INVESTIGATION OF RAILROADS, HOLDING COMPANIES AND AFFILIATED COMPANIES

THURSDAY, DECEMBER 9, 1937

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON
INTERSTATE COMMERCE,
Washington, D. C.

The subcommittee met at 10 o'clock a. m., pursuant to adjournment on yesterday, in room 412, Senate Office Building, Senator Harry S. Truman presiding.

Present: Senator Truman.

Present also: Max Lowenthal, counsel to the committee; George Rosier, assistant counsel to the committee; and Lawrence Brown, executive assistant to the committee.

Senator TRUMAN (presiding). The subcommittee will come to order.

TESTIMONY OF FREDERICK H. ECKER, CHAIRMAN OF THE BOARD, METROPOLITAN LIFE INSURANCE CO., NEW YORK CITY; TESTIMONY OF MARK W. POTTER, FORMER RECEIVER OF THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.; AND TESTIMONY OF ROBERT T. SWAINE, OF CRAVATH, DE GERSDORFF, SWAINE & WOOD, NEW YORK CITY—Resumed

FACTORS CONTRIBUTING TO THE ST. PAUL BANKRUPTCY IN 1935

Senator TRUMAN. Mr. Rosier, you may proceed.

Mr. ROSIER. Mr. Swaine, the Milwaukee Railroad came out of receivership sometime at the beginning of 1928, did it not?

Mr. SWAINE. In January of 1928.

Mr. ROSIER. And in June of 1935, the railroad went into 77, did it not?

Mr. SWAINE. That is right.

Mr. ROSIER. At the time it filed its petition under section 77 the railroad company, or the debtor, also filed a plan of reorganization with the Interstate Commerce Commission? [1]

Mr. SWAINE. It filed it first with the court, and then with the Interstate Commerce Commission.

Mr. ROSIER. That was toward the end of June of 1935?

Mr. SWAINE. My recollection is that it was on July 1, or I believe June 30.

Mr. ROSIER. On June 30, 1935?

Mr. SWAINE. Yes.

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[1] See "Exhibit No. 2280" subsequently introduced, Hearings, Part XVII, p. 7492.

Mr. ROSIER. And hearings were held on that plan before the Interstate Commerce Commission in August of 1935?

Mr. SWAINE. Yes.

Mr. ROSIER. At those hearings, Mr. Swaine, you represented the debtor, I believe?

Mr. SWAINE. Yes.

Mr. ROSIER. In support of the plan?

Mr. SWAINE. Yes.

Mr. ROSIER. Do you recall that in the opening statement you made to the Commission you enumerated certain factors which, as I construe them, contributed to the bankruptcy of the company?

Mr. SWAINE. Well, I remember that I made a statement, but if you have it I would much prefer that you would quote from the statement than that I should attempt to repeat something I said 2 years ago.

Mr. ROSIER. May I state what I believe they were?

Mr. SWAINE. I would prefer that the statement go into the record here as I made it and not as you may construe it.

Mr. ROSIER. Well, I can——

Mr. SWAINE (continuing). If you have it there, why not read from it?

Mr. ROSIER. I will read from it.

The debtor is a product of the reorganization following the receivership, which lasted from 1925 to 1928. * * * Its fixed charges, as a result of the reorganization, had been reduced from something over 20 million dollars to something less than $12,500,000, an amount which was well below the lowest amount which the property had ever earned as the system which it now is, that is, since the Puget Sound reorganization. * * * In the first two years of its operation, it produced remarkable operating results, having income available for interest on funded debt of over 30 million dollars in 1928 and of nearly 30 million dollars in 1929. Its descent from this condition of prosperity was rapid. Its earnings dropped in 1930 to $17,900,000, in 1931 to $9,000,000, and in 1932 to an operating deficit of nearly $300,000.

I am skipping some of this, Mr. Swaine, and if you feel you ought to supply it for the record I will be glad to have it put in. [Reading:]

This decline—

That is, in operating revenues—

forced the board of directors to recognize, after the 1932 operating deficit, that there was at least a possibility that a reorganization of the capital structure would prove necessary. And following that operating deficit the members of the board of directors and the executive officers of the company, and its counsel, had been thinking almost continuously of the problem of the financial structure of the property. That problem was accentuated to the board not only by the failure of income to sustain fixed charges—

And that was one of the difficulties, was it not?

Mr. SWAINE. What do you mean?

Mr. ROSIER. That is, of the failure.

Mr. SWAINE. That was the difficulty.

Mr. ROSIER. That was the principal difficulty?

Mr. SWAINE. That was the difficulty, not——

Mr. ROSIER (interposing). May I continue reading:

That problem was accentuated to the Board not only by the failure of income to sustain fixed charges, but also by reason of the fact that provisions which in the reorganization had been inserted in the mortgages for the protection of the bondholders became a severe burden upon the company.

Mr. SWAINE. They were not contributing causes of the receivership, but they were problems that would have to be taken care of in a reorganization.

Mr. ROSIER. That was the problem which——

Mr. SWAINE (continuing). They had nothing to do with bringing about the 1935 default, but——

Mr. ROSIER (interposing). It had caused a considerable burden upon the company and required some adjustment?

Mr. SWAINE. Not a financial burden up to that time. The burden was prospective at that time.

Mr. ROSIER. At the time you filed your plan in 1935?

Mr. SWAINE. If you are talking about the equipment problem, the burden was still prospective. If you are talking about the cumulative adjustment interest, it had no effect at that time. That was a problem that would have to be taken care of in a reorganization.

Mr. ROSIER. The accumulation of adjustment interest was how much.

Mr. SWAINE. I have forgotten. You have it there, I take it.

Mr. ROSIER. Reading from the statement you made:

The third concern was the piling up of the adjustment mortgage bond interest, which by July 1, 1935, had reached the sum of $47,500,000 due.

Does that refresh your recollection?

Mr. SWAINE. If I said that that day, then I knew it that day and it was probably right.

Mr. ROSIER. Mr. Swaine, is it your opinion that the accumulation of 47½ million dollars on July 1, 1935, on the adjustment bonds, would have had to be taken care of in some way?

Mr. SWAINE. It would not have had to be taken care of until 1975.

Mr. ROSIER. Which was the maturity date of the bond issue?

Mr. SWAINE. Yes. And if earnings had come back that would not have been a problem. You have raised the question, and it has been raised here several times, and, Senator Truman, you have repeatedly stated that the purpose of this investigation is to get facts——

Senator TRUMAN (interposing). That is true.

Mr. SWAINE. Then I am going to take that statement at its face value, and I will go on and give some data that I think you should have as a part of your record. You have asked me what was the cause of this receivership, and I think I am entitled to make a statement in the light of the innuendoes——

Mr. LOWENTHAL (interposing). Mr. Swaine, how long will that statement take?

Mr. SWAINE. I do not know how long, but it will be largely in statistical form.

Mr. LOWENTHAL. Will it take as much as half an hour in time?

Mr. SWAINE. I do not think so.

Mr. LOWENTHAL. Well, now——

Mr. SWAINE (interposing). I think this should go in.

Senator TRUMAN. Very well. Put that in the record. I want to hear it.

Mr. SWAINE. Senator Truman, I think fairness requires that I be allowed to state what that situation was, especially in the light of all the accusations that have been made or inferred that the receivership resulted from an improper capital structure

Senator TRUMAN. You may proceed, I said.

Mr. SWAINE. All right. The St. Paul Railroad, beginning in 1910 and down to the date of the 1925 receivership, had income available for interest in these amounts: in 1910, $30,000,000; in 1911, $32,000,000; in 1912, $24,000,000; in 1913, $33,000,000—and you will understand that I am only reading millions of dollars, while there were hundreds of thousands of dollars following. But I want to conserve time by speaking in round figures.

Senator TRUMAN. You will put that document in the record, will you?

Mr. SWAINE. Yes; so that you may have the exact figures. I will say that this statement shows gross revenues, operating expenses, taxes, total operating expenses and taxes, income available for interest on funded debt—matured and unmatured—and fixed interest on funded debt.

Now I will go ahead with the figures where I left off: In 1914, $28,000,000; in 1915, $26,000,000; in 1916, $32,000,000; in 1917, $21,000,000; in 1918, $23,000,000; in 1919, $24,000,000; in 1920, $22,000,000; in 1921, when the road came out of Federal control and had had imposed on it the expenses the Director General had put on, $5,000,000——

Mr. LOWENTHAL (interposing). Mr. Swaine, have you been sworn?

Mr. SWAINE. Yes, I have.

Mr. LOWENTHAL. All right.

Mr. SWAINE. And in 1922, $12,000,000. And what I say is the truth without my being sworn, I will say, Mr. Lowenthal.

Mr. LOWENTHAL. All right.

Mr. SWAINE. And in 1923, $19,000,000; and in 1924, $18,000,000; and in 1925, $16,000,000; and in 1926, $18,000,000; and in 1927, $14,000,000.

Now, it was in the light of that earnings record, and I have not averaged these figures, but I dare say the average is well above $20,000,000, and that 1925 plan as originally drawn contemplated but about $10,000,000 of fixed charges, and as modified by the Roosevelt committee it contemplated fixed charges of under $13,000,000. And if you have been following the figures you will see that the earnings record shows that the fixed charges under the 1925 plan, were earned in every year except the year when the property came out of Federal control, and the year immediately following, when there was a very slight deficit.

Now, the first year after the property came out of the 1925 reorganization, 1928, the earnings were $30,000,000; and in 1929 they were $29,000,000; and in 1930 they were $17,000,000; and in 1931, $9,000,000; and in 1932 there was an operating deficit. Then they went back in 1933 to $8,500,000; and in 1934 to $7,000,000; and dropped again in 1935 to approximately $4,000,000.

Now, that is the record of net earnings available. And if you will look at the matter of gross earnings in comparison with income available you will see that in 1916 the property had $105,000,000, out of which it saved $32,500,000 for interest. In 1936 the property had $109,000,000, and was able only to return $11,000,000 for interest. In 1937, estimating November and December, because we have not got the actual figures yet, the gross is $108,000,000, and we are able to take down for income available for interest, only $7,000,000.

Now, just so that you can visualize that a little better, I have put it in graph form, and I think any fair-minded man who will look at that graph will see two things: First, that the 1925–28 reorganization was a conservative reorganization in the light of the earnings record; and, secondly, that the reason why this property went into receivership was the state of facts following 1929 which no human being could possibly have contemplated in the period from 1925 to 1928. This graph shows a line of gross revenues, and it shows a line of expenses. So that by taking the difference between expenses and gross revenues, you will see the income available for interest.

At the bottom I have traced out on the graph income available for interest, and I have also shown three sets of lines: the first line showing fixed charges up to the 1925 receivership; and, secondly, a line showing fixed charges under the plan as it was finally consummated in the 1928 receivership; and the third line shows the proposed fixed charges under the 1935 plan.

Since the committee says it wants facts, I should like very much to have both the graph and the statistical table I have furnished, made a part of the record at this point.

Senator TRUMAN. That will be done.

