cumulative three years from issuance instead of in 1950. If the earnings were poor in 1928 and 1929 the burden would be great. Besides these increases, the installments which would be due the government beginning four years hence would make the payment of preferred dividends remote and the payment of common dividends hopeless. The 50 year 5% mortgage bonds as called for by the managers plan were selling at this time (October, 1925) on a when issued basis at 82 1/2. These were to be given to the stockholders for the assessment of $28 and $32 on the preferred and common respectively. The market price of the new adjustment bonds being sold on a when issued basis made the net assessment on each share of stock under the managers' plan of $8.20 on the preferred and $6.80 on the common. Under the Roosevelt plan the stockholder was to pay $10 per share and receive new income adjustment bonds junior to the new fixed interest bonds to be given to the government ($75,000,000) and to the bondholders for 15% of the old bonds ($67,737,699). Taking into account the increased prior fixed interest charges, $45 would be a fair value for these bonds. This would make a net assessment of $5.50 on each share. The stockholders' committees decided that the sacrifices they must make under the Roosevelt plan were too great for the $2.70 reduction on the preferred and $3.40 reduction on the common.

However, the Iselin and Roosevelt committees were not the only organized units opposing the plan of the managers. A committee representing Massachusetts Savings Banks expressed its objections early in the fall of 1925. It thought that the government debt should be refunded instead of liquidated under the managers' plan. It pointed out that the junior bondholders had a second mortgage

on the property. Under the managers' plan they were to receive what was really a fourth mortgage. It claimed that the junior bondholders should receive from 40% to 80% of their holdings in new mortgage bonds of the same lien as the old ones and the rest in a security like that provided for in the plan which would sell at par when the road recovers.[1]

In spite of the condemnation of the plan by the assenting committees the objections were effective in securing certain modifications in the managers' plan as of June 1, 1935.

It was announced on November 20, 1935 that the managers and the Roosevelt and Ikelin committees had agreed on certain modifications. The assenting security committees approved of the modifications. In order to meet the desire of numerous savings banks, insurance companies, and similar institutions that they should receive new fixed interest bearing bonds for a portion of their investment, the bondholders participating in the plan were to receive 20% of the principal amount of their bonds in new 50 year 5% mortgage gold bonds of the same issue as the bonds to be issued to the stockholders on account of the cash assessment. This would increase the total issue of such bonds (secured by a closed mortgage) from $60,888,820 to $108,888,880. 5% adjustment (income) mortgage bonds as described in the plan were to be issued for the remaining 80% instead of for the entire amount as provided for in the original plan. So the authorized amount of these new

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1. Ibid., p. 1224.

adjustment mortgage bonds was reduced from $230,980,800 to $184,780,640. In order that the holders of the new adjustment (income) mortgage bonds, in recognition of their waiving a fixed interest charge in respect of 80% of their holdings, might be afforded an opportunity of sharing with the stockholders in the ultimate prosperity which it was hoped the property would achieve, the adjustment mortgage bonds were to be convertible for the life of the bonds, at the option of the holder, into preferred and common stock of the new company at the rate of five shares of preferred and five shares of common for each $1,000 bond. In order to provide stock for this purpose the authorized common and preferred was increased 933,804 shares each to 2,933,804 and 2,087,817 shares respectively. These were the two major changes. There were minor ones. A cumulative sinking fund of $285,000 a year after April 1, 1935 was created for the retirement of the 50 year 5% mortgage gold bonds. This sinking fund was not to increase the charges ahead of the stock. It was to be approximately the amount by which the sinking fund for the adjustment (income) mortgage bonds was reduced by reason of the 20% reduction in the authorized amount of such bonds and was payable only out of available net income after provision had been made for the full cumulative interest and sinking fund on the adjustment mortgage bonds. To the end that the provision of the present plan in respect to income applicable to capital requirements should remain approximately unchanged in spite of the increase of $2,302,508 in fixed interest charges, the modified plan provided that the pro-

portion of the net income available for interest on the adjustment (income) mortgage bonds which the board of directors had to apply for capital expenditures was to be two-thirds (instead of one-half) of such available income of each year, until the available income for such year should equal $7,500,000 (instead of $10,000,000). At this time the provisions for the voting trust were made more definite. The stock was to be deposited with a voting trust. The following persons were selected and announced as the five voting trustees: Honorable Elihu Root and Messrs. Frederick H. Ecker, Henry S. Prichett, Samuel Rea, and W. D. Van Dyke. The first board of directors was to be subject to their approval. The trust created by the trust agreement was to continue until January 1, 1930. If Congress at the coming session should pass legislation making it possible to refund or extend the notes to the government on a basis not in violation of the four fundamental requisites the managers had in mind in framing the plan, the managers would arrange for the refunding or extension of the debt and would modify the plan, reducing to this extent the new money to be collected from the stockholders. Depositing stockholders were promised financial aid, if necessary, in meeting the assessment. The depositors of securities under the original plan of June 1, 1925 were now given until December 24, 1925 to withdraw their securities if that were desirable after the modifications of November 19, 1925. The new adjustment bonds were being quoted at about 83 1/2 on a when issued basis in November, 1925. If they should sell as low as 80 the net assessment on the preferred would be $8.80 per share; and on the

common, $5.90 per share.[1]

The Ickin and Roosevelt committees how notified the holders of the securities deposited with them that the modifications were satisfactory and that the committee in each case would hereafter support the plan.

Table XXVIII in the Appendix contains a schedule of participation in the distribution of new securities by the holders of the existing securities participating in the plan. The following table contains a comparative table showing the capitalization and interest charges of the old company and also the new company if the managers' modified plan would go through:

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1. The Plan, p. 1. For summary of these changes and their effects on the capital structure, see Chronicle, vol.121,p.2516; Chronicle, Railway & Industrial Section, vol.125,p.38; and Chronicle, vol.125,p.1046. A brief review of the financial difficulties of the St. Paul, the modified plan, and the future prospects of the road were presented by F.J.Lisman & Co.,N.Y. in a pamphlet entitled "C.M.& St.P.Ry.Co.,Analysis," dated March, 1927, hereafter referred to as Analysis.

Comparative Table Showing Capitalization and Interest Charges.[1] (The Mottled Plan)

	Present Capitalization	Present Fixed Interest Charges.	Capitalization Giving Effect to Reorganization Plan.	Fixed Interest Charges Giving Effect to Reorganization Plan. (a)
Undisturbed Bonds	$161,370,400	$ 8,431,904	$161,370,400	$ 8,431,904(b)
Timber Loan to be liquidated	2,200,000	110,000		
Notes held by U.S.Government to be paid,compromised or settled.	55,000,000	3,000,000		
Bonds to be exchanged	230,950,796	9,694,889		
50 year 5% Mortgage Gold Bonds			106,988,080	5,344,449
Adjustment Mortgage Bonds			184,780,840	
Preferred Stock	115,931,900		115,931,900(c)	
Common Stock	117,411,300		117,411,300(d)	
Total	$702,864,396	$21,235,793	$704,383,220	$13,776,353

(a) The amounts here stated might be increased by the amount of any securities which might be issued in connection with the liquidation of the 6% note of the railway company dated Nov.1, 1920, held by the United States Government (actually never increased). These amounts included the new securities to be issued for new money.

(b) Aggregate of interest for full year at respective rates on principal amount of obligations outstanding June 1,1935.

(c) This amount might be increased by the amount of preferred stock required to be applied in settlement of general claims against the railway company.

(d) Taking no par common stock at $100 per share.

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1. The Plan, p. 7. Chronicle, vol.121, p.3514.

In the light of the modifications it was clear that the managers took the Roosevelt suggestions and plan under careful consideration and incorporated some of the features of this plan in its own. Most of the opposition to the plan was swept aside by these modifications. However, the way was not clear as yet by any means for the new plan. Those still opposing the plan, as will be pointed out shortly, were to make its progress difficult.

By the end of 1935 over $175,000,000 or 78% of the aggregate of bonds effected by the reorganization and $71,155,000 par value preferred stock and $41,790,000 par value common stock or 80% of each issue, in all about $315,000,000, had been deposited in favor of the plan. The bonds deposited included about $152,000,000 or 75% of the various issues under the General and Refunding Mortgage and over $23,000,000 or 88% of the Puget Sound bonds.[1]

Early in November, 1935, another dissenting bondholders' committee was announced under the chairmanship of Edwin C. Jameson, president of Globe & Rutgers Fire Insurance Company, New York. This committee came forward with a number of objections. The position of the lien of the junior bondholders' obligations (coming after the security which the stockholders would receive) was unjust, the stockholders would receive part of the equity

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1. Chronicle, vol.122,p.93.

rightfully belonging to the junior bondholders, the plan itself was evidence of the intent of the managers to buy the property at one third of the equity above the undisturbed bonds, the treatment of the government loan was unsatisfactory, the $10,000,000 (approximately) which represented the difference between the cash the stockholders would pay and the par value in bonds which they would receive was a fund set up with inadequate restrictions as to its expenditure, and the voting trust would not assure control of the property by the real owners or the removal of the management which had failed to avert the present catastrophe (claimed this committee).[1] This committee was known as the Jameson committee and also as the bondholders' defense committee. At first this committee accepted the deposit of all the various issues of bonds in default. Later in the summer of 1935 it decided to represent the various issues of defaulted bonds on the General and Refunding Mortgage but not the Puget Sound bonds because of a conflict of interests between them. This alleged conflict of interests will be brought out shortly. This committee represented about $16,000,000 bonds in the subsequent legal battle.

