deemed to be assented to by all the holders of the mortgage bonds of the company. *Held*, that this act was binding on citizens of the United States who were holders of the bonds of the company at the time of its enactment.

THE opinion of the court was delivered by

WAITE, C. J.—What is now known as the Canada Southern Railway Company was originally incorporated on the 28th of February 1868, by the Legislature of the Province of Ontario, Canada, to build and operate a railroad in that province between the Detroit and Niagara rivers, and was given power to borrow money in the province or elsewhere, and issue negotiable coupon bonds therefor, secured by a mortgage on its property, "for completing, maintaining, and working the railway." Under this authority the company, on the 2d of January 1871, at Fort Erie, Canada, made and issued a series of negotiable bonds, falling due in the year 1906, amounting in all to $8,703,000, with coupons for semi-annual interest attached, payable, principal and interest, at the Union Trust Company, in the city of New York. To secure the payment of both principal and interest as they matured, a trust mortgage was executed by the company covering "the railway of said company, its lands, tolls, revenues present and future, property and effects, franchises and appurtenances." Every bond showed on its face that it was of this kind and thus secured.

Before the 31st of December 1873, the company became satisfied that it would be unable to meet the interest on these bonds maturing in the coming January, and so it requested the holders to fund

their coupons falling due January 1st 1874, July 1st 1874, and January 1st 1875, by converting them into new bonds payable on the 1st of January 1877, and by so doing only, in legal effect, extend the time for the payment of the interest, without destroying the lien of the coupons under the mortgage, or otherwise affecting the obligation of the old bonds. Some of the bondholders funded their coupons, in accordance with this proposition, and accepted the extension bonds, but, under the arrangement, their coupons were not to be cancelled until the new bonds were paid.

In this condition of affairs, the Parliament of Canada, on the 26th of May 1874, enacted that the Canada Southern Railway, which was the railway built by the Canada Southern Railway Company under its provincial act of incorporation, "be declared to be a work for the general advantage of Canada," and a "body corporate and politic within the jurisdiction of Canada," for all the purposes mentioned in, and with all the franchises conferred by, the several incorporating acts of the legislature of the province. This, under the provisions of the British North America Act, 1867, passed by the Parliament of Great Britain "for the Union of Canada, Nova Scotia and New Brunswick, and the government thereof," made the corporation a Dominion corporation, and subjected it to the legislative authority of the Parliament of Canada.

On the 15th of March 1875, another series of bonds, amounting in the aggregate to $2,044,000, or thereabouts, was issued and secured by a second mortgage to trustees. After the issue of all the bonds the company found itself unable to pay its interest, and otherwise financially embarrassed, and a joint committee, composed of three directors and three bondholders, after full consideration of all the circumstances, submitted to the company and to the bondholders "a scheme of arrangement of the affairs of the company," which was approved at a meeting of the directors on the 28th of September 1877. This scheme contemplated the issue of $14,000,000 of thirty-year bonds, bearing three per cent. interest for three years, and five per cent. thereafter, guaranteed, as to interest for twenty years, by the New York Central and Hudson River Railroad Company, the first coupons being payable January 1st 1878. These new bonds were to be secured by a first mortgage on the property of the company, and exchanged for old bonds at certain specified rates. The old bonds of 1871 were to be exchanged for new at the rate of one dollar of principal of the old for one dollar

of the new, nothing being given either for the past due coupons or the extension bonds executed under the arrangement in December 1873. The proposed issue of bonds was large enough to take up all the old indebtedness at the rates proposed, whether bonded or otherwise, and leave a surplus, to be used for acquiring further equipment, and for such other purposes of the company as the directors might find necessary. This scheme was formally assented to by the holders of 108,132 shares of the capital stock out of 150,000; by the holders of the bonds of 1871 to the amount of $7,332,000 out of $8,703,000; and by the holders of $1,590,000 of the second series of bonds out of $2,029,000 then outstanding. Upon the representation of these facts to the Parliament of Canada, the "Canada Southern Arrangement Act, 1878," was passed and assented to in the Queen's name, on the 16th of April 1878.