(The documents referred to were marked "Exhibits Nos. 2044 and 2045" and are included in the appendix on p. 7086 and facing p. 7090.)[1]

Senator TRUMAN. You may now proceed, Mr. Rosier.

WEAKNESS OF CAPITAL STRUCTURE SET UP IN 1925 PLAN—BANKERS' KNOWLEDGE THEREOF

Mr. ROSIER. Mr. Ecker, there has been some testimony on this record, to the effect as I understand that testimony, that if it had not been for the modification resulting from the compromise with the Roosevelt-Iselin group of security holders, the company might have been able to stay out of bankruptcy, at least up to the present time.[2] Am I correct in that statement?

Mr. ECKER. That statement has been made, and I am in accord with it.

Mr. ROSIER. Those modifications resulted in the fixed charges of the company being increased by the sum of $2,300,000?

Mr. ECKER. Increased by $2,300,000 a year.

Mr. ROSIER. You were at the time of those modifications the chairman of the bondholders' protective committee?

Mr. ECKER. Yes.

Mr. ROSIER. That was the most important protective committee in the 1925–28 reorganization, was it not?

Mr. ECKER. It was an important one, certainly.

Mr. ROSIER. Wouldn't you say it was the most important one?

Mr. ECKER. I would say so; yes, sir.

Mr. ROSIER. It included among its members representatives of Kuhn, Loeb & Co. and the National City Co., Mr. Hanauer, and Mr. Charles Mitchell?

Mr. ECKER. It had those, and in addition to them it had representatives of institutions which were the largest bondholders.

[1] See also supplemental statement submitted by Mr. Swaine, Hearings, Part XVII, p. 7230, printed infra, p. 7088, as "Exhibit No. 2257."

[2] See supra, p. 6791; also Hearings, Part XV, p. 6635.

Mr. ROSIER. Mr. Ecker, your committee consented to the modifications of the plan in November of 1925, did it not?

Mr. ECKER. If that is the date; yes; the committee did consent reluctantly.

Mr. ROSIER. Did you at that time consider the effect that the modifications would have on the capital structure of the new company?

Mr. ECKER. We did. I say, we accepted it reluctantly, but on the basis of the past earnings of the property, as has been testified to here by Mr. Swaine, the committee felt justified in accepting it, and together with the reports that had been made to us by well-known experts whom the committee had engaged to study the property and to make forecasts of what the earnings would be in their judgment.

Mr. ROSIER. Who were those experts?

Mr. ECKER. Coverdale & Colpitts.

Mr. ROSIER. Did you consult them at the time this modification was made as to whether or not there was an adequate margin of safety if the fixed charges of the railroad were jacked up by $2,300,000?

Mr. ECKER. I have no doubt we did, but I could not testify to it now.

Mr. ROSIER. Do you recall that at the time you promulgated the original plan in June of 1925, that Coverdale & Colpitts wrote a letter which was included in the plan itself?

Mr. ECKER. Well, if it is there of course I accept it.

Mr. ROSIER. It is in the plan, as I think you will find on page 23, Mr. Swaine.

Mr. SWAINE. Of the original plan?

Mr. ROSIER. Yes.

Mr. SWAINE. Yes; I now find it.

Mr. ROSIER. Mr. Ecker, would you take a look at the plan and follow me?

Mr. ECKER. All right.

Mr. ROSIER. On page 24, you will note, next to the last full paragraph—and, incidentally, this letter is dated June 1, 1925, at the time when the original plan was promulgated.

Mr. ECKER. Yes.

Mr. ROSIER. I quote from it:

> We have carefully studied the plan of reorganization which has been prepared by you. In our opinion, in the light of the knowledge which we have acquired of the whole situation, it adequately meets the financial problems of the St. Paul system.
>
> It is apparent that the first requisite of any plan of reorganization must be to provide a means for financing these necessary capital expenditures and to bring the fixed interest charges well within the prospective earnings. These ends the plan accomplishes—

And then it goes on to describe them as you will see.

Mr. ECKER. Yes.

Mr. ROSIER. Do you know whether Coverdale & Colpitts were approached in November of 1925, at the time the modifications were made, to write a similar letter with respect to the charges proposed under the modifications to the plan?

Mr. ECKER. I have no recollection of it. They may have or may not have been. I assume that it was a matter of so much importance it was discussed with them.

Mr. ROSIER. You do not know whether they were asked to write a letter about that?

Mr. ECKER. I do not.

Mr. ROSIER. This document which I have in front of me and which is called, "Plan and Agreement, dated June 1, 1925, with modifications of plan dated November 19, 1925,"[1] is one complete document, containing both the original plan and letter of Coverdale & Colpitts, and the modifications of the plan that occurred in November of 1925. It contains no subsequent letter of Coverdale & Colpitts with regard to the modifications, does it?

Mr. ECKER. I assume it does not if it is not there.

Mr. ROSIER. Mr. Swaine, do you know whether it contains a letter on that subject from them?

Mr. SWAINE. I do not know. I have not looked for it, but I do find a statement on page 2 of the modifications:[2]

> That the reorganized company should have moderate fixed interest charges and a financial structure that will enable it to raise the money from time to time required for capital purposes—

and so on. And following down I find:

> All these requisites are met by the modified plan. Under the modifications, the position of the financing mortgage is unchanged. While fixed interest charges are increased by $2,309,508, they are well within present earnings as well as the lowest estimates of future earnings.

Mr. ROSIER. But there is no letter from Coverdale & Colpitts on the modified plan?

Mr. SWAINE. I cannot tell you whether Coverdale & Colpitts wrote a letter or not. I know that Mr. Colpitts was consulted, but whether he wrote a letter or not you would know better than I.

Mr. ECKER. Is there an estimate of earnings in the record, Mr. Swaine?

Mr. SWAINE. I do not know. Since you went into this matter and say you want the facts, I think it would be well to make the report of Coverdale & Colpitts a part of your record.

Mr. ROSIER. We think it is too large.

Senator TRUMAN. We can take it by way of reference, and the committee when it meets will consider it, and if they think it should be done they will order it done. You may proceed, Mr. Rosier.

Mr. ROSIER. Mr. Ecker, do you know how long prior to the actual date when the modifications were agreed on—and they were agreed on, as you will note from the plan, a copy of which you have before you, on November 19, 1925—do you know how long before that the negotiations were going on between your committee and the reorganization managers and other committees, and the Roosevelt-Iselin committees? Would it be matter of a month or 2 months?

Mr. ECKER. I wouldn't attempt to say how long, but there had been negotiations.

Mr. ROSIER. Mr. Chairman, I should like to offer for the record at this time a telegram from Mr. W. W. Colpitts to W. H. Coverdale, dated November 3, 1925.

Senator TRUMAN. It will be received in evidence.

(The telegram referred to was marked "Exhibit No. 2046" and is included in the appendix on p. 7090.)

[1] Subsequently entered as "Exhibit No. 2280" Hearings, Part XVII, p. 7492.
[2] Ibid.

Mr. ROSIER. Would you say that at the time you were considering the modified plan, or may I read this in order to refresh your recollection [reading from "Exhibit No. 2046"]:

> Preliminary study of change in St. Paul plan leads me to believe it will weaken plan in that safeguard against lean years will be lessened unless offset by rate increases, which of course problematical. Will study change further today and wire a definite opinion later. Expect to arrive office Thursday.

I am sorry that I haven't an extra copy of this telegram to furnish you.

Mr. ECKER. I have heard it read.

Mr. ROSIER. Had you seen a copy of that telegram before today?

Mr. ECKER. No.

Mr. SWAINE. It must be obvious that it weakened it, and Mr. Ecker so testified 2 weeks ago. Of course it weakened it to add $2,300,000. Everybody was reluctant to have that weakening, but the fact that it was weakened does not mean that it made it weak.

Mr. ROSIER. May I read from a memorandum by G. W. Burpee to Mr. Colpitts, dated November 4, 1925? Mr. Chairman, I am only going to read an extract from the memorandum, but am offering the entire memorandum for the record.

Senator TRUMAN. The memorandum will be received in evidence.

(The memorandum referred to was marked "Exhibit No. 2047" and is included in the appendix on p. 7090.)

Mr. ROSIER. I read as follows:

> I am attaching copy of a memorandum on the results of the proposed modification of the St. Paul Reorganization Plan. This memorandum was prepared after considerable discussion with Mr. Coverdale. You will notice from the conclusion in paragraph 9, that I have not attempted to state any categorical conclusion.
>
> I talked to Lewis Strauss——

He was a partner in Kuhn, Loeb & Co. was he not, Mr. Swaine?

Mr. SWAINE. I do not think he was a partner in the firm.

Mr. ROSIER. Is he the Mr. Strauss who is a son-in-law of——

Mr. SWAINE (interposing). It is pronounced S-t-r-a-u-s-s.

Mr. ROSIER. Well, is he a son-in-law of Mr. Hanauer?

Mr. SWAINE. That is right.

Mr. ROSIER. I continue reading:

> I talked to Lewis Strauss, on the telephone this morning, and told him that you expected to be in the office tomorrow. Kuhn, Loeb & Company realize that the proposed modification will seriously weaken the plan but wish Coverdale & Colpitts to say whether the plan is likely to fail on account of the proposed modification. It looked to Mr. Coverdale and me, after going through these figures, as if they might get away with the change, although it greatly reduces the margin of safety. Mr. Kahn will, undoubtedly, want to talk to you about this before you write the letter and Mr. Strauss will probably expect to hear from you sometime tomorrow. Kuhn, Loeb are, of course, extremely anxious that no inkling of this get outside but rumors have already appeared in the press.

Mr. Ecker, were you at one time in 1925, at or about the time that the modifications were being discussed, in November of 1925, were you aware of this memorandum or of any opinion from Coverdale & Colpitts to the effect contained in this memorandum, namely, that the modifications would result in a weakening of the plan, or to quote: "will seriously weaken the plan" and "they might get away with the change, although it greatly reduces the margin of safety?"

Mr. ECKER. I have no recollection of having information of these specific statements. But I cannot see how they could do otherwise than say it would weaken the plan.

Mr. ROSIER. Mr. Ecker, the reference is "to seriously weaken the plan." And, again, that "they might get away with the change"——

Mr. SWAINE (interposing). Wait a minute, Mr. Rosier. This is an interoffice Coverdale & Colpitts memorandum, as is shown, so how could we know about it? If you have a further memorandum, why don't you bring it out? If there is any such memorandum it will best show what Coverdale & Colpitts, the authoritative people, knew about it or said.

Mr. ROSIER. Mr. Chairman, may I state that I have been unable to find any memorandum on the agreement following this memorandum, and I assume therefore that there is no such memorandum on the modifications of the plan, that there was not any memorandum written. But if you can supply the subcommittee with a copy of such memorandum, Mr. Swaine, I would be glad to have it. Incidentally, at this time I should like to state, that Mr. Colpitts, the member of the firm of Coverdale & Colpitts, to whom this memorandum was written—and he wrote the previous telegram—was requested to come to the hearings this week, but he said he had a very pressing engagement in Louisiana, and that on account of that pressing engagement he requested us not to have him down here. It was as a result of that request that we permitted him to remain away from this hearing.

