

CHAPTER VIII

THE BANKERS DECIDE UPON RECEIVERSHIP

THE decision to reorganize the entire junior financial structure raised a further question. Where should the control of the property be, pending reorganization? That control could remain in a board of directors, or it could be placed in the hands of a court. The first alternative would not necessarily mean that the men who were then the directors would continue on the board; such matters are frequently arranged to satisfy those who have risen to power in the affairs of a distressed company. Of course, others might also contend for control or a share in control. Whatever the result, the first method would preserve the constitutional forms set up by the company's charter. The second method, that of receivership, would involve more than a possible overthrow of the nominal governors of this financial society. It would involve an overthrow of the governmental structure of that society, and the introduction of a dictatorship under a judge.

The method first discussed is called by reorganizers "voluntary readjustment," on the theory that a reorganization carried through in such circumstances is effected with the voluntary consent of the company's security-holders. Voluntary readjustments are effected without receivership. The theory underlying reorganization through receivership also assumes that the security-holders' consent must be obtained before a reorganization can become effective. As a practical matter, greater pressure

BANKERS DECIDE UPON RECEIVERSHIP 87
can ordinarily be brought to bear on security-holders to give their "consent" to reorganizers' plans when a property is in receivership than when it remains in the hands of a board of directors. But there was a widespread feeling among business men at the time of the St. Paul trouble that so-called voluntary readjustment is infinitely preferable to the receivership method.

Important men in the St. Paul situation apparently shared the feeling that receiverships as conducted by the courts are wasteful and should be avoided. Mr. Ecker, vice-president of the Metropolitan Life Insurance Company, which had over five million dollars' worth of the junior bonds, testified in the court proceedings "that I would go just as far as I could on a journey to avert a receivership, and the waste that comes from it." The special committee of the directors wanted to avoid a receivership and to arrange any readjustment by proposals to the bondholders, out of court. Mr. Colpitts, the consulting engineer, said that "the effort of everybody was to get over the difficulty in some way without a receivership."

So strong was the feeling against court receivership that the witnesses gave the impression that everybody had tried to avoid even the mention of the word. Mr. Colpitts testified: "I remember this very distinctly, that throughout my conversations with these gentlemen, I very carefully avoided the word 'receivership' . . . because we were all trying to look for means for avoiding a receivership. I did not myself want to get in a frame of mind where I could talk about receivership. I knew what the worst outcome might be, and naturally thoughts of all kinds rolled around in my mind." Mr. Hanauer testified that when Mr. Colpitts spoke with him after he had concluded that a reorganization was necessary, "I doubt if the word 'receivership' was mentioned."

Many months after even the general public had become accustomed to the existence of a St. Paul receivership, President Byram was still laboring under the long-established attitude of the operating officials. He testified that in the months before the receivership, "those of us who had direct charge of the prop-

erty, we always avoided using the term 'receiver.' " He hesitated to acknowledge that the board of directors had actually voted for receivership. The testimony was as follows:

Mr. Ekern: The directors . . . were . . . agreed . . . that it was necessary to have a receiver . . . ?

Mr. Byram: It was necessary to have a reorganization, and that might involve a receivership.

Mr. Ekern: Did they know at that time that that meant a receivership for the road the following day?

Mr. Byram: I think it was pretty well established that the receivership was the logical consequence of the action of the board.

Mr. Ekern: Was that not decided at that meeting?

Mr. Byram: If it involved the action to that as to receivership, then it was decided there, but the actual procedure from then on, after the board decided that a reorganization was necessary, was turned over to the lawyers to handle, and if that meant a receivership, the proceedings would, of course, follow naturally.

.....

Mr. Ekern: Now, that resolution specifically provided for the institution of proceedings for the appointment of receivers . . . didn't it?

Mr. Byram: I don't see anything about a receivership in there. It seems to provide for making an answer to the bill of complaint, but, of course, the whole thing was working toward a receivership. There is no denying that fact.

Mr. Ekern: Mr. Byram, look at the last two lines of the answer which is part of that resolution.