After the modifications to the managers' plan were announced the Jameson committee admitted that they were an improvement but not a sufficient one to secure its support for the plan.

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1. Chronicle, vol. 121, p. 2265.

When the receivers of the road in the spring of 1938 applied to the federal court at Chicago for permission to pay the interest on the Gary and Terre Haute obligations the Jameson committee opposed. It claimed that the properties were so weak in earning power and such unwise acquisitions that the securities ought to be defaulted. The court granted permission to pay the interest. About this time the Jameson committee entered fraud charges (alleged breach of trust) against the reorganization managers. These charges were withdrawn subsequently.

CHAPTER XI

THE STRUGGLE WITH THE COURTS.

During all this time, when the managers and committees were formulating a plan, the receivership proceedings were in progress before the federal district court at Chicago.[1] The defaults in the funded debt were really on two mortgages - the General and Refunding and the Puget Sound. The former was defaulted first. When the latter was defaulted the court ordered that the cases be consolidated.

On April 27, 1925 the court entered a decree ordering the sale of the road. This action of course followed the petition for foreclosure and sale filed previously by the Guaranty Trust Company of New York, the trustee of the General and Refunding Mortgage. The date and upset price was to be set later. The sale was to take place at the front entrance of the railway passenger station at Butte, Montana, on the premises covered by the bonds in default. Mr. Herbert A. Lundahl of Chicago was to be special master and conduct the sale. Mr. Nathan L. Miller, a counsel for the Jameson group and former governor of New York, suggested that the perspective bidders who had a plan should submit it in advance of the sale for the court

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1. Hereafter when court is mentioned, the federal court at Chicago presided over by Judge Wilkerson is referred to, unless otherwise stated. It was in this court that the receivership and foreclosure proceedings took place.

to approve as just and equitable or not. The court did not like the suggestion. The court pointed out that anyone had a lawful right to bid for the property at the sale. The court by approving of a plan before the sale would injure its power to set it aside if necessary in confirming the sale. In other words, the bid of the bidder whose plan had been accepted by the court might not be accepted when reported to the court by the master. Entangling difficulties as to the status of the bidder might then arise. Besides to cut off all bidders without a plan, the court thought, would be unfair. Therefore the bid was to be made and the plan of the successful bidder was to be approved by the court before it confirmed the sale.[1]

On July 26, 1926, Mr. D. C. Swayne, counsel for the reorganisation managers, appeared before the court and formally suggested that $100,000,000 be set by the court as the minimum price to be accepted for the property. This was the suggested upset price for the property. It consisted of $40,000,000 for the Puget Sound property, $50,000,000 for the property (other than the Puget Sound extension) subject to the General and Refunding Mortgage, and $10,000,000 for the unpledged assets. October 1, 1926 was suggested to the court as the date of the sale. It was maintained by counsel that the upset price should cover only the actual property holdings of the road and that the purchaser should assume the undisturbed liens.[2]

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1. Chronicle, vol.122, p.2488. Railway Review, May 1, 1926, p.807.
2. Chronicle, vol.123, p.575.

On August 23, 1926 the Jameson committee presented its petition to the court. Jameson requested in this petition that the sale be postponed until Congress had a chance to pass proposed legislation permitting the railroads to extend their debts to it at lower rates than the 6% existing on these debts by law. If postponement could not be had, Jameson requested that the court consider the plan of reorganization before setting a date of sale. The court had already decided against him once in this respect in the decree of foreclosure in April, mentioned previously. If the consideration of the plan by the court previous to the sale was not obtainable then he suggested that the court set an upset price which would assure the minority (the holders of the defaulted bonds secured by the General and Refunding Mortgage which he represented) a fair return on their bonds. Jameson wanted the court to fix an upset price of $60,000,000 for the Puget Sound extension, $150,000,000 for the lines east of Kobridge, and $40,000,000 for the unpledged assets or $250,000,000 in all. He requested the sale be made by these three parcels, and a notice of sale be made four to six months in advance in order to enable the intending bidders to ascertain the worth of the 11,000 miles of line. In this petition he claimed that the receivership was unnecessary and could have been avoided by short term financing and a voluntary extension of the maturing bonds. He claimed that the receivership planned by the banks and the road's officials working in combination - the managers' plan - was unlawful and inequitable. Now it would be necessary to refund many 4% bonds with bonds of higher rates. To substantiate his claim that short

term financing and a voluntary exchange would have been successful in avoiding a receivership, he pointed out the fact that the road earned its fixed charges in 1923, had a deficit in 1924, a larger one in 1925, and now (he claimed) was earning more than its fixed charges.[1]

Then the majority bondholders' (holders of the bonds deposited in support of the managers' plan) reply petition was filed with the court in September. This petition was quite frank and at points, it seemed, sarcastic. This petition was clearly an attempt to discredit the Jameson committee.[2]

First, the position of the Jameson committee was reviewed. The Jameson committee previously had brought sensational charges of fraud and corrupt dealings in connection with the acquisition of the Gary and Terre Haute. These charges were retracted later. Then on looking around for another excuse to delay matters it decided many months after the committee had been organized and more than a year after the managers' plan had been promulgated that there was a conflict of interests between the holders of the General and Refunding Bonds and the Puget Sound bonds. So it returned to the holders the latter bonds which had been deposited with it. Now it was using this conflict argument to drag things

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1. Ibid., p. 1110.
2. "Brief on behalf of the bondholders of over 80% of the bonds of the railway company on (1) the petition of intervention of the so-called 'bondholders defense committee' and (2) the motion of the complainant trustees to fix the date of sale and upset prices." Guaranty Trust Co. of N.Y. and Merwal P. Calloway, as trustees, complainants, against C.M.& St.P.Ry.Co. et.al., defendants, in equity consolidated cause No. 4931. For a summary of this petition, see Chronicle, vol. 123, p. 1403.

along. Jameson's suggestion to have the court review the plan of the managers before the sale was unnecessary because the decree of foreclosure protected all parties by providing that no sale be confirmed until the court found the plan of the successful bidder to be equitable and was undesirable because it would probably prolong the receivership indefinitely while plan after plan was submitted to the court and without affording any insurance that even if some plan were approved by the court that a bid would be made at the sale under such plan.

If the sale was delayed until Congress acted on the legislation pending in the House and Senate for refunding of carriers' indebtedness to the government the injury to the bondholders would offset the advantage of Congress passing a bill of this kind - a higher price probably at the sale. Similar legislation had failed to pass in the two previous sessions. Besides the reorganization managers had assured the security holders that, if such legislation were passed, it would attempt to make an agreement with the government as to refunding the debt. Then Jameson did not want the court to fix the upset prices until he had had time to determine the exact value which could never be expected to be realized at an auction sale on foreclosure. A property at such a sale is always worth only what the purchaser can afford to pay. Jameson wanted time to investigate but he had had sufficient time for all that and to formulate a plan of his own besides, neither of which had been done. If Jameson could

have none of these be asked for a sale at upset prices which would result in an abortive sale requiring the reoffering of the property at a later date at prices which a purchaser could afford to bid. The majority bondholders' petition maintained that these requests were only for delay. Besides the Jameson committee represented no substantial interest other than Jameson and the Globe & Rutgers Fire Insurance Company of which he was president. These two were holding $14,000,000 of the $18,000,000 his committee was representing. These $14,000,000 bonds were purchased at an average price little, if any, above the existing market value of the bonds and by far the greater part purchased in the face of the receivership or since the receivership. Jameson claimed he and his insurance company purchased the St. Paul's securities as an investment. Over $9,500,000 of the $14,000,000 were purchased since January. On December 31, 1935 the total investment of this insurance company in all bonds amounted to $21,045,300 face value having a book value of $14,410,555, and of this total investment in bonds, $9,529,000 face value or over 45% carried at a book value of $5,579,547 or over 38% of the total book value were in St. Paul General and Refunding Bonds. The insurance company had as much as $1,000,000 face value of bonds on one other mortgage. It held $1,071,200 Denver & Rio Grande Western 5's due in 1955. These bonds were also purchased in the face of insolvency and receivership and had borne no interest since 1921. So Jameson with everything to gain and nothing to lose was fighting for upset prices which in a sale would result in a distributive share for the General and Refunding Bonds 30 points above the present market

value of such bonds resulting in a profit to Jameson and his company of over $4,000,000 on the $14,000,000 bonds purchased at approximately the existing market price. He was fighting to upset the plans of a vast majority of the bondholders, consisting of 30,000 depositors who have deposited 90% of the bonds affected by the reorganization which were out in the hands of the public. This majority was supporting the managers' plan. On the majority bondholders' committee were men well versed in finance representing large financial institutions interested solely in providing the St. Paul with a sound financial structure, restricted by law in their investments and in speculation in the bonds of insolvent corporations.

Second, the petition pointed out that the majority bondholders were entitled to control the conduct of the foreclosure proceedings and the reorganization. In the absence of fraud the majority bondholders were entitled to their own judgment as to what was best for them and the property. When the bondholders differ among themselves it has long been the rule that a small minority of the bondholders are not to be allowed to defeat the wishes of an overwhelming majority of those associated with them in the benefits of their common property. The majority bondholders were not trustees for the minority.