Mr. ECKER. It is my recollection that Coverdale & Colpitts were consulted on everything that you have presented, and this seems to confirm that.

Mr. ROSIER. But you do not recall that they wrote any letter such as is referred to here. If you will refer to the memorandum you will note that it states [reading from "Exhibit No. 2047"]:

> Mr. Kahn will undoubtedly want to talk to you about this before you write the letter—

Mr. ECKER. I have no recollection of such a letter being written. I do know that they were consulted.

Mr. ROSIER. Do you know whether at any time prior to the actual formation of the new company, in January of 1928, either the Interstate Commerce Commission or the court, or any other body, was informed that in the opinion of the experts who had been engaged by the bondholders' committee, of which you were the head and chairman, that the modifications in the plan would seriously weaken the plan?

Mr. ECKER. I have no such recollection of the word "seriously" being used. I am sure they could not do otherwise than say it would weaken the plan.

Mr. ROSIER. Do you have a recollection that any statement was made that it had weakened the plan, or that the plan was weak, by reason of that fact?

Mr. ECKER. No; it was not weak by reason of that fact. It necessarily weakened it, and it was for that reason we were reluctant to accept the modifications. But we felt justified in doing it because we were desirous of completing the plan of reorganization; there had been a good deal of controversy about it, and it was our judgment, based upon the past earnings of the property and the forecasts made by these experts, that we were justified in the circumstances in accepting the modifications.

Mr. ROSIER. Mr. Ecker, are you familiar with the fact that Mr. Hanauer, sometime in 1926, in testifying before the Senate Committee on Interstate Commerce, and in answer to a question propounded by Senator Couzens, referred to the St. Paul plan—and this was in 1926, after the modifications had been agreed to—as a very sound plan of reorganization?

Mr. ECKER. Of course, I have no knowledge of that.

Mr. ROSIER. Mr. Swaine, you were here I believe sometime in the early part of November, with Mr. Buttenwieser, in connection with the Missouri Pacific matter?

Mr. SWAINE. Yes.

Mr. ROSIER. Do you recall that an excerpt from Mr. Hanauer's statement before the Senate committee was introduced into our record, I believe as "Exhibit No. 1631"? [1]

Mr. SWAINE. I have no recollection of that.

Mr. ROSIER. You say you have no recollection of that?

Mr. SWAINE. No.

Mr. ROSIER. May I state for the record at this time, Mr. Chairman, that that is an exhibit in our record?

Senator TRUMAN. All right.

Mr. ROSIER. Would you say, Mr. Ecker, that you were or were not familiar with that statement of Mr. Hanauer?

Mr. ECKER. I do not recall it.

Mr. ROSIER. Mr. Chairman, I also want to offer for the record an excerpt from a letter written by Mr. W. W. K. Sparrow to Mr. Hanauer, dated December 17, 1925, approximately a month after the modifications had come out.

Senator TRUMAN. It will be received in evidence.

(The letter referred to was marked "Exhibit No. 2048" and is included in the appendix on p. 7093.)

Mr. ROSIER. In this letter Mr. Sparrow states:

> I do not think the tinkering with the plan, while you were away, has strengthened it at all. Giving the disturbed bondholders 20 percent in fixed interest-bearing securities I think has the opposite effect and really does not give the bondholders anything more than they already had. Of course, getting the Roosevelt opposition out of the way has been helpful, particularly in the investigation hearings now taking place.

Senator TRUMAN. Mr. Swaine, I have examined this statistical table. Have you any way of informing the subcommittee what percentage of the operating expense goes to labor, and what expense goes otherwise?

Mr. SWAINE. It is shown on the graph as nearly as I could get it. It is pretty difficult to just pull out the labor. I tried to incorporate that information on one of the lines of the graph, and did it as best I could, but it is an approximation.

Senator TRUMAN. I was just personally interested in it.

Mr. SWAINE. Wages separately are not shown, but I took out items that would not involve that sort of thing, and gave you a line that shows what was most affected by wages. It has other factors there. Answering your question, I thought you would be interested in that, and I tried to get it, but was told it would take 2 months to get it out.

[1] See Hearings, Part XIII, appendix, p. 5819.

Senator TRUMAN. Probably you could get it for us sometime in the future.

Mr. SWAINE. They said it would take a force of men 2 months to segregate wages and just give the wages alone.

Senator TRUMAN. All right. You may proceed, Mr. Rosier.

DIRECTOR POTTER'S CONTENTIONS THAT THE MANAGEMENTS FAILED TO EFFECT ECONOMIES THROUGH COOPERATION AND COORDINATION

Mr. ROSIER. Mr. Potter, you became a director of the reorganized company in 1928, did you not?

Mr. POTTER. Yes.

Mr. ROSIER. The reorganized company, as Mr. Swaine has said, had earnings in 1928 and 1929 which were adequate to meet the interest charges?

Mr. POTTER. I do not recall the figures, but that is my recollection.

Mr. ROSIER. In 1930 do you recall whether the earnings declined?

Mr. POTTER. I do not recall that now.

Mr. ROSIER. You do not know whether the company was able to earn all its interest charges, including fixed and accumulated contingent charges, in 1930?

Mr. POTTER. I would not make a statement in that regard.

Mr. SWAINE. It is all shown on that table I just introduced. I just read the round figures in millions of dollars, but it is shown on that statistical table in complete figures.

Mr. ROSIER. I think the figure you read was about $17,000,000. Would that conform with your recollection, about $17,000,000?

Mr. SWAINE. Yes; something over $17,000,000.

Mr. ROSIER. Assuming that that figure is approximately correct——

Mr. SWAINE (interposing). It is almost $18,000,000, being $17,901,000 and some odd cents.

Mr. ROSIER. That was not a sufficient amount of earnings to meet both fixed-interest charges and cumulative contingent-interest charges, was it, Mr. Potter?

Mr. POTTER. I have no recollection of that.

Mr. SWAINE. It paid 1½ percent that year.

Mr. ROSIER. Isn't it true that both fixed and cumulative interest charges were approximately $22,000,000?

Mr. SWAINE. That is my recollection.

Mr. ROSIER. Mr. Potter, in 1930 do you recall advising with the president or the directors of the board concerning effecting possible economies in the operation of the St. Paul Railroad property?

Mr. POTTER. That subject was up frequently and almost continually at the meetings in one way or another.

Mr. ROSIER. Between what general dates, would you say, Mr. Potter?

Mr. POTTER. Oh, most of the time. Generally, I will say, there was a feeling of concern on my part, at least. I remember that at one time, after having discussed certain policies with the president and not being able to convince him that a certain line of action was required, I did send a communication to the directors on the subject.

Mr. ROSIER. By the president, you mean Mr. Scandrett?

Mr. POTTER. Yes. Some months later I think I sent another one.

Mr. ROSIER. You sent a series of communications, did you not?

Mr. POTTER. Yes; I think, finally a third, all of which you have. I do not remember the dates. I think I have them here with me, as a matter of fact.

Mr. ROSIER. By the way, Mr. Potter, do you recall that sometime in 1927, while you were still receiver of the property, but before you became a director of the reorganized company, the Chicago, Milwaukee & St. Paul opposed a merger or unification project for the Great Northern and Northern Pacific?

Mr. POTTER. The receivers opposed it?

Mr. ROSIER. The representatives of security holders opposed it.

Mr. POTTER. I do not recall at the moment. I recall the subject being up; I do not recall just what was its nature.

Mr. ROSIER. You do not recall whether it was or was not opposed?

Mr. POTTER. It would be a guess, but I would say it was opposed. It seems to me that is my recollection.

Mr. ROSIER. Do you recall whether or not it was opposed, among other things, on the ground that greater economies, or at least as much economy could be effected, if the unification did not go through, by cooperation and coordination between the Great Northern, the Northern Pacific, and the St. Paul?

Mr. POTTER. My recollection is perfectly clear about that now. My recollection is perfectly clear that a policy of cooperation and coordination which could and, I thought, should be accomplished without reorganization would be preferable. If that is what you are trying to get at, that is my recollection.

Mr. ROSIER. Can you tell us just what you mean by cooperation and coordination?

Mr. POTTER. That is a great big job.

Mr. ROSIER. Briefly. Would you say that it would include, for example, consolidation of terminals such as the use of one terminal by several railroads instead of several terminals?

Mr. POTTER. Yes; it would include a great many things. Fundamentally and basically it would have been an arrangement for the division of traffic and earnings, with the idea that the traffic would move irrespective of ownership of lines over that route which made for the greatest economy; and that would take traffic away from certain lines which, under the competitive conditions, were striving for it, and they would have to be compensated for surrendering it. My opinion was, and the results of my study were, that if that policy had been pursued all of the carriers, including those that surrendered traffic, would be very much better off, and in the end the policy would make for enhanced value of securities, better earnings, better wages, and lower freight rates. That was the basic principle. That carried with it, of course, plans with respect to shops. It contemplated that the repairs for all of the lines would be made in the most efficient shops, which would be run at maximum capacity. Expenditures for maintenance and operation of shops would be greatly reduced. It meant that the lines of greatest efficiency and economy would be used preferentially, which, I recall, in our case meant that the St. Paul electrified lines would be used more extensively and with great benefit to all concerned, to an extent that would have proven that the electrification of the St. Paul extension was a good thing for all of the lines; and the policy meant that an enormous amount of disgraceful competitive solicitation for traffic, which is nothing in the world but an effort of one competing line to steal business from another, and then for the other to steal it back, would have been stopped.

Mr. LOWENTHAL. May I interrupt you for just a second there?

Mr. POTTER. Certainly.

Mr. LOWENTHAL. Do I gather that your thought is that the solicitation does not increase the total volume of business for the railroad industry as a whole, but merely results in the shifting of existing business from one road to another, and then back again?

Mr. POTTER. Exactly.

Mr. LOWENTHAL. Thank you.

Mr. POTTER. And it meant that the extravagant display of freight and traffic offices in the large cities would all be shut down.

Mr. LOWENTHAL. Would you briefly indicate what that involves, that kind of display?

Mr. POTTER. You know better than I do. You know that on Fifth Avenue in New York the St. Paul has a very expensive office, which I was largely to blame for. I favored doing it because other lines had them, and we were forced to. On the block above, the Northern Pacific and the Great Northern had offices. Everybody was compelled to go in and do things because the other fellow did. We were compelled to be wasteful and extravagant and foolish because the other fellow was; and there was no cooperation, no intelligent effort being made by the management to stop those crying sins. That is what I had in mind generally.

Mr. LOWENTHAL. There was a reference here a day or two ago to a report by the Federal Coordinator of Transportation transmitting a report of some of the staff on the subject of fiscal agencies, giving some of the smaller economies that might be effected. I wondered if you had had occasion to read that report.

Mr. POTTER. No; I do not think I did. I had it, but I do not think I read it. You say it was dealing with fiscal agencies?

Mr. LOWENTHAL. Yes; a recommendation made to the board and communicated by him to the regional coordinating offices, that the railroads have a jointly established agency operating at cost, instead of paying banks and trust companies in New York for the performance of certain financial services. Perhaps you have heard of the report?