Mr. Byram: You are right. I did not see that. That is the first time the word "receiver" appears in our records. . . .

The actual receivership decision was not precipitated by the bankers, according to Mr. Hanauer. He said that when Mr. Colpitts made his adverse report, "I put my mind to work try-

ing to consider whether it would be possible to have a voluntary plan of reorganization, and discussed it with our counsel, and told them they should try to draw some plans. . . . We realized the difficulty of any such undertaking, in view of the thousands and thousands of security-holders involved, in Europe as well as in America, but as we expected if there was to be a receivership it would come just before the first of June, we felt a good deal of time would be saved in starting in that way, and if successful, it would be very lovely, and if not, we would have gained some months."

This program was, however, rudely interfered with, according to other testimony given by Mr. Hanauer as follows:

"We felt that we had from the first of March to the first of June [when the 1925 bonds were to fall due] to possibly work out a voluntary readjustment. . . . But after only a few days we were very much surprised and disturbed by being told that the board of directors had been advised by their own counsel . . . Mr. W. W. Miller . . . that they knew that they could not pay on June first the principal and the interest of the bonds then maturing, and the board of directors had no right, in his opinion, to pay interest on April first on bonds issued under exactly the same mortgage as the bonds maturing on June first."

Mr. Hanauer's testimony on this matter is confusing when considered in the light of other testimony, including his own on other points. The board of directors, which, he thought, had been given such advice by Mr. Miller, had not met since January, and all the men involved, bankers and lawyers, denied that any decision preventing a voluntary readjustment had been reached by that time. Indeed, Mr. Hanauer said that Mr. Miller's first raising of the question was on March 6. The board was not then in session, and its first meeting thereafter was on March 17, when the bankers and their lawyers had already made all receivership arrangements.

Mr. Miller's opinion was, as Mr. Hanauer put it, a surprise. Mr. Miller, according to this testimony, had acted on his own, and when the bankers knew of the problem, it was an established

and announced difficulty, not one as to which they would have an advance opportunity to confer and express their view. The fact was brought out in the examination of Mr. Hanauer by his own attorney, Mr. Swaine.

Mr. Swaine: So far as you know, Mr. Hanauer, neither you nor your counsel were ever consulted as to that before?

Mr. Hanauer: We were told. We were not consulted. . . . We were advised either by Mr. Byram or advised by our own counsel, having been told by other counsel, that this would mean practically an immediate receivership.

The bankers' lawyers told the Commission that "the bankers were not consulted regarding the determination not to pay the April 1 interest but were simply informed that the railway company's counsel had advised against it."

This version of what happened necessitates the inference that bankers as experienced as Kuhn, Loeb & Company and the National City Company had not, after months of intensive inquiry, foreseen a difficulty which the company's attorney recognized within three days after he had heard Mr. Colpitts's report. That report, as has been seen, was known to the bankers before it was known to the company's lawyer. Instead of preparing at once for receivership, the bankers began to work on voluntary readjustment plans—this, at least, was as Mr. Hanauer remembered it. But the point was, in Mr. Hanauer's view, that the decision was a legal decision, and that therefore his hands had been tied by the lawyers. He said:

"I was advised from our counsel who had heard it from Mr. W. W. Miller. We did not like that idea at first, because of the thought that we had in our minds of possibly being able to put through a voluntary reorganization. But our counsel agreed thoroughly with Mr. Miller, that if you cannot pay on the first of June and you knew it, you cannot pay on the first of April on exactly the same issue of securities. . . . Of course, if our counsel agreed, we could not make any protest on that score."

The strange circumstance in connection with this legal point is that apparently it had not occurred to the bankers' attorneys, themselves among the most distinguished and most capable men in Wall Street work. While they were engaged in carrying out Mr. Hanauer's instructions to prepare a voluntary readjustment plan, the company's attorney was engaged in deciding upon a legal point which must have been quite clear to him, for he "insisted" that the April payment be not made, according to Mr. Hanauer's testimony. And the legal obstacle must have seemed equally clear to his lawyers when the company's attorney raised it, for the bankers' counsel "agreed thoroughly" with Mr. Miller.