Third, the upset prices should be fixed as high as possible without making a sale impossible or penalizing the majority bondholders to the profit of the bondholders who might refuse to participate in a reorganization plan which must be found by this court to be equitable before it could be effected. The petition

pointed out that the upset price was only a minimum and that there was nothing to prevent anyone from bidding higher. True, the upset price must be adequate to cover the court's own expenses (to be provided for by the purchaser according to the decree in this case) and if set in advance will reduce the changes that the confirmation of the sale will be withheld because of the inadequacy of the bid. However, the upset price must not be raised to a point where the cash distributive share upon the bonds will approach too nearly the market value of the bonds. If it is, there could never be a reorganisation. The bondholders would find it to their advantage to take their share of the cash proceeds of sale rather than the new securities, and the reorganised company would not be able, by the sale of the new securities issuable against the bonds, to raise sufficient funds to pay the purchase price. In short an upset price set too high would result in the reorganisation finding no bidders. The prices of the General and Refunding Bonds were then about 55. The petition pointed out that this price undoubtedly reflected the market's estimate of the value of the securities to be received in exchange under the plan.

The Jameson upset figures were too high. No one would bid them. Jameson did not say that he would bid these figures. Jameson in justifying his upset prices had recourse to investment and reproduction costs. If the properties had earned a fair return on such values there would never have been a receivership or foreclosure. These values might be of first importance for rate making or taxation but not for a proper basis for determining upset prices. The $100,000,000 was in fact in excess of the theoretical value of

the equity of the property remaining after the deduction of the principal of the prior lien bonds based upon the capitalization at 6% of the average earnings for the years of 1923, 1924, and 1925 (ending June 30). Making allowance for the probability that the earnings of the property would increase in the future, $100,000,000 was all that should be expected as an upset price. Everyone was protected as the court would finally have to approve of the plan and confirm the sale. Jameson claimed that the government was shown illegal preference in the plan. The majority bondholders' petition denied its illegality. Past experience showed that the relation of the government to a railroad is not quite that of an ordinary creditor. Besides the General and Refunding Bonds held as collateral for the $40,000,000 note had an aggregate market value at that time in excess of the $17,000,000 cash offered under the plan on account of the principal of the note. This collateral could be sold and a claim filed for any deficiency. The indebtedness of the company would then be increased. The treatment of this debt under the plan was best.

Fourth, there was no real conflict of interest between the holders of General and Refunding Bonds and the holders of Puget Sound bonds. The managers' suggested upset prices for the properties subject to the General and Refunding Mortgage ($50,000,000 in addition to about $100,000,000 of underlying bonds, exclusive of the government debt and guaranteed obligations) and for the properties subject to the Puget Sound mortgage ($40,000,000) which, taking into account the underlying liens on the eastern lines,

stood in the ratio of 5 for the General and Refunding Mortgage property to 1 for the Puget Sound property.. Yet the Jameson committee claiming preference to the Puget Sound holders suggested upset prices for the two parcels ($150,000,000, in addition to the underlying liens, for the General and Refunding Mortgage property, and $30,000,000 for the Puget Sound property) which stood in the ratio of less than 4 to 1. If the government debt and guaranteed obligations were included, the respective ratios would be 7 to 1 and 5 to 1. The matter of primary importance was the fixing of an upset price which would not preclude a bid or require an underwriting of the non-depositing bonds. The matter of an exact amount of the upset price for the Puget Sound property was relatively unimportant. Over 85% of the Puget Sound bonds were pledged under the General and Refunding Mortgage and of the 15% remaining about 90% were deposited under the present plan. Over $158,000,000 of the General and Refunding Bonds were deposited under this plan. The holders of these bonds evidently did not think the plan favored the holders of Puget Sound bonds at their expense. Furthermore, relative values even carefully calculated based on book values, reproduction costs, and capitalization of segregated earnings of the old lines and the new lines should not be conclusive or entitled to preponderant weight as against other considerations. The probable loss of net earnings to the old lines if the Puget Sound property should pass into separate ownership would jeopardize the safety of the interest on even the underlying bonds on the old lines. The only ones to

benefit by a separation of the two parts would be the competitors of the old or eastern St. Paul's lines. Therefore, the petition pointed out, the vast majority of the bondholders were opposed to the suggestions of Jameson to the court as to the manner in which the property should be offered so as to facilitate the sale of the St. Paul in separate prices to separate purchases.

Fifth, the court should set an early date of sale. So long as the receivership continued the bondholders were being deprived of a return on the investment. While the receivers were making needed improvements and improving the service to the public, these things could be financed by the reorganized company at a much lower cost than could ever be done by receivers in charge of a property whose future was more or less uncertain while the receivership hung over the property. The Jameson proposals for delay in winding up the receivership would prove injurious to the property.

Several important facts were brought out in this petition and in the court at this time. The Jameson group numbered seventy owners holding only 8% of the General and Refunding issues. Apart from the holdings of Jameson and his insurance company, the group held 3%. Against this small group were 20,000 depositors who had deposited 76% of the various General and Refunding issues and 90% of the Puget Sound bonds out in the hands of the public. This majority supported the managers' plan, did not want to see the new lines in the extension torn apart from the rest of the system, and were opposed to the suggestions of Jameson, especially his

suggestion that the receivership be prolonged.

Then the Jameson committee filed a petition with the court answering the previous petition of the majority which contained objections to a previous petition of the Jameson committee as to the upset prices, etc.[1]

First, the Jameson committee stubbornly insisted that the upset prices as suggested by the majority's petition were inadequate. Colpitts of Coverdale & Colpitts (the engineers) evidently calculated the upset figures suggested to the court by the managers. The petition pointed out how Colpitts began with the figure $7,913,371 as the average net income of the General and Refunding and Puget Sound properties for the average years 1923, 1924, and 1925. To this he added the item of Terre Haute interest (claimed by Jameson to be a duplication) and then deducted 85% of the Puget Sound earnings (representing the bonds of this issue deposited under the General and Refunding Mortgage). Then he made other deductions and reached $7,140,388 as the "net earnings of the system." This he capitalized at 6% and arrived at the figure of $119,181,433 as the "theoretical value of the properties subject to the refunding mortgage and the Puget Sound Mortgage." This figure was too low. First, it represented the capitalization of earnings after deducting $3,300,000 of interest on the government loan. Only $600,000 of that interest was prior

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1. "Brief reply for bondholders' defense committee on motion of trustees to fix the time of sale and upset price," Guaranty Trust Co. of N.Y. and Merrel P. Callaway, as trustees, complainants, against C.M. & St.P. Ry.Co.,et.al., defendants, in equity consolidated cause No.4931.

lien interest. A purchaser at foreclosure sale would acquire the property subject only to the lien of the $18,000,000 General 5's pledged as collateral and free of the lien of $74,000,000 General and Refunding Bonds securing the balance of the lien. Colpitts assumed that he would acquire it subject to the whole government debt. Therefore, $3,300,000 minus $900,000 or $2,400,000 capitalized at 6% or $40,000,000 should be added to the $118,000,000. Second, the Colpitts figure was based on the average earnings for the three years, 1923, 1924, and 1925 instead of upon current earnings (earnings for the year ending June 30, 1926 used by Jameson). The Jameson group insisted that these current earnings reflected the present earning power of the property. They were not abnormal. The earnings of the property over the last few years showed improvement. The current earnings had been used in the past as a basis for upset prices and should be used in this case. The figures for previous years were significant merely as showing the trend. Therefore $25,000,000 more should be added to the Colpitts figure. Then Colpitts scaled down his $118,000,000 still more. He knocked off $10,000,000 in connection with the operation of the Chicago Union Station. This station was put in operation in the early part of 1925. The cost of operating and maintaining the station was $1,425,583. If the station had been in operation in 1923, 1924, and the full year 1925 this cost of operation would have exceeded the cost of operating the station as it then stood by an average of $648,087 which capitalized at 6% was about $10,000,000. Therefore, according to Colpitts, the present value

of the property should be cut down by $10,000,000. The Jameson committee thought that if increased current expenses were to be carried retroactively back into the average expenses of the three previous years then the increased current earnings should be similarly carried back into the earnings of the three years. If an average was to be used at least it should be honest and not padded. Then Colpitts depreciated the property to close to $90,000,000 because of the alleged "short remaining" life of the St. Paul equipment and consequent increased annual charge for depreciation. Yet according to Byram the condition of the equipment was being improved. Certainly the recent acquisitions of equipment were substantial. A substantial sum should have been added to the property and not deducted on this account, it seemed. Finally, Colpitts fell back on Swaine's (the managers' counsel) argument that the principal amount of the prior lien debt, disregarding the fixed charges, should be deducted from the capitalized earnings of the whole system. In this way he attained a "true theoretical value" of $77,637,719.

However, the reader will note that an upset price of $90,000,000 was suggested by the managers for the properties subject to the two defaulted mortgages. The difference represented allowance for the probable improvement in the earning power in the future. The Jameson group maintained that if proper additions to the Colpitts figure of $119,000,000 be made on account of the poor basis of calculation (not using the present earnings and assuming an error as to the government debt) and on account of the erroneous deductions, it would amount to $200,000,000. The reader will note

that such an upset figure would have been based on the 1926 earnings capitalized at 8%, the basis on which the Jameson group were resting their figures. However, anyone supporting such a figure would be claiming that the Puget Sound property was worth only $26,000,000 (the segregated earnings of the 12 months period ending June 30, 1926, capitalized at 8%, equals $26,840,000). The managers suggested $40,000,000 as the upset price for the extension. The Jameson group who were insisting on the current earnings capitalized at 8% being used as a basis for the upset prices which would only make the price about $26,000,000 in this case suggested $80,000,000 as the upset price for the extension. It claimed that a different rule should apply in the present case in view of the great asset value and prospect of increased earnings of the extension. For the lines east of McBride (other than the extension) Mr. Pugh (for the Jameson group) ascertained the net earnings available for interest on the General and Refunding issues during the 12 months ending June 30, 1926, after deducting interest at 5% on the $18,000,000 Generals pledged with the government, to be $8,843,235. This sum did not include any income attributable to the Puget Sound bonds pledged under the General and Refunding issues. Capitalized at 6%, this would be $147,387,254. The Jameson group were suggesting an upset price in round figures of $150,000,000.