Mr. POTTER. I do not recall it. That is a pretty big question, and I would be glad at some time, at the proper time, to give you my opinion as to such operations. I would not want to do it in a moment.

Mr. LOWENTHAL. I did not want to interrupt you. Proceed.

Mr. POTTER. I think I have answered your question. I could go on for hours.

Mr. SWAINE. We have had our own fiscal agency. We have not employed any bank or trust company as fiscal agents.

Mr. LOWENTHAL. It deals with many things besides that technical term "fiscal agency." It deals with the use of trust companies as mortgage trustees, and so on.

Mr. POTTER. I am willing to admit that I was thought to be a crank, and I think probably the thought was right, on the subject of cooperation and coordination. I got on the bad books of every railroad executive in the United States. The only man who kept me on the railroad and gave me an opportunity to make that fight was Jerome Hanauer.

Mr. LOWENTHAL. Was Mr. Eastman also on the bad books, for some similar reason?

Mr. POTTER. No; I do not think so. I think all the railroads had a lot of confidence in Eastman, and I think they considered at the outset that he was going to do some great things. But the trouble was that at the last moment the Congress put a provision in the coordination bill which stopped intelligent progress and made economics impossible by not allowing reduction in the item of wages.

Mr. LOWENTHAL. Mr. Potter, on the subject of fiscal agencies, if you have time—I do not know whether it would be possible for you to do so, before the hearing on the St. Paul matter is concluded—but we have a copy of that report available if you care to peruse it after the session today.

Mr. POTTER. I would be glad to peruse it at any time, and I will be glad to give you my impression. There is nothing about this railroad situation that I am not willing to talk about and give you my views on. I have been working on this subject for 25 years. I began this idea of cooperation and coordination when I was president of the Clinchfield road and had relations with the Southern Railway, the Atlantic Coast Line, the Seaboard and the Louisville & Nashville. I made suggestions along that line which would have been very constructive and helpful, but I was blocked because the big systems said they could not afford to admit that the little Clinchfield could haul traffic cheaper than they could; and I never got anywhere. I took the receivership of the St. Paul Road mainly for the purpose of getting a chance to have a crack at those practices, and I continued as director for that purpose, and I fought in season and out of season with everybody, particularly with the railroad executives, to that end. About the only support I had was Mr. Hanauer. He could have kicked me off if he had wanted to, but he did not do it.

Mr. LOWENTHAL. Off the board of the St. Paul?

Mr. POTTER. Yes. He did not ask me to go on the board.

Mr. ROSIER. You say he asked you to go on?

Mr. POTTER. No; I did not say he asked me to go on. If this is the proper time I would like to put this all in. Probably this is not the proper time for it. But I wish, after you get through, you would give me an opportunity to tell you about the railroad picture as I saw it.

Senator TRUMAN. We would be glad to have that.

Mr. POTTER. I would like very much to do it. With that understanding, I will just answer your questions as briefly as you wish.

Mr. ROSIER. At any rate, you did send a series of letters to President Scandrett and to other members of the board concerning your views on what could be effected and should be effected by way of cooperation and coordination?

Mr. POTTER. Yes.

Mr. ROSIER. Those letters, would you say, were sent as early as 1930 and 1931?

Mr. POTTER. The first one here was sent April 23, 1931.

Mr. ROSIER. I have here a letter dated December 15, 1930. Perhaps you have not a copy of that letter. Just to fix the date I will offer that letter into evidence. Those are excerpts from the letter that you have there.

Mr. POTTER. I remember, now, writing that letter, and it was because Scandrett and I did not agree that I wrote to my directors. That is a fact.

Senator TRUMAN. The letter will be received in evidence.

(The letter referred to was marked "Exhibit No. 2049" and is included in the appendix on p. 7093.)

Mr. LOWENTHAL. That is regarded as entirely proper practice, is it not, for one of the directors to communicate with all the others as to his views?

Mr. POTTER. Oh, I think that would be a director's right and, perhaps, duty.

Mr. ROSIER. I have offered the entire letter for the record.

Mr. POTTER. I did not stop to consider proprieties very much. I wanted results, and I think it was all right.

Mr. LOWENTHAL. I think you are right, Mr. Potter.

Mr. POTTER. Thank you, sir.

Mr. ROSIER. Mr. Chairman, I would like to offer into evidence at this point a letter from Mr. Potter to Mr. Scandrett dated May 25, 1931, on this general subject. I will offer the entire letter into evidence and read certain excerpts from it.

Senator TRUMAN. The letter will be received.

(The letter referred to was marked "Exhibit No. 2050" and is included in the appendix on p. 7096.)

Mr. ROSIER. I will read from the third paragraph [reading]:

> I do not want to be regarded as riding too hard. I am much concerned over the present situation. If I could feel that good times were going to return speedily, I would not be so perplexed. I am apprehensive that net earnings are going to remain down for a long period—

This was in May 1931, that you wrote this letter, Mr. Potter?

Mr. POTTER. Yes.

Mr. ROSIER [continuing reading from "Exhibit No. 2050"]:

> a period through which certain carriers may not be able to live and so long as even to menace the financial structure of the Milwaukee. If there is anything I can do, I want to do it. I perhaps have a desire to get in the clear and be in position to say I did all I could.

Mr. POTTER. Why not read the next sentence, while you are reading?

Mr. ROSIER [reading]:

> I really believe a legitimate desire to be helpful is my most important impulse.

You felt very seriously about this problem, did you not, Mr. Potter?

Mr. POTTER. Indeed I did.

Mr. ROSIER. You felt that this was the only way in which the railroads, and the Milwaukee, could keep alive through the depression period which you foresaw at that time might continue for a long time?

Mr. POTTER. Yes; and what I suggested for a long time had been, then was, and now is, and always will be the problem; and whether the railroads live or die economically depends upon how that very question is going to be worked out. And on that point I think, Senator, that your committee is the last hope for the carriers.

Senator TRUMAN. I hope we can arrive at some solution. That is why we are trying to get information.

Mr. POTTER. I would like to help you, and I think I can if you will give me that opportunity.

Senator TRUMAN. We will give you that opportunity.

Mr. ROSIER. Mr. Potter, at or about that time the carriers were applying for a rate increase, were they not?

Mr. POTTER. Yes.

Mr. ROSIER. You did not feel at that time that the carriers were doing all they could in the way of paring down expenses, did you?

Mr. POTTER. I certainly did not.

Mr. ROSIER. And you felt the same thing was true of the Milwaukee, of which you were a director?

Mr. POTTER. Yes; and of every other railroad in the United States, particularly the strong railroads who did not need any help.

Mr. ROSIER. Mr. Chairman, I would like to read from a letter from Mr. Potter to Mr. Pierpont V. Davis, dated January 12, 1931, and introduce the entire letter into the record.

Senator TRUMAN. The letter will be received.

(The letter referred to was marked "Exhibit No. 2051" and is included in the appendix on p. 7098.)

Mr. ROSIER. Who is Mr. Davis, Mr. Potter?

Mr. POTTER. Mr. Davis then was a vice president of, I think, the National City Co., which was one of the companies in the National City Bank outfit. He was the man who went along in the reorganization work in a manner somewhat similar to that in which Mr. Hanauer functioned for Kuhn, Loeb & Co. The two institutions were joint managers.

Mr. ROSIER. I would like to read excerpts from the letter, of which you have a copy in front of you, Mr. Potter, beginning on page 2, the last two paragraphs [reading from "Exhibit No. 2051"]:

> I believe that within their proper function railways operating with proper cooperation can meet the competition of other facilities and survive with increasing prosperity. Critics of railroads, who are clamoring for lower rates, really could say more than they do say if they knew what to say and how to say it.

Mr. LOWENTHAL. From what portion are you reading now—on the first or second page?

Mr. POTTER. It is on the second page.

Mr. LOWENTHAL. Where on the second page?

Mr. POTTER. Next to the last paragraph.

Mr. LOWENTHAL. Thank you.

Mr. ROSIER (continuing reading from "Exhibit No. 2051"):

> There is a lot in the notion that with proper management present rates are not too low but in fact are too high, and that with proper management even lower rates could be put into effect while a fair return would provide for all. You aptly say that present conditions "present a challenge to railway management."
>
> Some time or other the facts will come out. If they are not recognized and corrected by the carriers, they will be discovered by others and other means to correct them will be found. Carriers can be managed privately with proper coordination. If they do not so cooperate, I believe government ownership will be the inevitable end; and disliking government ownership and disbelieving in it as I do, I have become convinced that under government ownership the roads can be operated more successfully than they are being operated today.

Mr. Potter, what is it that the public does not know, that you know, that is referred to in that letter? Will you just straighten us out on that?

Mr. POTTER. I can give you a brief answer, but I would like to go into it more fully that I can at this time.

Senator TRUMAN. We want you to go into it fully; but make your answer as brief as you can.

Mr. POTTER. I had in mind the general inefficiency of the railroads in their collective relation in matters of operation. The railroads individually were operated with greater skill than at any time theretofore. We had more skillful and competent railroad managements than we ever had for an individual property. We had better management than we ever had. But in the collective relation, and taking the industry as a whole, the railroad industry, in my judgment, is more inefficiently operated than any other industry in the country, with the possible exception of the bituminous-coal industry. That is what I had in mind.

I have not tried to be a reformer, and when anybody has asked my opinion he has gotten it, and it has been that. You will observe that this letter was written because of the reason shown in the first paragraph, in which it is stated [reading from "Exhibit No. 2051"]:

> It was very kind of you to send to me your letter of the 9th, inclosing a study which you have just completed.

Except for the receipt of his letter, my letter would probably never have been written.

Mr. LOWENTHAL. Mr. Davis himself was not a member of the St. Paul board, was he?

Mr. POTTER. No; he was not a member of the St. Paul board, but he was very happily referred to by Mr. Scandrett as a sort of an ex-officio member.

Mr. LOWENTHAL. He was an official of the company which had been one of the two reorganization managers in the 1925–28 reorganization?

Mr. POTTER. Yes. May I just say one more word right there?

Mr. LOWENTHAL. Yes.

Mr. POTTER. I was sorry to see the criticism of that reference, "ex-officio director." This was the fact. The National City Co. and the Kuhn, Loeb outfit had been the spokesmen, as it were, for the various committees. Someone had to be the head and lead. After conference with these various committees the reorganization plan was worked out and put into effect. Those two concerns had a lot of responsibility. When we came to operate under that plan, I, as a director, was very eager to keep their feet in the water just as far as I could, and I was delighted to have them sit in and help us carry the responsibility. And that is all they did.

Senator TRUMAN. Do you believe that this same situation would apply to the present application for rate increases?

Mr. POTTER. Do I what?

Senator TRUMAN. Do you believe that the situation referred to in this letter of yours, of January 12, 1931, would apply to the present application of railroads for a rate increase?