Doubts of some sort led an attorney for independent bond-holders to engage Mr. Hanauer in the following colloquy:

Mr. Anderson: Then, as a matter of fact, you . . . and some of the directors had really reached a conclusion that this property would be put into the hands of receivers in the week preceding the action of the board, had you not?

Mr. Hanauer: No. . . . The conclusion was reached by counsel for the St. Paul.

Mr. Anderson: The conclusion was reached by counsel for the St. Paul that there should be no payment of the April 1st interest, and he advised as a legal question that that not be done, I understood you to say?

Mr. Hanauer: That is correct.

.....

Mr. Hanauer: Of course, I remember we were very much disturbed by the suggestion of Mr. Miller that there should be an immediate receivership.

Mr. Anderson: Now, Mr. Hanauer, is it not a fact that when Mr. Byram returned from the west, where he had been with Mr. Colpitts prior to the first of March, and stated to you that he thought Mr. Colpitts' report on your first question would probably be adverse, that you replied to him: "You know what that means, don't you?"?

Mr. Hanauer: That is entirely correct. But that meant before the first of June unless some adjustment or something was found before June 1st. These other answers I have given you were all to show why it was done the 17th of March and not, as we had hoped and expected, before the first of June.

Mr. Anderson: When you said to him: "You know what that means," you meant that meant a receivership, didn't you?

Mr. Hanauer: No, no. That meant there had to be a readjustment of capital. Frankly, while it was not discussed, we hoped to gain time in order to try the readjustment, if it were possible. I realized that with 40,000 or 50,000 different owners of securities . . . it would be really hoping for almost the impossible to have a voluntary readjustment. On the other hand, we felt we might make a very good start, and if we got the security-holders in, the receivership, which would come just before the first of June, might be a very short receivership, just as to hold the situation.

.....

Mr. Hanauer: While I was turning over in my own mind . . . the possibility of formulating some plan which would start, at any rate, as a voluntary plan, Mr. Miller came in with his surprise statement, and then I forgot all about any question of readjustment because there were so many things we were considering and conferring about in connection with the receivership and the announcement and formation of committees.

When Mr. Miller took the witness-stand, he was questioned on the matter by the Commission's attorney.

Mr. Fisher: Was that just based upon your theory that that would be sound policy?

Mr. Miller: It was not sound policy, and it was not equitable. I had another reason, that if the situation was as bad as the reports seemed to indicate and the company had to go into the hands of a receiver, it would be much better for the company to go into the hands of a receiver with its cash treasury not

absolutely exhausted. . . .

Mr. Fisher: And it was not the idea that the payment of this interest would constitute a preference in the legal sense?

Mr. Miller: No.

This flat denial by the attorney for the St. Paul company that he had set up a legal barrier to the payment of the April 1 interest did not change the record so far as the bankers' lawyers were concerned. The latter submitted to the Commission a memorandum purporting to summarize the evidence before it, and said that Mr. Miller had advised that "it would be improper" to pay the April interest, "as such a payment would amount to an unfair preference."

On the elimination of the claim made by Mr. Hanauer that Mr. Miller's advice had called attention to a binding legal point which defeated Mr. Hanauer's plans, it became apparent that Mr. Miller's view had rested simply on considerations of sound business and financial policy. In this aspect, Mr. Hanauer was dealing with a matter which lay in his own expert field, rather than the lawyer's. As a financial problem it was one which so expert a banker would have been likely to foresee long in advance of a lawyer. Only a few weeks before, Mr. Hanauer had already demonstrated that in determining what was sound business and finance he felt no hesitancy in rejecting proposals by the company's lawyer. The latter had drawn, for the special committee of directors, a refunding plan which Mr. Hanauer had promptly rejected. It was of this plan that he was willing to say publicly that it "was an absolute absurdity, proposed by inexperienced gentlemen." This statement he made in the testimony in which he, at other points, said that he was surprised and his hand was forced by an opinion of Mr. Miller's which turned out to be an opinion on a question of business and not of law.