A summary of the position of the two sides as regards the upset price to be set might well be made here.

Colpitts found the theoretical value of the equity of the properties subject to the two defaulted mortgages remaining after the deduction of the principal of the prior lien bonds based on the average earnings for the years 1933, 1934, and 1935 to be $77,637,719. The prospects were bright. The counsel for the managers suggested an upset price for such property of $90,000,000. The majority, the managers' counsel claimed, were opposed to the break up of the property into two parcels (the old lines and the extension). However, $50,000,000 of this was suggested as the upset price for the General and Refunding Mortgage property; and $40,000,000, for the Puget Sound property. An exact value of the latter alone was insignificant. The majority wanted the property to be continued as one system as in the past. $10,000,000 was suggested as an upset price for the unpledged assets. The total upset price suggested was $100,000,000.

The Jameson group basing their calculations on the earnings for the year ending June 30, 1929 capitalized at 6% suggested an upset price of $150,000,000 for the old eastern lines, $40,000,000 for the Puget Sound extension, and $20,000,000 for the unpledged assets or $250,000,000 in all. The capitalized earnings of the extension amounted to less than a third of the $60,000,000. However, the future looked bright as regards the extension property. A separate value for the extension was important. There was a conflict of interest between the holders of the Puget Sound bonds and the holders of other defaulted bonds. The Jameson group were the holders of the rest of these defaulted bonds. Their committee were suggesting that the sale be conducted in such a matter as would

facilitate separate bidding on each of the three parcels. Evidently this group would like to see the property broken up.

In short the two opposing groups differed as to the earnings basis for the calculation of their suggested upset prices, differed as to the treatment of certain items like the treatment of the interest on the government debt and the expenses in connection with the Chicago Union Station, differed as to the future favorable prospects (as seen by the leaders of the two groups) at least in so far as they should enter the upset prices, and also seemed to differ as to the desirability of keeping the property intact at the coming sale. The total upset price suggested by the Jameson group was more than twice that suggested by the managers.

The second main point in the petition of the Jameson group was that the court should consider the plan prior to the sale. The court would not have to take much time considering plan after plan as counsel for the managers pointed out in the previous petition if the court should accept this suggestion. Only the managers' plan need be considered. If plan after plan would have to be considered most likely because the managers' plan was so certain of rejection, why hold the sale at all? If the managers were as certain as they maintained that their plan was equitable, they should have no fear of a court review. The Jameson committee in insisting on this point maintained that the court could not properly pass upon the adequacy of the minimum price at which the property could be sold until it had examined into the equity of the plan pursuant to which the sale would take place. Clearly the

dissenting group were to be powerless in the bidding. This group maintained that the plan was inequitable to them. An inadequate upset price would make the proceeds of the sale which would go to the bonds also inequitable.

Of course the reader will note that in the previous petition the managers counsel answered this suggestion of the Jameson group in its previous petition as well as in this one under review. The court ruled previously that the plan would have to be approved before the sale was confirmed. The reorganization managers also assured the court that the dissenting bondholders would be given a reasonable time to deposit their securities under the plan after the sale was confirmed if the managers were the successful bidders and the plan were approved. Any dissenting holder then dissenting could either take his share of the proceeds of the sale or else sell the bonds in the open market. The counsel for the managers claimed that surely the bondholder could have asked no more than these alternatives. Also the reader will note that the Jameson group still insisted on its point because it thought that the plan was inequitable to the holders of the various General and Refunding issues because of the terms of the offered exchange for new securities (the basis of the market price of these existing bonds) and also thought that the managers' upset prices were inadequate and the cash proceeds of the sale based on such prices would be likewise inadequate and inequitable. Therefore with the alternative of bidding with chances of success looking in this situation and the alternatives of depositing their securities

under an inequitable plan or selling them at the depressed market prices opened to them, the Jameson committee thought that the upset prices and plan were interdependent in this case and should be considered by the court together prior to the sale.

Third, the Jameson group still insisted that the government should not be given the preferential treatment as called for in the managers' plan. The majority petition pointed out that the market value of the collateral the government held on the $30,000,000 note was considerably more than the $17,000,000 in cash offered under the plan. The Jameson petition pointed out that if the $2,400,000 or more interest proposed to be paid were counted in, the total payment offered to the government was $2,000,000 in excess of the present market value of the collateral. Even if it were not, the treatment of the government as proposed in the plan would be unfair to the other creditors. The government held General and Refunding Bonds as collateral to the note. The plan of the managers would give one powerful creditor 63¢ on the dollar on the plea that it was good business judgment to buy his claim at that price and then these same managers would suggest upset prices which would pay only 34¢ to the other bondholders of the same rank on the plea that that was all their bonds were worth. Therefore since the managers' plan would yield less than 63¢ on the dollar to the holders of the various General and Refunding issues, the upset price and the plan could not stand together. They should be considered together prior to the sale.

Fourth, the Jameson committee insisted as in their previous principal petition that the holders of the Puget Sound bonds were to be favored at the expense of the holders of the various General and Refunding issues. The upset prices being suggested by the managers would yield the holders of the Puget Sound bonds approximately 35¢ on the dollar; and the holders of the various General and Refunding issues, 34¢ on the dollar. This was an admission that the lien of the latter was worth more than that of the former. Yet in their plan the managers would treat the two liens as equal. The latter lien was in fact superior. The book value of the property subject to the General and Refunding Mortgage was 234% of the par value of the bonds outstanding, whereas the book value of the property subject to the Puget Sound Mortgage was 131% of the Puget Sound bonds outstanding. Based on physical values of the commission the corresponding figures were 188% and 104%. After certain adjustments the capitalized value (at 6%) of the average Puget Sound earnings during the past three years was 13.71% and for the 12 months ending June 30, 1926 was 14.75% of the Puget Sound bonds outstanding, whereas the capitalized value (at 6%) of the General and Refunding earnings for the corresponding periods was 81.35% and 72% of the amount of various General and Refunding issues held by the public. The various General and Refunding issues were now substantially earning their interest charges; the Puget Sound bonds were only earning about 1%. True enough, accurate relative valuation of the two mortgages and the two properties as a basis for upset prices or treatment of the securities in the exchange was impossible but the glaring discrepancy in the plan and in the upset figures of the managers was

unsalled for. The favoritism shown to the holders of Puget Sound bonds in the plan was the result of the membership of the majority bondholders' committee which had approved and was supporting this plan. Of the $88,000,000 Puget Sound bonds in the hands of the public more than 87% were owned by institutions directly represented by the members of the majority committee. Of the $202,000,000 various General and Refunding issues outstanding only 6% are owned by institutions directly represented on the committee. The Jameson group repeated in their reply petition that not only was the committee representing a dual interest but that the Puget Sound interest was heavily overweighted. Hanour's reply to this point that long litigation concerning respective rights might result if the Puget Sound bonds were given anything short of equal treatment was unsatisfactory. The bonds were too heavily represented on a committee from whom the only opposition would come were they properly not treated on an equal basis with the rest of the defaulted bonds. Colpitts' reply to this argument of the Jameson committee was unsound. He grossly exaggerated the income attributable to the extension. Therefore in this respect also the plan and the upset price could not stand together.

In the petition of the majority discussed previously it was pointed out that the ratio between the managers upset price on the extension and the upset price on the other lines plus the undisturbed liens on these other lines was less than the ratio between the Jameson upset price on the extension and the upset price on the other lines plus the undisturbed liens on these other lines.

1 to 5 and less than 1 to 4 respectively. The majority pointed out in that petition that evidently a vast majority of the holders of the various General and Refunding issues who had deposited under the plan did not think this plan favored the holders of Puget Sound bonds. The reasons the managers decided to treat them equally in framing the plan were brought out previously in this chapter in the presentation of the plan as of June 1, 1925. The managers in the majority briefs filed in the legal battle in Chicago did not take special pains to meet the arguments of the Jameson group against the provisions of the plan whereby the Puget Sound bonds were to be treated exactly like the various General and Refunding issues. Apparently they decided to leave the matter up to the court when it would finally review the plan subsequent to the sale.