Mr. POTTER. I want to be guarded in answering that. I will answer it this way. The need for cooperation is just as present; the resulting wastes are just as great. Whether, notwithstanding that fact, there is need for a rate increase I am not in position to determine. Whether it is feasible to bring about this coordination promptly, particularly with the present attitude of the Congress toward labor, particularly with this—I don't know how to characterize it with an adjective, but this influence that labor has with Congress—whether it is possible to do the right thing, I do not know. I have a very distinct idea as to what ought to be done, but I do not want to judge the other fellow; I do not want to blame the Congress or the Commission. It may well be that there is need for a rate increase. But I do say that in my judgment if the right policies had been pursued in the past you would have had a gradually descending rate basis instead of an increasing one.

Mr. LOWENTHAL. Apart from the problem of labor to which you refer, there are economies such as those that I think you mentioned, by way of illustration, economies in solicitation, whether those would increase in a smaller or larger amount, could they not be put into effect anyway?

Mr. POTTER. No; they could not. Theoretically they could, but they could not, practically, for this reason. Under the present competitive system every road management has upon it its duty to fight for business. It cannot voluntarily surrender to some other line. It cannot shut its doors or reduce its activities; and it never can unless and until you have agreements for the routing of traffic and for the division of earnings, which will accomplish all the savings and, at the same time, take care of the lines which need revenue. The trouble of it is inefficiency, extravagance, and waste. You have got to tackle those problems, and you will never get anywhere until you do.

Senator TRUMAN. Proceed.

Mr. ROSIER. Mr. Chairman, I would like to offer for the record a letter from Mr. Potter to each member of the board of directors of the Milwaukee, dated May 18, 1932, and I would like to read certain extracts from it. Do you have a copy of that, Mr. Potter?

Mr. POTTER. Yes; I have.

Mr. ROSIER. This letter is addressed to each member of the board of directors, is it not?

Mr. POTTER. Yes.

Senator TRUMAN. It will be received.

(The letter referred to was marked "Exhibit No. 2052" and is included in the appendix on p. 7101.)

Mr. ROSIER [reading]:

I have felt that perhaps I had pressed too hard to bring about reforms that would be beneficial to our company, and that I would make no further effort. At the moment, however, I have a feeling that I am not justified in abandoning the cause.

There is a rule of law to the effect that where directors are guilty of neglect in failing to perform their duties, they may be held liable to the corporation for damages in suits brought by stockholders on behalf of the corporation. It is so clear to me that there is a lot that can be done to forestall disaster and prevent loss to shareholders that I am a bit apprehensive that this rule may be used against us. It certainly puts it up to us to do everything we can.

Mr. LOWENTHAL. Would it be a fair thing to say that that, in effect, said to the directors that if they did not do their job with reasonable care they might be sued for failing so to do?

Mr. POTTER. That was the thought I wanted to bring to their attention; yes.

Mr. LOWENTHAL. Thank you, Mr. Potter.

Mr. ROSIER (continuing reading from "Exhibit No. 2052"):

Some months ago I gave notice that I intended to ask for a joint committee representing the Northwestern lines to study cooperation.

The Northwestern lines are the Great Northern and the Northern Pacific. Were there any others, Mr. Potter, that you had in mind?

Mr. POTTER. Read the sentence again. What was the sentence?

Mr. ROSIER (reading):

Some months ago I gave notice that I intended to ask for a joint committee representing the Northwestern lines to study cooperation.

Mr. POTTER. Now, you ask me what?

Mr. ROSIER. What were the Northwestern lines?

Mr. POTTER. The Northern Pacific, the Great Northern, and, I think I had in mind, the Burlington also.

Mr. SWAINE. And the Chicago & North Western?

Mr. POTTER. The Chicago & North Western; yes.

Mr. ROSIER (continuing reading from "Exhibit No. 2052"):

At the board meeting I deferred pressing the motion for this because there seemed to be a feeling that such action by the board would embarrass the president, and because of the assurance of the president that he would endeavor to bring about the appointment of such a committee, and that he could do as much without the resolution as with it.

What was the meaning of the reference to the possibility of embarrassing the president, Mr. Potter? Do you recall? Why would the action of the board in passing a resolution for the appointment of a joint committee embarrass the president?

Mr. POTTER. I hardly know how to answer that. I think probably I felt that if the board took it into its hands and that for him to go to the other lines and say, "The board has directed me to do so and so" would not be as pleasant to him as to go to them, as it were, of his own initiative and suggest it. That was the thought I had in mind.

Mr. SWAINE. May I interpolate here?

Senator TRUMAN. Yes.

Mr. SWAINE. I think Mr. Scandrett at that board meeting said he already had numerous conferences with Mr. Kenney and Mr. Donnelly——

Mr. ROSIER. Who were they?

Mr. SWAINE. They were the two presidents of the two northern lines looking toward this very study; and, as Mr. Potter will remember, the study was made.

Mr. ROSIER. Mr. Potter, this letter is dated May 18, 1932, almost a year and a half after the first letter which I put into the record, dated December 15, 1930, was written?

Mr. POTTER. The one to Scandrett?

Mr. ROSIER. Yes. This particular letter of May 18, 1932, was written about a year and a half after the first letter which I introduced this morning?

Mr. POTTER. Being the letter addressed to Mr. Scandrett?

Mr. ROSIER. Yes.

Mr. POTTER. Yes.

Mr. ROSIER. Did you feel at the time you wrote this letter that any serious or genuine efforts had been made to effect economies by cooperation and coordination up to that time, May 1932?

Mr. POTTER. I would not say that I did not think any serious efforts had been made; no. I think Mr. Scandrett was handling the matter as he thought it ought to be handled. I even contemplated the possibility that he might be right about it. But I felt there was not enough being done. That is why I wrote the directors. I was more alarmed than Scandrett was. Scandrett had a feeling that good times were coming back and we ought not to press too hard, and that the thing to do was to maintain cordial relations and be tactful, and in the end all would turn out right. He was not so apprehensive as I was.

Mr. ROSIER. Mr. Potter, in 1932, you may recall—and I believe Mr. Swaine so testified this morning—the company had an operating deficit?

Mr. POTTER. I do not remember.

Mr. ROSIER. Is that correct, Mr. Swaine?

Mr. SWAINE. That is correct.

Mr. ROSIER. I believe that is shown on Mr. Swaine's graph.

Mr. SWAINE. It is shown on both the graph and the table. The red line goes above the black lines.

Mr. BROWN. Not in 1932.

Mr. SWAINE. Yes; up at the top [indicating].

Mr. ROSIER. Mr. Chairman, I would like to introduce into evidence a letter from Mr. Potter to Mr. Swaine dated June 1, 1932.

Senator TRUMAN. It will be received.

(The letter referred to was marked "Exhibit No. 2053" and is included in the appendix on p. 7104.)

Mr. LOWENTHAL. As I read the excerpts from your letter of May 18, 1932, to all the directors of the road, you seemed to have the opinion that the operation of the roads under the Director General had proven desirable in certain respects, as shown in certain desirable practices and lessons, and had not been really the failure that it has sometimes been called. Is that a fair inference?

Mr. POTTER. It would be hard for me to speak approvingly of the Director General's handling of the railroads, but I did feel that there was a whole lot of virtue in certain things he did, that he ought to be credited with. I did not think that the handling of the roads by the Director General at all indicated that the railroads could not be run by the Government.

Mr. LOWENTHAL. I was thinking of the sentence on the second page of these excerpts, in which you say [reading from "Exhibit No. 2052"].

Make no mistake about it, a Director General can run the roads far more efficiently than they are now being run.

Mr. POTTER. Yes. I say that right now, with very great emphasis.

Mr. LOWENTHAL. Thank you, Mr. Potter.

Mr. POTTER. But I would not say it can be done with the kind of Director General that we had then, working in an atmosphere of politics and political ambition.

Mr. LOWENTHAL. What did you think of Mr. Eastman's suggestion on that general subject?

Mr. POTTER. I do not recall that. What was it?

Mr. LOWENTHAL. Well, perhaps that is getting a little far afield. We will perhaps come back to that later.

Mr. POTTER. It would be hard for you to get any criticism of Mr. Eastman out of me; and yet Commissioner Eastman has very decided limitations when it comes to handling railroad problems. He ought to have a little more of the McAdoo in him.

Senator TRUMAN. Proceed.

Mr. ROSIER. Reading from the letter of June 1, 1932, Mr. Chairman, from Mr. Potter to Mr. Swaine [reading from "Exhibit No. 2053"]:

I think it altogether likely that I am stale so far as influence with the St. Paul

as having ridden too hard. You are in a very different position, and in one where you will be listened to.

* * * * * * *

Our president overstressed—in fact magnified out of all proportion the labor and the difficulties in connection with cooperation. In fact, cooperation will lessen labor and difficulties. All of the difficulties of the railroad today are due to their independent competitive operation, and to their endeavor to get ahead against one another. Cooperation means simplification, not complication. It means ease, not labor.

* * * * * * *

Our President has had and has wasted the biggest and best opportunity that ever came to the railroads. He should have been the leader in the plan which has been adopted in England. If and when disaster comes to our country, and that disaster is certain, unless something is done, the president and general managers will bear all the blame—except such as may attach to the directors for not insisting upon proper action.

Mr. SWAINE. I think it only fair that the entire letter, rather than excerpts from it, be introduced.

Mr. ROSIER. It has been introduced, Mr. Swaine.

Senator TRUMAN. In each case the entire letter has been introduced.

Mr. POTTER. I think that, and I wanted it particularly with reference to one of my letters here from which you read excerpts.

Mr. ROSIER. The complete letter is already in evidence.

Mr. SWAINE. Of course you appreciate that when you pick a paragraph out, without the paragraph in front of it, it may be given a different atmosphere.

Mr. LOWENTHAL. May I go back to your letter of May 18, 1932, where you referred to the fact that there might be quite a few receiverships? "Receiverships seem inevitable." Do you find that?

Mr. POTTER. Yes.

Mr. LOWENTHAL. As a matter of fact, you were in the highest sense prophetic on May 18, 1932, when you wrote that letter. That was just before the period when they began to flood into the courts, railroads going into receivership and bankruptcy?

Mr. POTTER. If that is your opinion, I have no desire to quarrel with it.

Mr. LOWENTHAL. You would agree with that?

Mr. POTTER. Perhaps that is true.

Mr. ROSIER. Do you recall that it was at or about that time that the Milwaukee went to the R. F. C. for a loan, in 1932?

Mr. POTTER. I do not recall that.

Mr. ROSIER. Is not that correct, Mr. Swaine?

Mr. SWAINE. Yes.

Mr. POTTER. I know I pointed out at one time that if the Milwaukee road would bring about cooperation, they would greatly strengthen their position with the R. F. C.

CONCERNING EFFORTS TO PERSUADE POTTER TO DISCONTINUE HIS CHARGES

Mr. ROSIER. Mr. Chairman, I would like to offer for the record a letter dated June 2, 1932, from Mr. Swaine to Mr. Scandrett. This was written after the previous letter which we have just introduced, from Mr. Potter to Mr. Swaine.

Senator TRUMAN. The letter will be received.

(The letter referred to was marked "Exhibit No. 2054" and is included in the appendix on p. 7106.)