Long before March 6, the date fixed by Mr. Hanauer as the time when Mr. Miller had first brought up his "surprise" point and precipitated immediate receivership, the legal papers for

putting the railway into receivership had been prepared. President Byram was questioned about this circumstance by Mr. Nathan L. Miller (not connected with W. W. Miller, but representing bondholders opposed to Kuhn, Loeb & Company and the National City Company).

Nathan L. Miller: When was that first prepared?

Mr. Byram: I don't know.

Nathan L. Miller: Who prepared it?

Mr. Byram: Mr. Miller [referring to W. W. Miller, New York attorney for the company].

Nathan L. Miller: You mean to say he did that without your instruction?

Mr. Byram: Yes, sir.

Nathan L. Miller: And haven't you since learned when it was first prepared?

Mr. Byram: No.

The legal papers included a so-called creditor's bill, or legal complaint by a creditor asking that the company be put into receivership. The questions were continued as follows:

Nathan L. Miller: How did Miller come to draw, in advance of the meeting of the 17th, a creditor's bill brought by an unnamed plaintiff against the St. Paul?

Mr. Byram: I think he had a suspicion he might need it.

Nathan L. Miller: You think he drew that bill wholly from suspicion?

Mr. Byram: I think he expected he might need it. Perhaps that is a better word.

Nathan L. Miller: From what did Miller get his suspicion. Do you know?

Mr. Byram: From his discussion with the special committee as to our affairs.

.....

Nathan L. Miller: When did Miller first get that suspicion?

Mr. Byram: Isn't that a ridiculous question?

.....

Nathan L. Miller: Your present view is that he prepared that bill not upon instructions from some responsible official of the road, but because he had a suspicion that it might be needed? Do you want to say that?

Mr. Byram: Yes.

.....

Nathan L. Miller: Now, since you say that your counsel prepared this creditor's bill for an unnamed plaintiff on a suspicion, I now ask you the question which you termed ridiculous: "When do you think he first got that suspicion?"

.....

Mr. Byram: I don't know.

Nathan L. Miller: You have no means of knowing?

Mr. Byram: No. Suspicion is a very hard thing to locate.

Nathan L. Miller: Didn't you yourself use the word "suspicion"?

Mr. Byram: I did, and I want to correct it, and you would not let me. I wanted to say anticipated, rather than a suspicion. It sounds better.

.....

Nathan L. Miller: What word do you want to substitute for "suspicion"?

Mr. Byram: "Anticipate." "Suspicion" is a nasty word, anyway.

Nathan L. Miller: And what do you think led your counsel to anticipate that he would need to have ready a creditor's bill to be filed by an unknown plaintiff against his client?

At this juncture the Chicago attorney for the railway, who was attending all the hearings, objected vigorously to a continuation of this line of questioning. After some discussion Commissioner Cox directed that the witness should answer the question, and said:

"This is a very important investigation. It involves the investigation of one of the most important transportation systems of our country. The Interstate Commerce Commission . . . has a very great duty to perform. It has a duty to the banking interests of this country who are financing railroads. It has a duty to stockholders and bondholders of the securities of the railroads. It has a duty to the railroads' managements whose optimism may have led them to do certain things . . . and it has a duty to the public who pay the bill. . . . It is quite essential that we get all the facts. . . ."

Mr. Byram's answer to the question was then given, and the inquiry proceeded.

Mr. Byram: I don't know.

Nathan L. Miller: You did not give him those instructions?

Mr. Byram: No.

Nathan L. Miller: Do you know who did give him those instructions?

Mr. Byram: No.

Nathan L. Miller: Was it a surprise to you on March 17th to find a creditor's bill handed to you?

Mr. Byram: No.

Nathan L. Miller: Was the name of the plaintiff blank when it was handed to you?

Mr. Byram: I don't remember.

Nathan L. Miller: When was it decided to fill in the name of the Binkley Coal Company?

Mr. Byram: I don't know.