This statute, after reciting the scheme of arrangement, with the causes that led to it, and that it had been assented to by the holders of more than two-thirds of the shares of the capital stock of the company, and by the holders of more than three-fourths of the two classes of bonds, enacted that the scheme be authorized and approved; that the new bonds be a first charge "over all the undertaking, railway works, rolling stock and other plant" of the company, and that the new bonds be used for the purposes contemplated by the arrangement, including the payment of the floating debt. Section 4 is as follows:

"4. The scheme, subject to the conditions and provisos in this act contained, shall be deemed to have been assented to by all the holders of the original first mortgage bonds of the company, secured by the said recited indenture of the 15th day of December 1870, and of all coupons and bonds for interest thereon, and also by all the holders of the second mortgage bonds of the company, secured by the said recited indenture of the 15th day of March 1875, and of all coupons thereon, and also by all the shareholders of the Canada Southern Railway Company, and the hereinbefore recited arrangement shall be binding upon all the said holders of the first and second mortgage bonds and coupons, and bonds for interest thereon respectively, and upon all the shareholders of the company."

Under the arrangement thus authorized the New York Central and Hudson River Railroad Company executed the proposed guaranty, and the scheme was otherwise carried into effect.

The several defendants in error are, and always have been, citizens of the state of New York, and were, at the time the scheme of arrangement was entered into and confirmed by the Parliament of Canada, the holders and owners of certain of the bonds of 1871, and of certain extension bonds, these last having been delivered to them respectively at the Union Trust Company in the city of New York, where the exchanges were made, in December 1873. Neither of the defendants in error assented in fact to the scheme of arrangement, and they did not take part in the appointment of the joint committee. Their extension bonds have never been paid, neither have the coupons on their bonds of 1871, which fell due on the 1st of July 1875, and since, though demanded. The company has been at all times ready and willing to issue and deliver to them the full number of new bonds, with the guaranty of the New York Central and Hudson River Railroad Company attached, that they would be entitled to receive under the scheme of arrangement.

These suits were brought on the extension bonds and past due coupons. The company pleaded the scheme of arrangement as a defence, and at the trial tendered the new bonds in exchange for the old. The circuit court decided that the arrangement was not a bar to the actions, and gave judgments in each of them against the company for the full amount of extension bonds and coupons sued for. To reverse these judgments the present writs of error were brought.

Two questions are presented for our consideration:

1. Whether the "Arrangement Act" is valid in Canada, and had the effect of binding non-assenting bondholders within the Dominion by the terms of the scheme; and,

2. Whether, if it did have that effect in Canada, the courts of the United States should give it the same effect as against citizens of the United States whose rights accrued before its passage.

1. There is no constitutional prohibition in Canada against the passage of laws impairing the obligation of contracts, and the Parliament of the Dominion had, in 1878, exclusive legislative authority over the corporation and the general subjects of bankruptcy and insolvency in that jurisdiction. As to all matters within its authority, the Dominion Parliament has "plenary legislative powers as large and of the same nature as those of the Imperial Parliament:" *The City of Fredericton* v. *The Queen*, 3 Can. Sup. Ct. 259.

On the 20th of August 1867, the Parliament of Great Britain passed the "Railway Companies Act, 1867:" 2 Stat. 1332; 30 & 31 Vict., c. 127. This act provides, among other things, for the preparation of "Schemes of Arrangement" between railway companies, unable to meet their engagements, and their creditors, which can be filed in the court of chancery, accompanied by a declaration in writing, under the seal of the company, and verified by the oaths of the directors, to the effect that the company is unable to meet its engagements with its creditors. Notice of the filing of such a scheme must be published in the Gazette, and the scheme is to be deemed assented to by the holders of mortgages, bonds, debenture stock, rent charges and preference shares, when assented to in writing by the holders of three-fourths in value of each class of security, and by the ordinary shareholders when assented to at an extraordinary general meeting, specially called for that purpose. Provision is then made for an application to the court by the company for a confirmation of the scheme. Notice of this application must be published in the Gazette, and, after hearing, the court, if satisfied that no sufficient objection to the scheme has been established, may confirm it. Sect. 18 is as follows:

"The scheme when confirmed shall be enrolled in the court, and thenceforth the same shall be binding and effectual to all intents, and the provisions thereof shall, against and in favor of the company and all parties assenting thereto or bound thereby, have the like effect as if they had been enacted by parliament."