Fifth, the method of sale prescribed in the decree of the court in April, 1926 did not permit effective competitive bidding on the property subject to the General and Refunding Mortgage and was a violation of the act of March 3, 1893. This charge was made in the previous principal petition of the Jameson group and repeated here. According to the decree the lines west of Mobridge were to be bid for, then the lines east of Mobridge were to be bid for, then the unpledged assets were to be bid for. The high bid in each case was to be noted. Then bids on the entire property were to be called for. The upset prices on each parcel and the total were to be fixed in advance. Now if the dissenting group made the high bid for the lines east of Mobridge but the managers bid the highest for the combined properties, the properties would go to the managers with no opportunity given to the dissenting bondholders to raise their

bid on the lines east of Mobridge. A high bid on the combined property higher than the aggregate high bids on the parcels was to prevail according to the decree of the court in April, 1926. To stay in the bidding they must bid higher for the combined property. The bidding on the separate parcels was not to be reopened. This was unfair to the holders of the various General and Refunding issues. Under the terms of the decree the bids for the separate parcels were to determine the ratio upon which a bid for the combined property was to be distributed. Even if the combined bid ultimately prevailed the dissenting bondholders were entitled by competitive bidding to assure themselves that the lines east of Mobridge realized their true value in proportion to the value of the lines west of Mobridge. The bidding was to be at a sale at public auction. No bidding on a parcel should be forbidden to be reopened. All parties should have unlimited opportunity to raise their bids until the bidding was exhausted. Only this could be reasonably interpreted from the provisions of the act of 1863. The trustee's brief pointed out that this suggestion of the Jameson committee would cause the bidding to go on indefinitely. The Jameson committee felt confident that limited purses would soon put an end to the proceeding. The opponent's reply to this suggestion of the Jameson group concerning the bidding that the method prescribed would facilitate a dismemberment of the property was also unsound claimed the Jameson committee. The Jameson committee agreed with the opponents that probably the system as a whole was worth more than the sum of the parts. In its petition it stated that it would rather participate in a fair reorganization

of the whole property than be compelled to protect itself by a separate bid on the lines east. But the bids for the separate parcels were to determine the distribution of the bid for the combined property if the latter bid prevailed, and the Jameson committee wanted a method of competitive bidding which would assure the holders of the various General and Refunding issues that the lines east of Mobridge would realize their true value in proportion to the lines west. If the competitive element in the sale was to be sacrificed to such an extent to facilitate the success of the combined bid, why have any bidding at all on the separate parcels?

The reader should not take too seriously the Jameson group's contention mentioned above that it was not desirous of seeing the St. Paul property split up at the sale. In their petitions to the court at this time the committee maintained that the lines east of Mobridge probably contributed as much traffic to the lines west as vice versa. It belittled the alleged consequences that the opponents pictured as resulting if the extension were not included in the reorganization. Probably a traffic agreement mutually advantageous to both parties, it claimed, would retain a large part of the traffic now interchanged between the lines east and the lines west of Mobridge. True enough, maintained the committee at one point, the St. Paul was maintaining a large and expensive traffic organization which was able to stimulate traffic over the Puget Sound extension because of its ownership by the St. Paul. Probably after all the Jameson committee was working vigorously for the interests of the holders of the various General and Refunding issues which were a lien on the more valuable lines

east of Mobridge on which the lien of the Puget Sound mortgage did not extend and not especially for the break up of the system. However, some of their suggestions if carried into effect by the court would do that very thing it seemed.

Sixth, the Jameson committee should be permitted to file its petition of intervention. This was what the Jameson committee were really fighting so hard for. The trustees professed to represent all the bondholders. Yet by the terms of the General and Refunding Mortgage providing that a majority of the bonds in amount could direct and control the acts of the trustees in the foreclosure proceedings, the trustees in fact represented and could only represent a majority. The court had allowed the Jameson committee to file affidavits and make oral argument. Surely the court recognized the possibility of just grievances. The trustees claimed that, if no fraud were shown, permission to the Jameson committee to file its petition of intervention should be denied and the majority allowed to rule. The plan was inequitable. It called for an unjust diversion of the trust fund. The trustee was instructed by the majority to proceed to a sale pursuant to an unjust plan. The minority had no right to complain, claimed the trustee. Surely the right of the majority did not extend so far. The trustee was not representing the minority. It was supporting an unjust plan. The plan should be reviewed at once by the court and the Jameson committee should be allowed to file its petition of intervention.

On September 28, 1938 the court set the sale of the property for November 22. The upset price for the entire property was set at $123,500,000. The upset price on the Puget Sound extension was set at $43,500,000; on the lines east of Mobridge, $67,500,000; and for unpledged stocks, bonds, and other assets, $13,500,000. Bids were to be asked for these parcels in the order given. Then a bid on the entire property was to be asked and this bid was to prevail if in excess of the combined bids on the parcels. The undisturbed bonds in the plan were to remain undisturbed at the sale. The prospective bidders were to deposit 5% of the upset price before the sale. Judge Wilkerson decided that the upset prices suggested by the Jameson committee were too high. He maintained such prices would mean several millions of dollars to dissenting bondholders at the expense of the majority. The Jameson plea for permission to file a petition of intervention was denied.[1] It was clear that the reorganization managers had won the legal battle so far.

After the federal district court at Chicago handed down its order denying the Jameson committee intervention in the foreclosure proceedings pending there, the Jameson committee filed a petition for leave to appeal from this recent decision in the same court. On October 12, 1938 Judge Wilkerson denied the petition. On October 28, 1938 the Circuit Court filed its decision denying the application of the Jameson group to appeal from the order handed down in the district court. Jameson at this time said he would

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1. Chronicle, vol.123, p.1758.

appeal to the United States Supreme Court.[1]

On November 28, 1928 the Jameson committee announced that it would not bid for the property. It stated that the committee was unable to secure modifications in the method prescribed by the court to be followed at the sale in disposing of the separate parts of the road and that there was not sufficient time remaining to figure out the worth of the property. However, the committee stated that it would stand on its legal rights. The plan it thought was too harsh on the holders of the various General and Refunding issues.[2]

On November 22, the property was sold. A bid was asked for on each of the three parcels with upset prices aggregating $132,500,000. The upset prices were bid by the successful bidder to be mentioned shortly. Then a bid was asked for on the entire road, this to prevail if in excess of the $132,500,000 bid in on the parcels. $140,000,000 was bid by Messrs. Robert T. Swaine and Donald F. Swatland representing the managers and the majority. A reorganization plan was called for and presented by the bidders. Immediately after the property was struck off to them they assigned their bid to the Chicago, Milwaukee, St. Paul & Pacific Railroad Company (to be the new company's title as will be pointed out shortly). Incidently there were no opposing bidders. It was now up to the court and, for reasons which will be pointed out shortly, up to the commission to approve of the plan. The court must also confirm the sale.[3]

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1. Ibid., p. 2386 and 2514.
2. Ibid., p. 3649.
3. Ibid., p. 3772. Railway Review, Nov.27,1928,p.802. For a summary of the facts connected with the reorganization up to the sale of the properties, see Chronicle,vol.127.p.2891.

As was expected, the Jameson committee protested the sale. In December, 1926 it presented a petition to the court requesting that the court disapprove the plan.[1] In this petition the protesting group were not concerned primarily with the proper time for a sale, the proper time to consider the plan, and the proper upset price. These were all matters of history now. The group now in this latest petition brought out its objection to the plan of the reorganization managers.

The petition pointed out that the Jameson committee represented $18,000,000 General and Refunding Bonds. Besides there were $25,000,000 more outstanding which had not been deposited with the managers or with the Jameson committee. For these two groups the Jameson committee was now protesting. It was assuming that the holders of these undeposited bonds objected to the plan.

The first objection to the plan was that it deprived non-consenting holders of the General and Refunding Bonds of their pro-rata share of their ownership in the property in favor of the stockholders. The book value of this property subject to this mortgage as of September 30, 1926 was more than $314,000,000. The physical value (engineering reports of the commission) was more than $362,000,000. The present net earning power (after deducting all

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1. "Brief containing objections of bondholders' defense committee to confirmation of sale and to proposed plan of reorganization," Guaranty Trust Co. of N.Y. and Merrel P. Calloway, as trustees, complainants, against C.M. & St.P. Ry.Co., et.al., defendants, in equity consolidated cause No.4031. For a summary of this petition, see Chronicle, vol.123, p.3178.

interest on indebtedness secured by liens having priority over the General and Refunding Mortgage) was approximately $9,887,000 per annum, and a value (capitalized earnings at 6%) of more than $160,000,000. The pledged Puget Sound bonds had a cash liquidating value (at the price bid by the nominees of the plan) of $41,000,000. The aggregate fair market value of the property was in excess of $300,000,000 then even at depressed values prevailing during receivership. Probably with competent management the earnings would be increased to $15,000,000 a year within three years. For this equity the holders of the General and Refunding bonds were to receive 80% of their holdings in new adjustment bonds subsequent in lien to a new refunding mortgage and also to another securing bonds to go mostly to the stockholders. Of the bonds secured by the latter mortgage $44,190,180 was to go to the bondholders; and $0,698,820, to the stockholders. The latter were to really pay for these bonds par plus $9,333,378 which was to go to pay excessive reorganization expenses. The managers in November, 1935 calculated that the net assessment on the stockholders as provided in their plan was only $0.60 per share upon the preferred and $2.80 on the common based the existing market price of the new bonds being traded in on the exchange on a when issued basis of approximately 80 at that time. In return for this net assessment the stockholders were to receive stock in the new company having a present market value (based on the market value of the existing stock plus the amount of the assessment) of more than $50,000,000. The excess represented part of the trust fund being wrongfully diverted to the stockholders from the bondholders.

The second objection to the plan was that it deprived the protesting group of a substantial part of the income of the property for the benefit of the stockholders. The property was in need of a substantial amount of new money which it seemed when invested would materially increase the earning power of the company. Instead of forcing the stockholders to supply this in order to retain an equity in the company the plan required an assessment up to $5,000,000 per annum against the bondholders for this purpose. For according to the plan one third of the net income available on the new adjustment bonds in any year until such income should equal $7,500,000 and all such income in excess of $7,500,000 was to be applied to the payment of interest and after 1938 to the sinking fund for the new adjustment bonds. This was the minimum. The entire available net income might be so applied. So according to the Jameson committee two thirds of $7,500,000 could be taken from the bondholders to whom it rightfully belonged and put into the property for the benefit of the stockholders. True enough, the plan provided that no dividends were to be paid on the stock until the accumulated interest was paid on the new adjustment bonds. But, until January 1, 1938, these new bonds were to be non-cumulative and until that time two third of the available net income could be diverted to the property and need not be made good to the bondholders, to whom it rightfully belonged, out of subsequent profits before dividends could be paid subsequently on the stock. Besides during receivership earnings aggregating more than $18,000,000 had been reinvested in the property. The bondholders were to be allowed no return on this.