Mr. ROSIER. The letter reads as follows [reading]:

> I am beginning to get considerably worried about our record on the question of cooperation. Potter has just written me another letter, hotter and more extreme than any of the past ones, and I have very little doubt that he has been talking to some of the members of the Interstate Commerce Commission—

Mr. POTTER. But I had not.

Mr. ROSIER (continuing reading):

> and that they are being thoroughly indoctrinated with his view of what is happening or rather what is *not* happening. Would it not be helpful if we had a talk about the matter—a leisurely one, over a highball, and not one subject to the pressure and interruption of a few minutes in a business day? If you agree, won't you and Bert—

That is Mr. Sparrow?

Mr. SWAINE. Yes.

Mr. ROSIER (continuing reading from "Exhibit No. 2054"):

> If you agree, won't you and Bert plan to come out to my farm with me either the evening of June 21, before the Executive Committee meeting, or the evening of June 22, before the Board meeting?

Mr. POTTER. I said that I had not talked to some of the members of the Interstate Commerce Commission. I want to change that. I did talk frequently to members of the Commission, and I think on some occasions I wrote to the members of the Commission and was guilty of the presumption of suggesting to them certain lines of action; but I failed with them about as ignominiously as I did with the railroad.

Mr. LOWENTHAL. You do not think you indoctrinated them at all?

Mr. POTTER. No, sir.

Mr. ROSIER. Mr. Swaine was too apprehensive——

Mr. SWAINE. No; I do not think that is a fair statement. I do not know whether you are going to introduce the rest of my correspondence or not——

Mr. ROSIER. I am going to introduce a good portion of it. If you feel that I ought to introduce any others, I will be glad to put them in.

Mr. SWAINE. I think Mr. Potter was very much unaware of what our people were doing along that line, and I do not believe that when Mr. Potter said there was no intelligent effort being made he intended to indict the management of the St. Paul, because the management of the St. Paul, I think, at that time was doing more than any other railroad management that I had any contact with, to try to develop coordination projects with the other railroads. There was a disagreement as to method. I felt that Mr. Potter was making a record which was very unfair, both to our management and to the board, and giving the impression that things were not being done which were in fact being done at the time. I agreed—I think Mr. Potter will recall, and I had said so in one of the letters—I agreed entirely with Mr. Potter's basic idea, and I was, within my limited capacities on the board, doing all I could do to press for study of these coordination projects, and very much more was being done than Mr. Potter's letters would indicate was being done, or even this testimony here this morning would indicate was being done. Mr. Scandrett, I think, should be brought here again, no matter when the time may be, to show to your committee exactly what was being done in the way of coordination studies at that time; and I think when he does appear he will demonstrate that we were doing very much more than Mr. Potter thought we were going to do.

Senator TRUMAN. He will be given that opportunity. The reason he is not here today is that he was called out of town on account of an operation.

Mr. SWAINE. I know. I think, however, that some time in the future he should have an opportunity to tell you what he was doing at this time.

Senator TRUMAN. He will be given an opportunity to do that.

Mr. POTTER. I just want to say this, Senator, that it has been perfectly obvious that my letters deal with the picture that I saw. I do not recall what Mr. Scandrett was doing. But I would not have written those letters without a purpose. I think the purpose is shown by the letters. They were friendly letters; they were fraternal letters; they were not written with the idea that they were going to be brought out in this hearing, and I never had any idea that they would be brought out. I wrote them because it was my duty, as I saw it, to the property and to the directors. If there was something being done that I did not know about, I am sorry that I did not know about it.

Mr. LOWENTHAL. You were entitled as a director to know everything that was going on, were you not?

Mr. POTTER. That was my theory of it.

Mr. SWAINE. The president was reporting at the board meetings.

Senator TRUMAN. Proceed.

Mr. ROSIER. I would like to offer in evidence a letter from Mr. Swaine to Mr. Potter, dated June 14, 1932, in answer to Mr. Potter's letter to Mr. Swaine of June 1, 1932.

Senator TRUMAN. It will be received.

(The letter referred to was marked "Exhibit No. 2055" and is included in the appendix on p. 7106.)

Mr. ROSIER. The letter reads as follows:

> A reply to your letter of June 1 has been delayed by reason of the pressure of the problems of another railroad than the St. Paul.
>
> As you know, I am in agreement with you upon the principle that there should be more of cooperation between our railroads and that undue executive jealousies have in the past frequently prevented cooperative efforts which were otherwise both feasible and wise. However, I feel that you are not giving the St. Paul executives adequate credit for what they have been and are doing. I think, too, that while they may appear to you to be magnifying the difficulties, you appear to them (and, I confess, sometimes to me) to be minimizing the difficulties. They are not, as you intimated in one of your letters, seeking instances in which there cannot be cooperation, but, I am entirely certain from my own personal observation, are diligently seeking instances in which cooperation will be possible and doing their utmost to effect such cooperation. I felt that Mr. Scandrett's oral statement at our last meeting showed real progress along this line, and I have no doubt that he will be able to report more progress at our next meeting.

This is one of the letters that you referred to, Mr. Swaine?

Mr. SWAINE. Yes. That is substantially what I just said.

Mr. ROSIER. Do you recall whether you had had your meeting over a highball at that time?

Mr. SWAINE. Yes; I still remember that.

Mr. ROSIER. Do you know whether or not any other members of the board were present at that time?

Mr. SWAINE. They were not. No, apparently not. The letter you have just read was June 14, was it not?

Mr. Rosier. Yes.

Mr. Swaine. No; my highball meeting was June 21.

Mr. Rosier. Mr. Chairman, I would like to introduce into the record a letter from Mr. Swaine to Mr. Ecker. That is, Mr. Frederick H. Ecker. The letter is dated June 14, 1932, the same date that Mr. Swaine sent the previous letter to Mr. Potter.

Have you a copy of the letter, Mr. Ecker?

Mr. Ecker. I have not; no.

Mr. Rosier. Have you a copy of that letter, Mr. Potter?

Mr. Potter. No.

Mr. Rosier. Have you, Mr. Swaine?

Mr. Swaine. Of what?

Mr. Rosier. The letter of June 14 to Mr. Ecker; a letter from you to Mr. Ecker.

Mr. Swaine. Are you giving it to me now?

Mr. Rosier. Yes. Those are excerpts from it.

Senator Truman. The letter will be received.

(The letter referred to was marked "Exhibit No. 2056" and is included in the appendix on p. 7107.)

Mr. Rosier. The letter reads as follows:

> I have been somewhat disturbed about the record Mr. Potter is making in the St. Paul Board on the question of cooperation between the St. Paul and competing lines in its territory. Herewith is a letter which I have received from him, together with a copy of my reply. Will you be good enough to return Mr. Potter's letter after you have read it.
>
> I am also sending you a copy of a memorandum prepared by Mr. Sparrow in reply to Mr. Potter's letter of May 18 addressed to the Board.
>
> Of course all the members of the Board, including the two operating executives, are anxious to effect whatever cooperative arrangement with other roads may be in the interests of the St. Paul, and from my contact with the situation I think Mr. Scandrett and Mr. Sparrow are making sincere efforts to discover and work out such arrangements. It is therefore to be regretted that Mr. Potter should continue to indicate that he thinks nothing is being done, both because it is harmful on the record and because his attitude tends to inspire a defensive state of mind in the operating officers which is much less conducive to getting results than would be commendation for what they are doing.
>
> I think it would be helpful, if you could find time, with all your many other pressing engagements, to lunch with Potter some day in the hope that you might be able to "get him on the track." If you think my presence would be helpful I will be glad to join you whenever at your convenience you can arrange it.

Mr. Swaine. This is a species, Senator, of what I said the other day, when I said I conceived it to be the lawyer's job not to be the motivating force, but to try to give direction to forces of different people that were good. I was trying to bring about cooperation within the board and among the officers instead of antagonisms that were developing.

Mr. Rosier. You were a director yourself, Mr. Swaine.

Mr. Swaine. Yes.

Mr. Rosier. Besides being counsel.

Mr. Swaine. Yes.

Mr. Potter. If that letter pointed to a duty on Mr. Ecker's part, he failed to perform it, because he never made any effort to get me "back on the track" or interfere with me in any way.

Mr. Rosier. Do you recall, Mr. Potter, whether he succeeded in persuading you not to write any more letters on the subject?

Mr. Potter. Mr. Ecker?

Mr. Rosier. Yes.

Mr. Potter. He never endeavored to.

Mr. Swaine. I would like, Senator Truman, to have made a part of the record the memorandum of Mr. Sparrow in reply to Mr. Potter's letter of May 18, which is referred to in this letter.

Mr. Potter. May I have a copy of it? I am sorry, I have never seen it.

Mr. Rosier. That is May 18, 1932?

Mr. Swaine. Yes: Mr. Sparrow's memorandum of May 18.

Mr. Rosier. I will offer that for the record.

Senator Truman. It may be received.

(The memorandum referred to was marked "Exhibit No. 2057" and is included in the appendix on p. 7107.)

Mr. Swaine. I do not think the memorandum is dated May 18. It is a memorandum in reply to Mr. Potter's letter of May 18.

Senator Truman. Have you any other copies?

Mr. Rosier. This is the only copy I have of that.

Senator Truman. Very well. Put it in the record. Do you want to see it, Mr. Potter?

Mr. Potter. I should like to have a copy of it, yes. Mr. Sparrow was very cordial to my endeavors on the subject of coordination, and in one of my letters here, excerpts of which you have put in——

Senator Truman. The whole letter has been put in.

Mr. Potter. I referred to an activity of Mr. Sparrow's as a very fine one, indicating what should be done.

Senator Truman. Proceed.

Mr. Rosier. Mr. Chairman, I should like to offer for the record a copy of a letter from Mr. Ecker to Mr. Swaine, dated June 29, 1932.

Senator Truman. It may be received.

(The letter referred to was marked "Exhibit No. 2058" and is included in the appendix on p. 7112.)

Mr. Rosier. Do you have a copy of that, Mr. Ecker?

Mr. Ecker. No, I have not.

Mr. Rosier. This letter is in response to the letter from Mr. Swaine to Mr. Ecker of June 14, 1932 [reading from "Exhibit No. 2058"]:

> I return herewith the correspondence with Mr. Potter which accompanied your letter of June 14th.
>
> I have been so busy with other matters that I overlooked telling you of the luncheon with Mr. Colpitts and Mr. Potter after the last Milwaukee board meeting. It was a good opportunity to talk over the whole situation and for me to make reference to Mr. Potter's letters.
>
> In the course of the conversation he (Mr. Potter) said he felt convinced that little would be accomplished by the committee that had been appointed, consisting of representatives of the railroads, and that his efforts had not accomplished the results he had hoped for. It was his conviction that millions of dollars could be saved if the matter were undertaken in the right way.
>
> He did say that he was through writing, that he would not send any more letters—that's that!

Do you recall that letter, Mr. Ecker?

Mr. Ecker. This refreshes my recollection, yes.

Mr. Rosier. Does it refresh your recollection, Mr. Potter?