This act, it is apparent, was not passed to provide, for the first time, a way in which insolvent and embarrassed railway companies might settle and adjust their affairs, but to authorize the court of chancery to do what had before been done by parliament. Lord CAIRNS, L. J., said of it in *Cambrian Railways Company's Scheme*, L. R., 3 Ch. 294: "Hitherto such companies, if they desired to raise further capital to meet their engagements, have been forced to go to parliament for a special act, enabling them to offer such advantages by way of preference or priority to persons furnishing new capital as would lead to its being obtained. And parliament, in dealing with such applications, has been in the habit of considering how far the arrangements proposed as to such new capital were assented to, or dissented from, by those who might be considered as the proprietors of the existing capital of the company, either as shareholders or bondholders. The object of the present act * * *

appears to be to dispense with a special application to parliament of the kind I have described, and to give a parliamentary sanction to a scheme filed in the court of chancery, and confirmed by the court, and assented to by certain majorities of shareholders and of holders of debentures and securities *ejusdem generis*." And even now in England special acts are passed whenever the provisions of the general act are not such as are needed to meet the wants of a particular company. A special act of this kind was considered in *London Financial Association* v. *Wrexham, Mold and Connah's Quay Railway Co.*, L. R., 18 Eq. 566.

In Canada, no general statute like that in England has been enacted, but the old English practice of passing a special act in each particular case prevails, and OSLER, J., said in *Jones* v. *Canada Central Railway Co.*, 46 U. C. Q. B. 261, "our statute books are full" of legislation of the kind. The particular question in that case was whether, after the establishment of the Dominion government, the provincial parliaments had authority to pass laws with reference to provincial corporations which would operate upon debentures payable in England, and held by persons residing there, but it was not suggested, either by the court or counsel, that a statute of the kind, passed by the Dominion Parliament in reference to a Dominion corporation, would not be valid as a law. So far as we are advised, the parliamentary authority for such legislation has never been doubted either in England or Canada. Many cases are reported in which such statutes were under consideration, but in no one of them has it been intimated that the power was even questionable.

In *Gilfillan* v. *Union Canal Company*, at the present term, it was said that holders of bonds and other obligations, issued by large corporations for sale in the market, and secured by mortgages to trustees, or otherwise, have by fair implication, certain contract relations with each other. In England, we infer from what was said by Lord CAIRNS, *Cambrian Railways Company's Scheme*, *supra*, they are considered as in a sense part proprietors of the existing capital of the company, and dealt with by parliament and the courts accordingly. They are not there, any more than here, corporators, and thus necessarily, in the absence of fraud or undue influence, bound by the will of the majority as to matters within the scope of the corporate powers, but they are interested in the administration of a trust which has been created for their common

benefit. Ordinarily their ultimate security depends in a large degree on the success of the work in which the corporation is engaged, and it is not uncommon for differences of opinion to exist as to what ought to be done for the promotion of their mutual interests. In the absence of statutory authority, or some provision in the instrument which establishes the trust, nothing can be done by a majority, however large, which will bind a minority without their consent. Hence it seems to be eminently proper that where the legislative power exists some statutory provision should be made for binding the minority in a reasonable way by the will of the majority; and unless, as is the case in the states of the United States, the passage of laws impairing the obligation of contracts is forbidden, we see no good reason why such provision may not be made in respect to existing as well as prospective obligations. The nature of securities of this class is such, that the right of legislative supervision for the good of all, unless restrained by some constitutional prohibition, seems almost necessarily to form one of their ingredients, and when insolvency is threatened, and the interests of the public, as well as creditors are imperilled by the financial embarrassments of the corporation, a reasonable "scheme of arrangement" may, in our opinion, as well be legalized as an ordinary "composition in bankruptcy." In fact, such "arrangement acts" are a species of bankrupt acts. Their object is to enable corporations created for the good of the public, to relieve themselves from financial embarrassments by appropriating their property to the settlement and adjustment of their affairs, so that they may accomplish the purposes for which they were incorporated. The necessity for such legislation is clearly shown in the preamble to the Grand Trunk Arrangement Act, 1862, passed by the Parliament of the Province of Canada, on the 9th of June 1862, before the establishment of the Dominion government, and which is in these words:

"Whereas, the interest on all the bonds of the Grand Trunk Railway Company of Canada is in arrear, as well as the rent of the railways leased to it, and the company has also become indebted, both in Canada and in England, on simple contract, to various persons and corporations, and several of the creditors have obtained judgment against it, and much litigation is now pending; and whereas the keeping open of the railway traffic, which is of the utmost importance to the interests of the province, is thereby imperilled, and the terms of a compromise have been provisionally

settled between the different classes of creditors and the company, but in order to facilitate and give effect to such compromise the interference of the legislature of the province is necessary."

The confirmation and legalization of "a scheme of arrangement" under such circumstances is no more than is done in bankruptcy, when a "composition" agreement with the bankrupt debtor, if assented to by the required majority of creditors, is made binding on the non-assenting minority. In no just sense do such governmental regulations deprive a person of his property without due process of law. They simply require each individual to so conduct himself for the general good as not unnecessarily to injure another. Bankrupt laws have been in force in England for more than three centuries, and they had their origin in the Roman law. The constitution expressly empowers the Congress of the United States to establish such laws. Every member of a political community must necessarily part with some of the rights which, as an individual, not affected by his relation to others, he might have retained. Such concessions make up the consideration he gives for the obligation of the body politic to protect him in life, liberty and property. Bankrupt laws, whatever may be the form they assume, are of that character.

2. That the laws of a country have no extra-territorial force is an axiom of international jurisprudence, but things done in one country under the authority of law may be of binding effect in another country. The obligor of the bonds and coupons here sued on was a corporation created for a public purpose, that is to say, to build, maintain and work a railway in Canada. It had its corporate home in Canada, and was subject to the exclusive legislative authority of the Dominion parliament. It had no power to borrow money or incur debts except for completing, maintaining and working its railway. The bonds taken by the defendants in error showed on their face that they were part of a series amounting in the aggregate to a very large sum of money, and that they were secured by a trust mortgage on the railway of the company, its lands, tolls, revenues, &c. In this way the defendants in error, when they bought their bonds, were, in legal effect, informed that they were entering into contract relations not only with a foreign corporation created for a public purpose, and carrying on its business within a foreign jurisdiction, but with the holders of other bonds of the same series, who were relying equally with themselves for their

ultimate security on a mortgage of property devoted to a public use, situated entirely within the territory of a foreign government.

A corporation "must dwell in the place of its creation, and cannot migrate to another sovereignty" (*Bank of Augusta* v. *Earle*, 13 Pet. 588), though it may do business in all places where its charter allows and the local laws do not forbid: *Railroad* v. *Koontz*, 104 U. S. 12. But wherever it goes for business it carries its charter, as that is the law of its existence (*Relf* v. *Rundel*, 103 U. S. 226); and the charter is the same abroad that it is at home. Whatever disabilities are placed upon the corporation at home it retains abroad, and whatever legislative control it is subjected to at home must be recognised and submitted to by those who deal with it elsewhere. A corporation of one country may be excluded from business in another country (*Paul* v. *Virginia*, 8 Wall. 168), but, if admitted, it must, in the absence of legislation equivalent to making it a corporation of the latter country, be taken, both by the government and those who deal with it, as a creature of the law of its own country, and subject to all the legislative control and direction that may be properly exercised over it at the place of its creation. Such being the law, it follows that every person who deals with a foreign corporation impliedly subjects himself to such laws of the foreign government, affecting the powers and obligations of the corporation with which he voluntarily contracts, as the known and established policy of that government authorizes. To all intents and purposes, he submits his contract with the corporation to such a policy of the foreign government, and whatever is done by that government in furtherance of that policy, which binds those in like situation with himself, who are subjects of the government, in respect to the operation and effect of their contracts with the corporation, will necessarily bind him. He is conclusively presumed to have contracted with a view to such laws of that government, because the corporation must of necessity be controlled by them, and it has no power to contract with a view to any other laws with which they are not in entire harmony. It follows, therefore, that anything done at the legal home of the corporation, under the authority of such laws, which discharges it from liability there, discharges it everywhere.