Mr. Byram's examination continued the next day and included the following:

Mr. Byram: On March 3rd when Mr. Colpitts presented to . . . the special committee . . . his preliminary report, those of us who had charge of that part of the business, the special committee, could see that it . . . might lead to a decision on the

part of the board to declare a receivership. Mr. Miller who prepared the bill of complaint, as I said yesterday . . . attended the meetings. He was our counsel . . . and was present at the meetings . . . and I assume from that he did make preparations as a competent lawyer should to prepare for such eventualities as might happen.

.....

Nathan L. Miller: Having thought of it overnight, you now come in and give us this story that it was probably due to what he learned on the 3rd of March?

Mr. Byram: Yes, I assumed you wanted to know, because you asked me yesterday.

Later President Byram went further and, when asked who had drawn the legal papers for the receivership, said: "Mr. Miller says he did." Subsequently some confirmation of Mr. Byram's testimony came from Mr. Shaw, the Chicago lawyer who was called into the case by the bankers' attorneys. He said: "My impression is that I was told it was prepared by Mr. Miller, with some suggestions from Mr. Swaine [the New York attorney for the bankers] . . . but it is not of very great importance, to my mind, by whom it was prepared."

A curious circumstance brought the facts to light and indicated that the papers had been drawn, not by Mr. Miller, but by the bankers' lawyers who had prepared them a considerable time before Mr. Colpitts made his report and before Mr. Miller called attention to the business wisdom of not paying the April 1 interest charges. Investigators of the Commission found, in the files of the railway company's receivers, the bill of the New York printer who had printed the legal papers. This bill showed that they were first printed in January. The bill was sent by the bankers' attorneys to the Chicago lawyer for the railway company, the same lawyer who later protested against the continued questioning of Mr. Byram on this subject. The lawyer had promptly approved the bill for payment by the receivers, and

they had paid it.

The fact that the bankers' lawyers had drawn the legal papers and had them printed was finally cleared up when Mr. W. W. Miller went on the witness-stand. The company's Chicago lawyer, Mr. Dynes, had said that, next to himself, Mr. Miller knew more about the starting of the receivership than anybody else. Mr. Miller refused to have any traffic with the suggestion that he had drawn the legal papers on which the railway was put into receivership, just as he refused to fall in with the testimony that he had precipitated the company into receivership by forcing the bankers' hand. He testified that the legal papers were first prepared and printed by the bankers' lawyers, and he did not learn of this until several weeks after the bankers' attorneys had made these preparations.

Mr. Hanauer denied that he had any knowledge of this advance activity by his lawyers. He learned of it, he said, from Mr. Fisher, one of the directors, himself a lawyer, who denied that he had anything to do with preparing the legal machinery for the company's receivership. Mr. Hanauer was asked about this repeatedly, and on the last occasion of such questioning the following appeared:

Mr. Anderson: . . . could you tell me at whose suggestion the bill of complaint was prepared?

Mr. Hanauer: No. . . . If you want an opinion I am perfectly willing to give it, but I cannot testify from real knowledge.

Mr. Anderson: Suppose you give the opinion. I have no doubt you know from pretty reliable sources?

Mr. Hanauer: I do. . . . After I heard from Mr. Fisher, I spoke to our counsel. Whether it was Mr. de Gersdorff or Mr. Swaine I cannot remember at this time. And they said to me, "We would be fine counsel if at the last moment no preparation had been made for eventualities. We have had too much previous experience in other things."

Mr. Anderson: So they prepared the bill [of complaint], so far as you know, without any instructions from you or anybody,

so far as you know?

Mr. Hanauer: Certainly not from me.

Mr. Anderson: Can you tell me whether in the preparation of this bill this distinguished firm were counsel for the St. Paul or for you or for whom?

Mr. Hanauer: So far as I know they were never counsel for the St. Paul.

Mr. Anderson: And you don't know of any other interests than Kuhn, Loeb & Company for whom they were counsel at that time, do you?

Mr. Hanauer: No.