Mr. Potter. I think I was wrong in saying that I had no conversation with Mr. Ecker. Of course, that is true. I think now I recall a conversation, but I recall very distinctly that Mr. Ecker did not make any effort to tone me down or call me off.

Mr. SWAINE. The whole letter is going in?

Senator TRUMAN. The whole letter is going in.

Mr. Ecker, did this situation with Mr. Potter have any influence on the regulation of the board proposed in the Missouri Pacific plan, which required three directors to initiate business?

Mr. ECKER. I do not recall that it did.

Senator TRUMAN. I thought this might have had some influence on that.

Mr. ECKER. No; but every member of the board—and I can speak for myself—gave the most serious consideration to Mr. Potter's suggestions. I have known this man for 25 years or more.

Senator TRUMAN. I was just thinking about whether this effort of Mr. Potter's, which had evidently caused everybody so much worry, was the reason for the provision in the Missouri Pacific regulation which required three directors to initiate business.

Mr. ECKER. I do not know that it was.

Mr. LOWENTHAL. In the St. Paul board every director was allowed to speak as fully as he liked, and to make any motion he wished?

Mr. ECKER. I can only speak for myself. I never had any hesitation, and I never saw any on the part of anyone else.

Mr. LOWENTHAL. Is it usual in boards of directors that any and every director is permitted to make any motion he desires, or to initiate or bring on any business he would like to bring before the board?

Mr. ECKER. Surely.

Mr. LOWENTHAL. Is it your view that that is a sound practice?

Mr. ECKER. So far as I have experienced, it is a sound practice.

Mr. LOWENTHAL. You have had a great deal of experience on boards of directors?

Mr. ECKER. So far as I have had experience, that is true.

Mr. LOWENTHAL. And on the boards of rather large companies.

Mr. ECKER. In some instances; yes.

Mr. LOWENTHAL. Mr. Ecker, has your attention been called to the fact that in the Missouri Pacific reorganization plan that was under discussion before this committee some weeks ago there was a provision that so far as the ordinary directors of the company were concerned, no ordinary director could bring on a motion or initiate business, and that before ordinary directors could bring business before the board, they would have to sign a written petition to that effect, and have three of the directors sign it?

Mr. ECKER. I am not familiar with that provision, nor do I know its purpose.

Mr. LOWENTHAL. It was referred to at the hearings some weeks ago as an attempt to impose a gag rule on individual directors.[1]

Mr. ECKER. I am not acquainted with that. You are telling it to me for the first time.

Mr. LOWENTHAL. It was a plan that was agreed to by a committee on which the Metropolitan Life was represented by one of its vice presidents.

Mr. ECKER. That is true; but while matters of general policy and any matter that may be considered of sufficient importance is brought to my attention, that particular thing was not.

[1] See Hearings Part XIV, p 6071 et seq.

DIFFICULTIES IN EFFECTING ECONOMIES THROUGH COOPERATION AND COORDINATION—BURDENSOME MORTGAGE PROVISIONS

Mr. ROSIER. Mr. Swaine, do you recall that it was at or about the time of these latter letters we have read—that is, around the summer of 1932—that the northern roads did get together with the Milwaukee, and did make very substantial efforts to effect economies through cooperation?

Mr. SWAINE. They have been trying to get together for some time. Mr. Lowenthal referred, for example, to the matter of coordination with the two northern lines. I knew that the St. Paul had been trying to arrange some coordinating arrangement with respect to terminals with the northern lines for a number of years, but the two northern lines had a competitive advantage over the St. Paul, and they were unwilling to enter into such a coordinating arrangement. I say that in no criticism. Under a competitive system I suppose they were bound to take advantage of the superior terminals that they had.

Take another illustration. We needed new yard facilities in Chicago. We knew that the Chicago & Northwestern had a yard called the Proviso Yard, which was considerably better than it needed, much greater capacity than it needed. We made every effort to effect some kind of a coordinating arrangement with the Chicago & Northwestern for the use of the Proviso Yard. There again, they felt that they had a fine competitive facility, in Chicago, and that they should not give it to us on any terms, except, as I remember, on the basis of our paying a very large proportion of the charges on that terminal, and that made it prohibitive.

Another illustration: The Chicago & Northwestern had put in a fast livestock service from Omaha to Chicago. I think there are five lines from Omaha to Chicago. There is the Northwestern, the Rock Island, the Burlington, the Illinois Central, and the St. Paul, from Omaha to Chicago. They put in a very fast livestock service from Omaha to Chicago. Every one of the five roads immediately said, "Well, we will have to meet that competition." To meet that competition required heavier rail, heavier ballast, and new locomotives. As soon as I heard about that, I went to Mr. Scandrett about it, and I found that Mr. Scandrett was already on the job. I do not remember the exact date, but I think it was about this time, or it may have been before. I found that Mr. Scandrett was already on the job, to see if we could not do something to stop the initiation of five services when the studies showed that there was not business enough for five services. That meant terrific capital expenditures on the part of each of those five roads. I know of my own knowledge that Mr. Scandrett did everything he could to do something about that, but he could not, because the Northwestern said, "We have got the jump on you." You cannot criticize the Northwestern. They were in the business to compete for that traffic, and if they developed the idea of fast service and made the capital expenditure necessary to put in the fast service, under a competitive system they certainly were justified in holding their advantage. But that does not say that we were not trying to minimize it, and trying to avoid having to meet it. We finally did meet it.

Mr. ROSIER. Did the other roads meet it?

Mr. SWAINE. I think they all did. I do not know that all five of them did. I know the Burlington did, and I know we did something about it.

Senator TRUMAN. So far as your experience with coordination and cooperation has gone, there seems to be only one way to have it done, and that is by legislative action which will relax a great many of the barriers to it now.

Mr. SWAINE. I think you have got to have legislative action which will make it easier.

Mr. ROSIER. Mr. Swaine, referring to barriers, is it fair to say that one of the barriers is the provision in the mortgages of the various railroad companies which prevents or makes very difficult the release of parts of lines, portions of railroads, and the taking over of joint trackage rights or leasehold rights in other railroads?

Mr. SWAINE. That is true as to some classes of coordinative efforts. It is not true of terminals, for example. It would not have been true of an attempt to pool traffic in some way on this freight thing. I think that was one of the suggestions. I cannot remember the details, but I think one of the suggestions was that since the Northwestern had gotten itself in a position to handle this fast competitive business—and I think the Burlington was well under way—that the fast traffic should be handled by them, and the slow traffic taken by some of the other roads, and that the traffic be pooled, along the lines of Mr. Potter's idea. The point you made, with regard to the difficulties about the mortgages has to do with places where, in the competitive era, railroads built parallel lines.

For instance, going into Council Bluffs, Iowa, the Rock Island and the Milwaukee run for a great many miles—I cannot tell you the exact mileage—I should guess 20 miles, right alongside of each other. From a business standpoint it seems silly. Mr. Potter is quite right about that. It seems silly that they should keep up these two lines for that distance of 20 miles. You will find places like that all over. We run right alongside the Northern Pacific, out through the West.

Senator TRUMAN. You did cooperate with the Rock Island on your double track into Kansas City.

Mr. SWAINE. Yes. That is one that we succeeded in working out. It was one of the cooperative arrangements we studied at this time.

On that question, when these mortgages were created the bondholders wanted a lien upon a system which was an entity, which was an entirety. You will find, in the older mortgages, and in the mortgages which came out of this very reorganization, the so-called main-stem covenant.

Mr. LOWENTHAL. When you speak of the bondholders and the creation of these mortgages as of what period are you speaking?

Mr. SWAINE. I am talking about the period up to about 1932 or 1933. In fact, I think you will find in practically every corporate mortgage that is extant now, a similar provision.

Mr. LOWENTHAL. I was wondering if what you said applied also to the Ecker committee in the 1925 plan.

Mr. SWAINE. Yes.

Mr. LOWENTHAL. Thank you.

Mr. SWAINE. Not only to them; it is universal. I cannot swear to it, but I think you will find it in the New York Central mortgage, with which other bankers and other lawyers had to do. It was the

universal custom to put into those mortgages mainstem covenants. By that I mean a covenant that the continuity of the main lines would not be broken up, so that if a railroad went into receivership the bondholders would not wake up and find that they had some pieces of detached line, with an intervening piece of line that had belonged to some other carrier which had gone into bankruptcy, and as a result of that the receivers or trustees in bankruptcy had repudiated the trackage agreement on that intervening line, leaving the bondholders utterly at the mercy of the receivers of the bankrupt estate. Do I make my point clear? Practically all railroad mortgages contain this main-stem covenant. When we started out to try to work out cooperative arrangements in respect of parallel lines such as I instanced going into Council Bluffs, we found that the covenants of the mortgages would not permit us to abandon the various lines that had to be abandoned in order to produce that arrangement, because you could not substitute a trackage contract for a fee line when the bondholders recognized that that trackage contract would be subject to repudiation by the receiver in bankruptcy of the line which gave the trackage contract.

In the earlier days it was thought that the necessity of maintaining the continuity overrode the economy factors that would lie in coordination. If you look at the 1935 St. Paul plan you will find that Mr. Potter's ideas had borne fruit, because the board of directors of the St. Paul decided that at least so far as the board of directors was concerned, the desirability of effecting these coordination arrangements was more important than maintaining continuity, and one of the modifications which we said we were going to make in our mortgages was a provision which would allow us to do this very thing. But I still point out to you that that puts the bondholders under the disadvantage that might result from having detached pieces of line. Perhaps Mr. Ecker would not like it.

Senator TRUMAN. Could not the Commission compel railroads to go ahead with their agreement, even if they did go into receivership?

Mr. SWAINE. No.

Senator TRUMAN. Could not the law be so modified that that could be done?

Mr. SWAINE. I have substantial doubt whether Congress could compel any railroad, after bankruptcy, to give a trackage right on terms that had been agreed upon previously, because I think it might be depriving the owners of that piece of property of their property without due process.

Mr. ROSIER. Mr. Swaine, instead of a trackage right, how about the question of a joint interest in a part of the line of the railroad?

Mr. SWAINE. If you have studied this file, you will notice that throughout all these efforts that was what I was trying to effect. I gave an opinion that despite the main-stem covenant, an undivided one-half interest in one of these lines could be substituted for an entire interest, because I thought that was a fee interest and could not be disturbed. That is, it was a tenancy in common. But the difficulty there was that the other fellow had mortgages that his counsel told him would not let him give us an undivided one-half interest.

Mr. ROSIER. At this point, Mr. Chairman, I should like to introduce into the record a letter from Mr. Swatland to Mr. Sparrow, dated April 12, 1933, bearing on the question that Mr. Swaine testified to.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2059" and is included in the appendix on p. 7113.)

Mr. POTTER. Mr. Chairman, may I say a word here now, that I am afraid I will forget?

Senator TRUMAN. Go ahead.

Mr. POTTER. I do not want anything I have said to be a criticism of Mr. Scandrett.

Senator TRUMAN. We understand that.