No better illustration of the propriety of this rule can be found than in the facts of the present case. This corporation was created in Canada to build and work a railway in that Dominion. Its principal business was to be done in Canada, and the bulk of its cor-

porate property was permanently fixed there. All its powers to contract were derived from the Canadian government, and all the contracts it could make were such as related directly or indirectly to its business in Canada. That business affected the public interests, and the keeping of the railway open for traffic was of the utmost importance to the people of the Dominion. The corporation had become financially embarrassed, and was and had been for a long time unable to meet its engagements in the ordinary way as they matured. There was an urgent necessity that something be done for the settlement of its affairs. In this the public, the creditors and the shareholders were all interested. A large majority of the creditors and shareholders had agreed on a plan of adjustment which would enable the company to go on with its business, and thus accommodate the public, and to protect the creditors to the full extent of the available value of its corporate property. The Dominion parliament had the legislative power to legalize the plan of adjustment as it had been agreed on by the majority of those interested, and to bind the resident minority creditors by its terms. This power was known and recognised throughout the Dominion when the corporation was created, and when all its bonds were executed and put on the market and sold. It is in accordance with and part of the policy of the English and Canadian governments in dealing with embarrassed and insolvent railway companies and in providing for their reorganization in the interest of all concerned. It takes the place in England and Canada of foreclosure sales in the United States, which in general accomplish substantially the same result with more expense and greater delay, for it rarely happens in the United States that foreclosures of railway mortgages are anything else than the machinery by which arrangements between the creditors and other parties in interest are carried into effect and a reorganization of the affairs of the corporation under a new name brought about. It is in entire harmony with the spirit of bankrupt laws, the binding force of which, upon those who are subject to the jurisdiction, is recognised by all civilized nations. It is not in conflict with the Constitution of the United States, which, although prohibiting states from passing laws impairing the obligation of contracts, allows Congress "to establish * * * uniform laws on the subject of bankruptcy throughout the United States." Unless all parties in interest, wherever they reside, can be bound by the arrangement which it is sought to have legalized the scheme may fail. All home creditors

can be bound. What is needed is to bind those who are abroad. Under these circumstances the true spirit of international comity requires that schemes of this character, legalized at home, should be recognised in other countries. The fact that the bonds made in Canada were payable in New York is unimportant, except in determining by what law the parties intended their contract should be governed, and every citizen of a country, other than that in which the corporation is located, may protect himself against all unjust legislation of the foreign government by refusing to deal with its corporations.

On the whole we are satisfied that the scheme of arrangement bound the defendants in error, and that these actions cannot be maintained. The same result was reached by the Court of Queen's Bench in the Province of Ontario when passing on a similar statute in *Jones* v. *The Canada Central Railway Co.*, *supra*.

The judgments are reversed and the causes remanded, with instructions to enter judgment on the facts found in favor of the railway company in each of the cases.

Mr. Justice FIELD, not being present at the argument of this case, took no part in the decision.

Mr. Justice HARLAN delivered a dissenting opinion.

ABSTRACTS OF RECENT DECISIONS.

ENGLISH COURTS OF LAW AND EQUITY.[1]
SUPREME COURT OF THE UNITED STATES.[2]
SUPREME COURT OF MAINE.[3]
COURT OF ERRORS AND APPEALS OF MARYLAND.[4]
SUPREME JUDICIAL COURT OF MASSACHUSETTS.[5]
SUPREME COURT OF OHIO.[6]

AGENT. See *Former Recovery*.

ARBITRATION.

Award—Not Conclusive as to Claims not Considered.—On a submis-

[1] Selected from late numbers of the Law Reports.

[2] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1883. The cases will probably appear in 18 or 19 Otto Reports.

[3] From J. W. Spaulding, Esq., Reporter; to appear in 75 Me. Reports.

[4] From J. Shaaf Stockett, Esq., Reporter; to appear in 60 Md. Reports.

[5] From John Lathrop, Esq., Reporter; to appear in 134 Mass. Reports.

[6] From E. L. DeWitt, Esq., Reporter. The cases will probably appear in 39 or 40 Ohio State Reports.