Despite these facts, it was claimed by various witnesses that the decision to put the St. Paul into receivership was not made by the bankers or by anyone other than the board of directors on the afternoon of March 17, some sixteen hours before the court appointed receivers of the road. It appeared, however, that on March 4 Mr. Hanauer said to one of the men whom he wanted to put into the post of receiver: "It is definitely determined that there may be a receivership of the St. Paul." Mr. Hanauer asked him if he would be free to serve as receiver. On March 9 he telephoned to the man he had chosen for chairman of the bondholders' committee (who had gone south on vacation and was unwell) to come back promptly, saying "that the question of receivership was very imminent." About a week before the board meeting, the bankers' lawyers telephoned to their western representative in Chicago to arrange for a receivership there, and the arrangements were made with a judge and others. On March 13 Coverdale & Colpitts submitted their bill for past services and for the work of the next two months in completing their report, and the bill was paid. Mr. Byram and Mr. Colpitts acknowledged that the purpose was to pay the engineers before the receivership. Mr. Colpitts said: "We did not want to become a general creditor," and agreed that he had acted on advance information of the receivership.

Further information bearing on the source of the decision to

put the St. Paul into receivership was obtained from evidence of what took place on March 15, the Sunday before the meeting of the directors. The facts were put on record in the examination of Mr. Shaw, Chicago lawyer, who had been called into the case by the bankers' lawyers a week or more before the St. Paul board voted for receivership. Until Mr. Shaw went on the stand, the Commission's investigation contained no testimony indicating that any meeting such as that of Sunday, the 15th, had taken place. The evidence came out when Mr. Shaw was asked to name the person who employed him to arrange for a receivership of the company.

Mr. Shaw: I was advised by the general counsel of the . . . railway company and also by its eastern counsel, and also by a number of gentlemen who said they represented various groups of security-holders, that the . . . railway . . . would have to be thrown into the hands of a receivership; and I was requested to undertake the work of accomplishing that result, and that I did.

Mr. Grady: . . . Will you give us the names of these various groups of gentlemen . . . ?

Mr. Shaw: I would not undertake to give the names of all of them.

Mr. Grady: Well, give us those that you now recall.

Mr. Shaw: There were present Mr. Miller, eastern counsel . . . also the general counsel of the road; and there were also groups of other gentlemen present.

Mr. Grady: Who were they?

Mr. Shaw: Sir?

Mr. Grady: The general counsel?

Mr. Shaw: General counsel of the Chicago, Milwaukee & St. Paul Railway.

Mr. Grady: H. H. Field?

Mr. Shaw: Yes. And there were various other gentlemen present in the room who represented or claimed to represent various groups of security-holders.

Mr. Grady: Who were they?

BANKERS DECIDE UPON RECEIVERSHIP 101

Mr. Shaw: I would not undertake to give you all of the names. Mr. Freund was one, I think, from the firm of Shearman & Sterling.

.....

Mr. Grady: Well, give us the names of such others as you can now recall.

Mr. Shaw: There was—let me try and think. There was another member of the firm of Shearman and Sterling. . . .

Mr. Grady: Do you know whom they represented?

Mr. Shaw: No, not now. I was told . . . that each group or each class of security-holders of the railroad was represented to a limited extent by gentlemen in that room.

Mr. Grady: And where was this room?

Mr. Shaw: That interview took place in the office of Cravath, Henderson & de Gersdorff, 52 William Street, New York City, in the private room of Mr. Robert T. Swaine. . . .

.....

Mr. Grady: That firm of lawyers . . . are the regular counsel for Kuhn, Loeb & Company?

Mr. Shaw: You will have to ask them, sir, whom they represent.

Mr. Grady: Did they not say that they were, at that conference?

Mr. Shaw: I do not think that was discussed, as to whom they represented.

Mr. Grady: Well, you knew it without it being discussed, did you not? You were advised?

Mr. Shaw: I do not know whom they represented at that particular conference. Furthermore, there was a group of gentlemen gathered together trying to protect this property.

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Mr. Grady: By whom were you first solicited to interest yourself in this matter?

Mr. Shaw: I was requested to go to New York, by telegram.

Mr. Grady: From whom?