The reader will note that these objections relative to favoring the stockholders were not brought out by the Jameson group in their previous petitions containing objections to the plan.

The third objection was not new. The plan proposed a diversion to the holders of Puget Sound bonds of a valuable part of the lien and income to which the holders of the non-assenting bonds were in equity entitled. The present value of the property subject to the General and Refunding Mortgage was, as was pointed out, over $200,000,000. If divided among the holders of these bonds as provided in the decree of foreclosure, such value would realize to the holders approximately 75% of the par amount thereof. On the other hand the price bid at foreclosure established that the separate value of the property subject to the Puget Sound Mortgage was only 23.5% of the par of the Puget Sound bonds and its value in conjunction with the lines east of Mobridge was only 25.7% of the par value of the bonds secured by this mortgage. If the Puget Sound property was capitalized at 6% its value would amount to less than 23.5% of the par of the Puget Sound bonds. Even with no such method of valuation (earnings capitalized at 6%) the prices bid on behalf of the managers were an admission of the fact that the property subject to the General and Refunding Mortgage was worth more than the property subject to the Puget Sound mortgage in proportion to the outstanding bonds in each case. According to the decree of foreclosure the proceeds of the sale of the combined property were to be divided among the bonds secured by the two mortgages in proportion to the bids on the separate properties on which bids were to be called for prior to the calling for bids on

the entire property if a bid on the combined property was successful. $140,000,000 bid on the combined property was successful. The upset prices were bid on the two properties separately. This bid would yield the holders of the General and Refunding Bonds 40% of the par value thereof, and the holders of the Puget Sound bonds 33.5% of the par value thereof. This constituted an admission that the property subject to the General and Refunding Mortgage was worth 46% more (in proportion to the amount of bonds outstanding) than the property subject to the Puget Sound mortgage. Nevertheless the plan provided that the bonds on both mortgages be treated alike. About half of the interest (fixed or contingent) to be received by the holders of Puget Sound bonds would constitute income which in equity belonged to the other holders of disturbed bonds. So the plan provided for another wrongful diversion of the trust fund.

Furthermore the Jameson committee maintained that the plan was not the result of independent negotiations carried on by committees representing the several classes of bonds and stock and the other creditors of the railway. Instead the committees were appointed really by the managers. The bondholders' committee represented two mortgages between which there was a conflict of interests. It represented Puget Sound bonds heavily as against the other disturbed bonds. No doubt many holders of the General and Refunding Bonds were not aware of this conflict of interest and this predominent representation of Puget Sound bonds when they deposited their securities in support of the plan.

The non-assenting bondholders had still an opportunity to deposit their bonds under the plan without penalty. The managers in notice after notice set certain dates which were to be the last dates on which holders of disturbed bonds could deposit their bonds under the plan without penalty. No such penalties were ever imposed. Each time the last date was always extended. Relatively few deposits were made under the plan until after September 16, 1935, although the plan was promulgated June 1, 1935. Prior to September 16, 1935, two time limits had been set and extended. Unknown penalties (the amount of which would be left to the managers) were constantly being pictured to the non-depositing holder of disturbed bonds. No doubt a large number of holders were induced to deposit by means of the mis-leading advertisements and interviews published or caused to be published by the managers and majority bondholders' committee concerning time limits without penalties.

This petition of the Jameson committee pointed the court's attention to their previous petitions concerning this committee's objections to the method in bidding at the sale and also containing its request to file its petition of intervention prior to the sale against the plan which it thought inequitable and now being urged by the managers and their appointed security holders' committees (the latter of whom would of course approve regardless of the merits of the plan because of the manner in which they were selected). The Jameson committee still was of the same opinion in regard to these points.

Then the Jameson committee again pointed out that the sale did not contain the essential characteristics of a sale at public auction in several respects. This point was discussed previously in connection with one of this committee's previous petitions filed previous to the sale and discussion of the point need not be repeated here.

Then the Jameson group offered some suggestions which if accepted would secure their support to the reorganization. These suggestions amounted to its version of a proper reorganization. They were as follows:

1. Postponement of the reorganization until after March 3, 1927, in order to give Congress an opportunity to enact legislation (pending) authorizing a refunding of the indebtedness of the railway at 4 1/4%. If the legislation were passed the road was to take advantage of it.

2. If such legislation were not enacted the two notes aggregating $35,000,000 were to be paid from funds received from the stockholders. The $18,000,000 Generals which were part of the collateral for these notes were to be kept alive in the company's treasury to be used for additions and betterments. For the $30,000,000 note to the Director General of Railroads were to be given new notes maturing in 30 years with interest at 4 1/4% collaterally secured by the new bonds to be issued in respect of the $32,000,000 of General and Refunding Bonds held as collateral plus such additional bonds of the same rank as may be agreed upon to bring the market value of the collateral up to the principal amount of the debt. If this offer were rejected the Director General was to receive the same treatment as other individual holders of General and Refunding Bonds, i.e., the alternative of accepting in cash his pro-rata share of the proceeds of sale or of accepting in lieu of the $32,000,000 of General and Refunding Bonds held by him the new securities to be exchanged for these bonds under the plan.

3. Holders of Puget Sound bonds were to be offered an equal par amount of bonds to be issued under the adjustment mortgage; identical with the adjustment bonds described in the plan of the managers except that interest thereon should be limited to 4% per annum.

4. Holders of General and Refunding Bonds were to be offered 40% of their claims in 50 year 5% mortgage gold bonds described in the plan, and 60% thereof in adjustment bonds described in the plan except that the interest thereon should be cumulative from the date thereof instead of from January 1, 1930, as provided in the plan.

5. The voting trust provided in the plan was to be abolished and the voting power was to be given to the adjustment bondholders in proportion to one vote for each $100 par amount of bonds as long as the full interest, both current and accrued, was not paid on the adjustment bonds.

6. An average assessment of $26 per share was to be imposed on both classes of stock to yield $67,000,180 of which $35,000,000 was to be used in retiring notes held by the Secretary of the Treasury and the balance to be used for additions and betterments in lieu of the sums proposed to be diverted from bondholders under the managers' plan and for expenses of reorganization. The amount of all reorganization expenses (other than the expenses of the receivership and foreclosure proceedings which were to be determined by the court) including the compensation of counsel, committees, and reorganization managers was to be submitted to the commission for approval. If the notes held by the Secretary of the Treasury were refunded the assessment on each share of stock was to average $15 per share to be used for the other purposes above. For their assessment the stockholders were to receive an equal par amount of 5% adjustment bonds.

Finally, the Jameson petition stated that no order of the court should be made which approved such a plan of reorganization as that of the managers or which directed the delivery of deed or deeds to the new company until this new company had obtained an authorization and certificate of public convenience and necessity from the commission. The Jameson committee maintained that such

procedure was necessary under the terms of the Interstate Commerce Act as amended by the Transportation Act, 1920 in respect to a railroad issuing new securities. This committee not only maintained that the plan of the managers was unjust and inequitable in respect to certain provisions but that some other provisions in the plan, while not in violation of any law which the court had jurisdiction to enforce, were not in the public interest which the commission was to have in mind in matters of this kind calling for rejection or approval. The committee had in mind such provision in the managers' plan as that providing for a voting trust which, it was alleged, would deprive the security holders of all control over the affairs of the corporation until January 1, 1930, and the selection as two of the voting trustees of Mr. Samuel Rea, a director of the Southern Pacific Company, and of Mr. Henry S. Pritchett, a director of the Atchison, Topeka & Santa Fe Railway Company, both of said companies being trans-continental railway competitors of the St. Paul. These selections, it was alleged, were in violation of the policy of Section 20a, Paragraph 12 of the Interstate Commerce Act. The court was asked to disapprove of the plan of the managers, declare the price bid for the property inadequate, set aside the sale, and order a resale under methods suggested by the Jameson committee.

On January 19, 1927 the court approved of the managers' reorganization plan and the sale. Judge Wilkerson held that if Congress passed the pending legislation allowing the company to refund its indebtedness to the government at a low interest rate the plan should be modified and the debt should be refunded. The

managers gave assurance that this would be done. Furthermore, the court ruled that the deeds should not be delivered to the new company until the commission had approved of the managers' plan of reorganisation.[1] The managers won again. The sale was shortly after approved by four other federal courts at various places whose approval was necessary due to the wide expanse of the territory through which the lines of the company traversed.