Mr. Shaw: And I reached there on Saturday morning.

Mr. Grady: From whom?

Mr. Shaw: I do not know. I think—my recollection is now that it was Mr. de Gersdorff.

Mr. Grady: Yes?

Mr. Shaw: And I met these gentlemen in that room.

Mr. Grady: Mr. de Gersdorff of the firm of Cravath, Henderson & de Gersdorff, telegraphed you to come to New York?

Mr. Shaw: Yes, sir.

.....

Mr. Grady: And you have that telegram, I presume, Mr. Shaw?

Mr. Shaw: I really do not know whether I have or not.

Mr. Grady: Well, will you make a search for it and produce it?

Mr. Shaw: If it seems desirable.

Mr. Grady: Well, we ask for it.

Mr. Shaw: I do not know whether I will have time to look it up or not, but if I do, I will.

Mr. Grady: Well, Mr. Shaw, we will ask you to take the time.

Mr. Shaw: All right, sir. Go ahead.

Mr. Grady: And the Sunday before the receivership you had this conference; and have you now named all of the men whom you can recall as being present at that conference?

Mr. Shaw: I think Mr. Swaine was present. There were a number of other people present.

.....

Mr. Grady: Now, do you remember who suggested at that meeting that it was necessary for this road to go into the hands of receivers?

.....

Mr. Shaw: No, I would not undertake to say.

Mr. Grady: Was it discussed at that meeting?

Mr. Shaw: Oh, yes.

Mr. Grady: And they agreed those were the steps to be taken?

Mr. Shaw: There was no dissent at all of any kind.

Mr. Grady: Well, all those present were desirous of having that done, you mean?

Mr. Shaw: No, I did not say that. I do not know the sense in which you use the word "desirous." All of them seemed to regret the necessity of having to do it.

.....

Mr. Grady: Well, who gave you the directions while you were in New York as to what should be done . . . ?

Mr. Shaw: Nobody. . . . It was up to me to get a receiver appointed for that property. . . .

Mr. Grady: Yes, but who in that meeting directed that that should be done?

Mr. Shaw: I do not recall. It was the common consent of everybody.

Mr. Grady: Mr. Swaine was there representing whom?

Mr. Shaw: I do not think Mr. Swaine took a leading—well, you would have to ask him as to whom he represented.

.....

Mr. Shaw: I said there were a number of gentlemen there, and I said that they represented different groups of security-holders. . . .

Mr. Grady: But those whom you do recall all represented somebody?

Mr. Shaw: I was told that in that room were representatives of all the different classes of security-holders.

The next day Mr. Shaw was questioned by Mr. Prentice, attorney for independent bondholders.

Mr. Prentice: . . . This was a party of serious thinkers, was it not?

Mr. Shaw: A party of gentlemen considering a serious subject.

.....

Mr. Prentice: And you do not know whom they represented, any of them?

.....

Mr. Shaw: I would not undertake to say now who are the various representatives of the various committees. . . .

Mr. Prentice: . . . Who was the representative of Kuhn, Loeb & Company at that party of gentlemen considering a serious question?

Mr. Shaw: I was told at that particular party that Mr. Swaine represented Kuhn, Loeb & Company, but that he had no interest, or they had no interest in the matter at that time.

Mr. Prentice: I see. Were you told that they expected to acquire an interest?

Mr. Shaw: They said they expected to become interested in it later, I was told.

Mr. Prentice: . . . Who was the representative at that party of the National City Bank and the National City Company?

Mr. Shaw: I said I would not undertake to say what particular interests or group of interests, if any, were represented by any particular person or persons there.

Mr. Prentice: Well, you said there was a representative there of Shearman & Sterling.

Mr. Shaw: Mr. Freund. . . . Guy Cary.

Mr. Prentice: . . . And did you know of any other representation by Mr. Cary and Mr. Freund, other than the National City Bank and the National City Company?

Mr. Shaw: I did not even know that they represented the National City Bank at that meeting; I do not know whom they represented, or whom any particular man represented or claimed to represent.

Much later in the investigation Mr. Miller, the New York attorney for the St. Paul company, testified as follows:

Mr. Grady: It was a conference of attorneys of Kuhn, Loeb & Company, the National City Bank and National City Company, and the attorneys for the St. Paul road.

Mr. Miller: Yes, sir, that is correct.

Mr. Grady: Had the attorneys for the various committees been selected at that time?

Mr. Miller: Not to my knowledge.

Mr. Grady: And were any representatives of the firm of Shearman & Sterling there?

Mr. Miller: They were counsel for the National City Company.

Mr. Grady: They were there as counsel for the National City Company, and were any attorneys there representing the men who were subsequently selected as constituting the committees protective of the interests of either stockholders or bondholders?

Mr. Miller: None.

Mr. Grady: And at that meeting you had Mr. Shaw present?

Mr. Miller: Mr. Shaw was present at that meeting.

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Mr. Grady: Do you consider that he was to be compensated by Kuhn, Loeb & Company?

Mr. Miller: I did not give a thought to it.

Mr. Grady: In whose behalf did you think he was sitting in this conference?

Mr. Miller: On behalf of the expected receivership.

.....

Mr. Grady: But for the preliminary work did you understand that he was there at the request of the railway, or at the request of Kuhn, Loeb & Company?

Mr. Miller: He was there, as I understood it, at the request of counsel for Kuhn, Loeb & Company. But I wish you to under-

stand, however, that I entirely approved of the request to have Mr. Shaw come to New York.

No one but the lawyers for the bankers and the company was at the conference. Various directors testified that they had not known of this lawyers' meeting.

Mr. Miller testified further that after the meeting was over, several of the bankers' and company lawyers "left for Chicago that afternoon with copies of the proposed pleadings, there to await advices as to the action of the board of directors of the St. Paul company at a meeting of the board to be held on Tuesday, March 17." On the following day Mr. Swaine told Mr. Miller who the plaintiff in the receivership proceeding was to be.

On the day after that, the St. Paul board met. President Byram denied that the meeting was held to register a decision already made. But he acknowledged that a large part of the time the board was in session that day was devoted to the statement it should issue to the public, telling why the road had to go into receivership. "It seemed to all of us that on such an important item, that the language was rather important to choose," he said. The discussion was brought to a close by one of the directors, former Governor Philipp of Wisconsin. Mr. Byram told the story, as follows:

"When we were trying to choose language which would express the situation without making it too important one way or the other, merely stating the facts, . . . The Governor . . . said; 'I don't see why we should spend so much time choosing language to say you cannot pay your debts.'"

Mr. Hanauer was consulted, prior to March 17, on the language of the statement which the board should issue when it met on that day.

The board meeting adjourned in time to enable Mr. Byram to take the train for Chicago, there to qualify as a receiver of the road when it was put into receivership the next morning.

Mr. Hanauer was questioned in the Commission's investiga-

tion with respect to his part in the making of all arrangements for receivership before the board had met and decided on that step.

He said: "The board of directors do not act by themselves. They have to be called together. And there is no doubt about it that during the period after which Mr. Miller made this statement to counsel we were in constant touch with these gentlemen and the special committee so that the matter could be handled in the best and most public and most proper way. If when the board met on the 17th of March they had come to a different decision, of course, no harm would have been done, but it would have been unfortunate to have had a meeting on March 17 and not to have been prepared with proper action to reassure the security-holders that their interests were going to be taken care of by those who had a real interest in the situation."

Finally, Mr. Hanauer was induced to agree with the many other witnesses who had sooner or later acknowledged that receivership was really a decided matter before the board of directors took (to quote Mr. Hanauer) the "formal action . . . on the 17th of March."

Mr. Anderson: While the board had not met, it was recognized that an immediate receivership would be applied for?

Mr. Hanauer: Yes, sir.

This is not to say that the ordinary members of the board knew that all the arrangements had been made for a friendly receivership. Some of them did not know it even when they met on the 17th and took part in the active discussion about what should be said to the public in explanation of the St. Paul company's bankruptcy.