On March 14, 1927 Judge Wilkerson in Chicago denied the motion of the Jameson group to appeal from the district courts order approving the reorganisation plan and the sale.[2] Early in May, 1927 the United States Circuit Court of Appeals in Chicago denied the request of the Jameson group calling for an injunction preserving its alleged rights pending further hearings in the legal battle. At this time Jameson announced that only 5% of the bonds deposited with his committee were withdrawn recently when he announced plans to continue the fight through the higher courts.[3] An appeal was taken to the United States Circuit Court of Appeals for the Seventh Circuit upon assignment of error substantially reiterating the allegations contained in the petitions decided adversely by the district court. On July 21, 1927 the sale of the St. Paul under the decree entered in the mortgage foreclosure cause of the Guaranty Trust Company of New York and Merrel P. Callaway as trustees under the General and Refunding Mortgage was affirmed in Chicago by this

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1. Chronicle, vol. 124, p. 502 and 630.
2. Ibid., p. 1652.
3. Ibid., p. 2745.

federal court of appeals. Thus the affirmation of the federal district court in Chicago was affirmed. The circuit court in its decision pointed out that 20,000 bondholders (17,000 of them being holders of General and Refunding Bonds) had deposited $172,000,000 or 80% of the issue outstanding held by 70% of the holders in support of the plan. On the other hand Jameson represented $18,000,000 General and Refunding Bonds. $8,500,000 of this amount were being held by Jameson; and $9,500,000, by the insurance company of which he was president. Of this $8,500,000, only $1,600,000 were acquired prior to January, 1924. Most of the bonds being held by the Jameson group, the court pointed out, were purchased at around 55¢ on the dollar when the company's difficulties, which had since improved, became apparent.[1] On October 19, 1927 the Jameson Committee asked the United States Supreme Court to review the plan approved by the lower courts. Former Senator Irving Lenroot of Wisconsin was now counsel for the protesting group.[2] The Jameson group were now making their last stand so far as the courts were concerned. On November 28, 1927 this court refused to review the case appealed from the circuit court, denying a petition for a writ of certiorari to the federal court of appeals.[3] The legal battle through the courts was now at an end. The Jameson group lost the battle against the plan so far. However, during this time it was taking part in the battle before the commission.

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1. Ibid., vol.135, p. 844.
2. Ibid., p. 2259.
3. Ibid., p. 3230.

CHAPTER XII

THE COMMISSION'S INVESTIGATION AND REVIEW OF THE PLAN.

The commission had been investigating the road's priat affairs for some time. On May 16, 1925 it ordered that an investigation of the road be made. The history, management, financial and other operations, accounts, and accounting practices of the company were slated for investigation. Hearings were to be held at designated places on designated dates.[1] On November 30, 1925 the investigation began before Commissioner Cox assisted by Chief Examiner Hickey. Coverdale of Coverdale & Colpitts was the first witness. On December 1, 1925 Byram gave the commission his statement referred to a number of times previously in this history.[2] In September, 1926 F. J. Pearson who was in charge of the work on the Puget Sound extension testified concerning matters relative to that project.[3] His testimony at this time was referred to previously in this history. At this time also the commission's experts reported that the road's alleged economies in connection with the electrification project were sound.[4] This point was also brought out previously in this history.

While this investigation was in progress, Judge Wilkerson, as was pointed out previously, ruled on January 19, 1927 in his

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1. Chronicle, vol.120, p. 3551.
2. Railway Review, Dec. 5, 1925, p. 863.
3. Chronicle, vol. 123, p. 1629.

decision approving the managers' plan and the sale that the approval of the commission to the plan would be necessary before the delivery of the deeds to the property was made to the new company.

So in April, 1927 the new company applied to the commission for permission to receive the deeds to the property and to issue the new securities as called for in the plan of re-organization.[1] The hearings on the termination of the receivership were begun before the commission on July 6, 1927.[2] A brief was filed with the commission by the new company on August 10, 1927 asking for the approval of the plan. The plan was presented in detail. The objects of the plan and the manner in which the plan fulfilled these objects were brought out. All this has been presented previously in this account. At this time the commission was told that the conversion of 80% of the junior bonds into income obligations and the payment of the debt to the government as provided in the plan would reduce the fixed interest charges to an amount safely within the present earnings of the company. It was thought that future earnings would take care of the future fixed charges, contingent interest, and sinking fund charges, as well as to provide substantial amounts to be available for dividends upon the stock of the new company. It was pointed out that the new capitalization would be more than $100,000,000 less than the old, ignoring the new no par value common stock called for

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1. Ibid., vol. 124, p. 3275.
2. Ibid., vol. 125, p. 243.

by the plan. The morale of the management and employees would certainly be raised by the certainty following the approval of the commission. The question for the commission to settle was not whether there were other good plans but whether this plan injured the interests of the public, a plan approved by a vast majority of the security holders in the old company.[1] The Ioelin committee at this time in an intervening petition pointed out its approval of the plan of June 1, 1925, as modified in November, 1925. It pointed out how the stockholders lost $327,000,000 on the market decline from January 1, 1917 to the receivership in March, 1925. Therefore the $70,032,548 to be demanded from the stockholders under the plan was about all that could be expected. The committee claimed that it represented 300,000 shares of preferred and common stock.[2] The Roosevelt committee also pointed out its approval of the plan as modified. It claimed to be representing $18,832,500 bonds.[3] The Jameson group filed an intervening petition opposing the plan in September, 1927. The Jameson group apparently wanted the necessary cash to come from the sale of underlying general bonds in the company's treasury and also from the sale of some new bonds on the new financing and refunding mortgage instead of from the stockholders. The junior bonds should get stock in part instead of income bonds. The stockholders should be wiped out.[4]

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1. Ibid., p. 1046.
2. "Brief on behalf of a committee of preferred and common stockholders known to the Ioelin committee," before the Interstate Commerce Commission, finance docket no. 6340, in the matter of the application of the C.M. St.P. & P.R.R. Co., New York, August 17, 1927. Chronicle, vol.125, p.1048.
3. Chronicle, vol.125, p.1048.
4. Ibid., p. 1703.

The reorganization plan was argued before the commission between September 30 and 30, 1935. Robert T. Swaine, one of the two bidders, represented the road. The opponents of Jameson pointed out his inconsistency. After the receivership he bought stock at 50¢ on the dollar and claimed that the plan was too hard on the stock. Then he bought some junior bonds and claimed that the holders of these should receive more fixed charged bonds than provided for in the plan. Now he wanted to have the junior bondholders receive stock instead of bonds and to freeze out the stockholders. If this were done no one in the future would buy railroad stock. The delay in the approval of the plan was costing the road $2,000 a day in interest alone. The plan should be approved at once.[1] At the hearing an appearance was entered in behalf of the State of Wisconsin opposing the application of the new company because of the terms of certain existing contracts for the purchase of electric power.[2] A petition was filed by the savings banks of New York and Massachusetts holding $13,000,000 of the road's disturbed bonds. Jameson objected to the petition. The commission accepted the objections and rejected this brief in November, 1937.[3]

On January 4, 1938 the commission handed down its report on the investigation of the past affairs of the St. Paul leading up to the reorganization and also its decision of the reorganization plan. The plan was approved. The managers and the majority had won the long conflict.

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1. Ibid., p. 1966.
2. Ibid.,vol.136, p.346.
3. Ibid.,vol.125, p.3666.

The report on the past affairs of the road leading up to the receivership (No.17031) has been referred to a number of times previously in this history. In fact these references are so numerous that the reader should have a clear idea of the attitude of the commission on its findings in this investigation. A brief reference to some of the high spots of this report may be of interest here. The commission pointed out that for many years the St. Paul had been considered one of the strongest of railroad properties. As of December 31, 1934, it operated approximately 11,000 miles of road, had a total capitalization of more than $700,000,000, and in 1934 its operating revenues were nearly $160,000,000. When such a company became bankrupt at a time when general railroad conditions had greatly improved, the country was shocked. The ultimate purpose of such an investigation as that of the St. Paul, the commission said, was to draw lessons from its experience for the future. The construction of the Puget Sound extension was perhaps the chief of the causes that finally culminated in the receivership. However, Congress had subsequently provided for safeguards against ill-advised railroad construction by clothing the commission with power over proposed railroads. Impairment of the financial structure of the company was brought about by a disproportionate issue of bonds with ill-arranged maturities, the commission continued, adding that regulation authorized by Congress with respect to securities now provided a safeguard to a certain extent against such developments. Railroads should have competent financial officials to represent them in negotiations with bankers. The St. Paul lacked them. Many of the road's directors knew comparatively little about the affairs

of their company. Some were affiliated with interests that conflicted with the interests of the railroad company. Exercise of more interest on the part of the railroad stockholders in the affairs of their companies was suggested by the commission as a means of improving the management of the companies. The state of affairs as shown to exist on the St. Paul was unfortunately neither new or rare, said the commission. Inertia on the part of stockholders and inattention and irresponsibility on the part of at least some of the directors had usually attended railroad insolvencies in the past. Reliance is generally placed on some one else. The stockholders rely on the directors and the directors having chosen managers rely on them. There the matter ends. Theoretically stockholders are supposed to check up their managers. With the St. Paul the stockholders seemed to have been indifferent to their rights; and the directors,as to their duties. The commission expressed doubts as to the success of legislation in this respect. Men could not in general be compelled by law to exercise their rights. Public opinion was the only force fully competent to influence them. The commission dismissed the question of the effect of freight rate structure on the St. Paul's situation by saying that the law in respect to the regulation of rates was ample and adequate for the protection of both shippers and carriers. Whether the commission had administered that law wisely and justly, others would have to decide. The electric power contracts entered into by the old company were not altogether wise and prudent. The company should give careful consideration to the question of the

notification of them.[1]

The decision approving the reorganization plan (Finance Docket No. 6240) handed down at the same time approved of the reorganization plan.[2]

In the report on this decision the application of the new company was presented in detail. It sought authority to acquire the deeds of the property thereby acquiring the property of the old company subject to the undisturbed indebtedness, to issue the new securities as called for by the reorganization plan, to control wholly or in part by the acquisition of their capital stock (held by the old company) in several companies (the Terre Haute, Gary, Minnesota Transfer Railway Company, Chicago Union Station Company, and others) to assume the obligations issued by some of these companies (assumed by the old company) and also to issue by sale or pledge of General Mortgage 5% Bonds, Series D, which at any time may be in the treasury, up to the principal amount equal to the amount of expenditures, not otherwise capitalized, made by the receivers after June 1, 1925, for refunding underlying bonds and for additions and betterments. From June 1, 1925 to February 1, 1927, such expenditures aggregated $17,183,507.

The applicant estimated that the net railway operating income for the first five years of operation would be $[illegible]15,000, $22,370,000, $24,770,000, $28,005,000, and $29,970,000 (figures in

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1. For a summary of this report, see the Minneapolis Tribune, January 11, 1928.
2. For a summary of this decision, see the Minneapolis Tribune, January 11, 1928; Chronicle, vol.126,p.245; the monthly pamphlet entitled "Economic Conditions, Government Finance, United States Securities," for Feb.1928,p.31 (issued by the National City Bank of New York); and "Business Survey" (issued by Lane, Piper & Jaffray,Inc.,Minneapolis)for Feb.23,1928,hereafter referred to as Business Survey.

thousands). The commission thought from the reports of current earnings being made to it that they probably would not be attained in the period indicated. However, the fixed charges of $13,663,489 on the securities both old and new (as provided in the plan) would still be well within the estimates and would leave a margin applicable to the adjustment bonds, the commission said.[1]

The Jameson committee argued that the Transportation Act of 1920 established definite principles and policies to be followed in financing railroads emerging from receiverships. Among these it was claimed that the amount of bonds should be limited not to exceed 50% of the value of the property; that not more than 50% of the earnings should be applied to interest on bonds; that the financial structure should be elastic, and therefore closed mortgages were not to be permitted; that income bonds were not to be issued; that stockholders were to be completely cut off from any equity of redemption by the bondholders taking possession of the mortgaged estate or by the foreclosure and sale of the

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1. The interest figure here, the reader will note, is slightly less than that previously presented as the amount of fixed interest charges under the plan if adopted. The figures previously presented with the plan were as of June 30, 1925 including the securities of the company in the insurance fund. The figure above and others that may be presented hereafter in connection with the discussion of the commission's consideration of the plan, unless otherwise stated, were as of June 30, 1927, excluding the securities held in the insurance fund. The latter according to the commission were to be cancelled. Therefore the amounts of the various new securities for which the new company applied in 1927 to the commission for permission to issue were slightly less than those given in connection with the presentation of the plan previously in Chapter X. . Besides this factor, the reader will readily see that the undisturbed securities between these two dates were changing with the payment of maturing installments on the equipment notes. Furthermore, during this interval of time there was a flotation of new equipment trust notes, as will be pointed out shortly.

properties; that the rights and interests of the various classes of creditors were to be fixed by the commission; that separation of ownership from management by voting trusts was to be prohibited; and that the rights and interests of investors were to be protected.

The commission did not agree. This proceeding, it said, was not a case to determine the rights of private parties but an application under applicable sections of that act by a corporation to acquire certain lines of railroad and to issue securities. The public interest was to control the commission in considering such an application. The commission found that it could not accept the Jameson committee's principles and policies to be followed in financing a railroad emerging from receivership however desirable though they might be in railroad financing. If Congress had meant that they be followed by the commission it would not have left such important and far-reaching policies to be inferred as a matter of statutory construction which was all the Jameson version of the law amounted to.

In connection with considering the claim of the Jameson group that the plan was preferential to the stockholders and therefore prejudicial to the holders of General and Refunding Bonds the commission noted that approximately 40,000 security holders had deposited their holdings about equally divided as between bonds and stocks in support of the plan. Opposing the plan were about fifty bondholders owning approximately $17,000,000 General and Refunding Bonds. The commission was told that the deposits of the large percentages of the securities involved in the receivership were obtained by coercive measures and threats of penalties if

deposit were not made promptly. None of the security holders assenting to the plan by the deposits of their securities had complained in the proceedings as to the means used in obtaining the deposits. The whole procedure in connection with the purchase of the property at the sale pursuant to a plan to which they assented by depositing the securities which were to be used along with the government notes to be liquidated in paying for this property looked regular to the commission. Under the terms of the defaulted mortgages the bondholders with bonds secured by these mortgages became entitled to the property. The bondholders elected to foreclose and to sell the property for the payment of their claims. This was done and the bondholders not assenting were now entitled to receive their distributive share of the proceeds of the sale, said to amount to about 46¢ on the dollar, while the non-assenting bondholders were entitled to receive nothing. Deposits of securities could still be made under the plan. The bondholders depositing their bonds under the plan had apportioned to the stockholders a share of the bondholders' equity. The commission was advised of no rule of law or equity which required that the stockholders should be absolutely wiped out and cut off except to the extent of new money contributed by them as had been claimed by the Jameson committee. The courts had in the past looked with favor on permitting the stockholders to retain an interest in reorganized properties. There was nothing in such practice that was contrary to the public interest. Then the commission examined the amount of the equity remaining after the issue of bonds called for in the plan to ascertain whether the

remainder would justify an issue of stock in the total par amount proposed. In the testimony the lowest value given the property was $840,000,000. A total of $568,118,549 in bonds and preferred stock would be outstanding when the new securities were issued. The difference between these two figures was about $270,000,000 representing the value of the proposed 1,174,080 shares of no par common. Therefore it seemed that there would remain an unmortgaged equity in the properties sufficient to permit the bondholders to assign to the stockholders an interest therein and to support the issue of stock in the amounts proposed.

Then the commission critically analyzed the plan. The defects in the plan, when regarded in the abstract and in the light of a possible ideal of sound financial theory, were manifest. Even though the fixed charges were brought within reasonably safe limits, the issue of adjustment bonds might prevent the company for a considerable time from obtaining new capital by the sale of other than fixed-charge obligations. Moreover, the possibility of accumulation of unpaid interest on the new adjustment bonds after 1930 might make still more remote the possibility of stock financing. Such accumulations could not nowadays be adjusted readily by additional capital issues as in the past at times and to that extent they might become a clog upon the property in the future. Securities of this kind, the commission maintained, are hybrid things and have no place in a thoroughly sound financial structure. Were the commission dealing with an enterprise at its inception with proposed security issues to be sold to the public, it might disallow the inclusion of such securities in the financial

structure. However, the case was different here. The commission did not feel warranted in delaying the lifting of the receivership until an ideal plan might be formulated and presented. The plan here presented was the product of bargainings and compromises among the five committees representing a vast majority of the issues involved. If there were to be injuries the dissenting group would not be injured more than the assenting group. It had not been shown in the proceedings that the public interest would be served by denial of the application. The granting of the application of the new company would have its merits. The receivership would be terminated and the properties returned to the owners. There would be no severing or dismemberment of any existing line. The plan would preserve and maintain the unified system as it had been built up, which seemed to be in the public interest. The property had been in receivership over two and a half years. If the application were denied, the receivership might continue indefinitely. A new plan might be disapproved by one of the three committees which were parties to the present plan. Then the whole operation would have to be started anew. Probably the new plan when finally presented would be supported by less security holders than this one. The delay would be expensive to all concerned. The public interest it seemed required an approval of the application even though the commission believed that a stronger financial structure might have been erected by the adoption of some other plan. The plan as presented had merits. A financial structure was to be erected which would eliminate the early maturities existing under the General and

Refunding Mortgage and would substitute therefor maturities of 50 and 75 years, the latter embracing 80% of the bonds foreclosed. This would bring the actual fixed interest charges safely within the net earnings applicable to interest and also by the execution of a new mortgage subordinate in lien only to the liens of the mortgages securing the undisturbed bonds would provide a means for refunding underlying bonds and for future financing. The fact that two of the proposed mortgages were to be closed mortgages should not interfere with such future financing, as the Jameson committee maintained. This would probably be the case if their liens were to be superior to subsequent mortgages, but the plan provided for three mortgages and in these mortgages specific provisions were made whereby the liens of the 50 year 5% mortgage and the adjustment mortgage were to be subordinated to the lien of the new First and Refunding Mortgage under which future financing was to be done. It seemed to the commission that the existence of closed mortgages inferior in lien to the new First and Refunding Mortgage would not affect the marketability of bonds issued under the latter mortgage.

The commission decided to permit the voting trust in this case. As a rule power to control corporation management should rest in owners of share capital rather than creditors or others, and the owners of share capital should exercise this control periodically and at reasonably frequent intervals. In this case the control was to be vested in a voting trust for only two years after which the shareholders might resume control. The purpose of the proposed voting trust was stated to be the initial provision

of capable management for the reorganized property. The commission thought the statement was made in good faith. The voting trust was allowed.

The commission ordered the new company not to pay any underwriting commission in connection with the reorganization. The new company in the application stated that it was doubtful whether the formation of an underwriting syndicate to underwrite the participation in the reorganization of any class of security holders would be necessary.

The authority sought to issue General Mortgage 5's, Series D, up to the amount of certain expenditures incurred during the receivership was denied. For a new company acquiring the properties to capitalize by the subsequent issue of bonds any of the expenditures made for capital purposes during the receivership and before it took possession of the property would negative the benefits derived from withholding interest from the bondholders and applying such funds to the purposes indicated.

The State of Wisconsin objected to the application because of power contracts calling for the payment for such power not actually consumed, as was brought out in a previous chapter. The federal commission pointed out that the decree of foreclosure gave the new company one year to disavow any contract not fully performed which was made or assumed by the predecessor. The commission said that the new company had not acquired the property yet and that the conduct of its affairs in a sound way after it acquired the property should be assumed for the time being. The State of Wisconsin also objected to the fact that the creditors