Mr. POTTER. I want to go further. Mr. Scandrett was and is my very dear personal friend. When I left the Commission I invited him to come to New York and become my partner. That is what I thought of him. He would have come if the Union Pacific had not increased his salary and made him vice president. You have seen what I thought about him, when I recommended him to Mr. Hanauer. I thought he was the man to uproot this old practice; and I want to say to you that Mr. Scandrett would not have been pleased by anything in the world more than to find himself in accord with me. He would have been delighted to adopt my ideas, but Mr. Scandrett would not do anything that he did not think was right for any living human being. It was just an honest difference of opinion between him and me. He may have been right. I did not think so, and I do not think so.

Senator TRUMAN. I think the record amply shows what you think of Mr. Scandrett. There is no intention on the part of the committee to enter into any personalities. All we are trying to get are the facts and figures for the benefit of the Congress.

Mr. SWAINE. Is this whole letter going in?

Senator TRUMAN. This whole letter is going in.

Mr. SWAINE. It shows that other counsel disagreed with my opinion that an undivided one-half interest could be substituted.

Mr. POTTER. I think all this talk about banker control is folderol. It is not worth a halfpenny in the way of a solution of the great railroad problem. You are on the right track, and you will get somewhere if you keep this up.

Mr. LOWENTHAL. Mr. Swaine, when you say that other counsel held a different opinion, you mean your partner, Mr. Swatland, and you held somewhat different views?

Mr. SWAINE. No; I do not mean that at all. If you look through this entire letter, you will find that another firm of lawyers, representing one of the trustees, had a little different view.

Mr. ROSIER. I think it was the Great Northern that Mr. Swatland was discussing.

Mr. SWAINE. It was an attempted coordination with the Great Northern.

Mr. LOWENTHAL. I got the impression that Mr. Swatland in this letter was indicating that it might be possible to get rid of restrictive provisions in the mortgages by going into bankruptcy under section 77.

Mr. SWAINE. Yes; I agree entirely with that. I have not the slightest doubt that I saw and approved this letter before it was sent out.

Senator TRUMAN. Proceed.

Mr. ROSIER. Mr. Chairman, I should like to offer for the record a copy of extracts from various letters and telegrams. The first one is an extract from Mr. Sparrow's letter of December 23, 1927, to Mr. Swatland. The second is an extract from Mr. Swatland's letter to Mr. Sparrow of December 28, 1927, in answer to the first letter. The third is a telegram from Mr. Swatland to Mr. Sparrow, dated December 29, 1927.

Senator TRUMAN. It may be received.

(The extracts referred to were marked, collectively, "Exhibit No. 2060" and are included in the appendix on p. 7114.)

Mr. ROSIER. These letters, Mr. Chairman, deal with the preparation of the new mortgages of the St. Paul, under which the new company began to operate in 1928, and they show that Mr. Sparrow was alive to the burdensome provisions which subsequently went into the mortgages of the St. Paul and indicated that they would be a hindrance to cooperation and coordinative efforts.

The extract from Mr. Swatland's letter to Mr. Sparrow of December 28, 1927, reads as follows [reading from "Exhibit No. 2060"]:

> The main stem provisions of the release articles are necessary. The mortgage ought to be a floating charge on the enterprise but not a floating charge on a floating enterprise. I will, however, endeavor to get Mr. Hanauer's consent to changing the provision so as to permit the substitution of joint interests, or trackage rights, or leasehold interest, etc. for owned lines.

The telegram from Mr. Swatland to Mr. Sparrow, of December 29, reads:

> Hanauer would not agree modification of main stem provisions.

Mr. Swaine, you have stated before that a great many of the difficulties which you had in connection with coordination and cooperation were due to the fact that other lines also had mortgage provisions which prevented the abandonment or release of property, similar to the provisions in your mortgage.

Mr. SWAINE. It was the universal custom, and that was undoubtedly why Mr. Hanauer would not consent. The institutional bondholders were accustomed to having a mortgage on an entity. Just as Mr. Swatland says, they were not willing to have a lien on a floating enterprise, an indeterminate enterprise.

Mr. ROSIER. Mr. Ecker, do you recall whether this particular problem was presented to you in 1927, the date of these letters and telegrams?

Mr. ECKER. No; I do not recall, but it is quite possible that it was, and my thought about it at that time would be the same as it is now, that in looking at the security for the mortgage we should have a property which would be, as Mr. Swaine has described it, an entity, having perhaps the same thought about it as the holder of a mortgage on a piece of real estate, that if we had the real estate as security, we would want it all. We would not want to take the risk of having some important part of it taken out in case of difficulty.

Mr. ROSIER. Mr. Ecker, you remember Mr. Swaine's statement a little while ago that in the plan which was filed with the Commission in 1935, the new plan—which has subsequently been abandoned—provision was made for relaxation of these restrictive provisions with respect to the mortgage. You were a member of the board at the time that plan was filed, were you not?

Mr. ECKER. Yes.

Mr. ROSIER. Did you support that particular provision as it went into the plan?

Mr. ECKER. I do not recall it. It would be my desire to do everything that would bring about a better situation, and recognize that in the railroad field there are broader questions, sometimes, than the mere technical protection that a mortgage gives on a specific property.

Mr. LOWENTHAL. Did you yield on that point to the other directors?

Mr. ECKER. I do not recall it, but I know that that would be my disposition. If, in the protection of the interest that we have there, something of that kind should be done, I would be sympathetic with it—sympathetic with doing anything that would aid the situation.

Mr. SWAINE. Senator Truman asked me if this exhibit which I put in showed the amount for wages. I have since consulted some of the accounting officers and they advise me that about 60 percent of the figures indicated by the red line on that graph represent wages as such.

Senator TRUMAN. We will take a recess until 1:30. We will meet at that time in the Interstate Commerce Committee room in the Capitol. It is on the gallery floor of the Senate Chamber.

(Whereupon, at 12 noon, a recess was taken until 1:30 p. m.)

AFTERNOON SESSION

The subcommittee resumed the hearing at the expiration of the recess, at 1:30 p. m., in the hearing room of the Senate Committee on Interstate Commerce, in the Capitol, Senator Harry S. Truman presiding.

Senator TRUMAN. You may proceed.

TESTIMONY OF FREDERICK H. ECKER, CHAIRMAN OF THE BOARD, METROPOLITAN LIFE INSURANCE CO., NEW YORK CITY; TESTIMONY OF MARK W. POTTER, FORMER RECEIVER OF THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.; AND TESTIMONY OF ROBERT T. SWAINE, OF CRAVATH, DE GERSDORFF, SWAINE & WOOD, NEW YORK CITY—Resumed

POWER OF SHIPPERS TO ROUTE TRAFFIC—UNWHOLESOME EFFECT ON RAILROAD EARNINGS

Mr. BROWN. Mr. Potter, in this morning's testimony you said that a railroad "cannot shut its doors or reduce its activities; and it never can unless and until you have agreements for the routing of traffic and for the division of earnings," and so forth. I believe this committee is interested, possibly from a legislative point of view, in those matters, and I wondered if you could give a little more detail about what you mean by the routing of traffic. How large a factor is that, to your mind, in the railroad picture?

Mr. POTTER. I can tell you what I have in mind. I do not know whether I can give you figures. Under the competitive system various routes are competing for traffic, competing with one another—the long route, the short route, the efficient route and the inefficient route.

They are all striving to get business, and they are soliciting traffic from the producers of the traffic, and they are fighting one another. Every important shipper has dozens of traffic people running to him all the time.

Mr. BROWN. May I interrupt just at that point to get clear on the record: Does the shipper have the power to route his traffic?

Mr. POTTER. Yes.

Mr. BROWN. There is no question as to that whatsoever?

Mr. POTTER. That is subject to modification. The Commission has certain powers; but by and large the right of the shipper to route his traffic is generally recognized. That naturally results in a division of the traffic. The shipper will give the traffic at one time to one road and at another time to another road, depending largely upon friendships and relations that may be built up.

Mr. BROWN. May I interrupt again? If a shipper is only on one road does he have the power to route his traffic beyond the interchange point?

Mr. POTTER. Yes. That means in actual practice that the traffic moves over hundreds of different routes, in fact. You would be amazed to see the way the traffic moves in this country. It is just an economic absurdity, the way it is moved. It is moved that way because each railroad is fighting for its life; each traffic man is fighting for his position, to hold it. They won't give up the traffic or allow it to go to some other road unless they are protected in giving it up. Therefore the way to run the road efficiently is to decide how the traffic ought to move economically, ignoring ownership.

Mr. BROWN. May I interrupt again? You say they won't give it up. Do I understand that to mean that where, for instance, railroad A terminates at a certain point and it can physically interchange with railroads B and C, either one, to the same point of destination, railroad A has the power to decide whether it will turn over the traffic to railroad B or to railroad C?

Mr. POTTER. In the absence of routing instructions by the shipper; yes.

Mr. BROWN. And is not the traffic usually routed by the shipper?

Mr. POTTER. Yes; a very large part of it is; perhaps most of it is.

Mr. BROWN. I suppose it frequently happens that railroad A which originates the traffic, though routed by the shipper, makes an arrangement with railroad C, and then induces the shipper to route over railroad C, and if railroad A desires to change the routing for some reason, they go back to the shipper and say "Change your routing and route over railroad B"?

Mr. POTTER. Yes; that is done all the time.

Mr. BROWN. Is it your opinion that at least with the majority of medium sized shippers the railroad's request as to which way they will route the traffic is determinative?

Mr. POTTER. I would not want to say that.

Mr. BROWN. Is it influential?

Mr. POTTER. They are making requests of that sort all the time, of course.

Mr. BROWN. Do you think they are influential with the shippers?

Mr. POTTER. Oh, yes; very largely.

Mr. BROWN. Do you think they would be influential with the great shippers, like Armour and Swift and the steel people?

Mr. POTTER. That would go into a great many things that go to the viciousness of the practice. What influence would cause Armour to route traffic is something that I do not know.

Mr. BROWN. Excuse my interruptions.

Mr. POTTER. The thought I had in mind was that you will never get away from this routing over expensive routes until you get into a position where you can say to a shippers, "No matter how this traffic goes, whether you route it for me or against me, I am going to get a share in the earnings, which are and will be increased by routing the traffic over the economical route."

Mr. BROWN. A pool, in other words?

Mr. POTTER. I would not call that exactly a pool. It is in a sense a pool, but it is what the Transportation Act calls and authorizes as an agreement between carriers for the routings of traffic and the divisions thereof. A pooling is a little bit different, perhaps, but they amount to about one and the same thing.

Mr. BROWN. To make sure I understand you: You spoke about a more expensive route. Say there are four routes between point X and point Y. They cost the shipper the same?

Mr. POTTER. Yes.

Mr. BROWN. It may cost one of the railroads a good deal more to haul that freight than it would cost another one?

Mr. POTTER. Yes. One may be able to handle it for, say, 40 cents, and it might cost the other 80 cents.

Mr. BROWN. Do you think that is a strain and burden on interstate commerce?

Mr. POTTER. Yes, decidedly, because it unnecessarily increases the cost to the shipper of handling the aggregate traffic.

Mr. BROWN. Do you consider that so, Mr. Swaine?

Mr. SWAINE. I am not a traffic expert.

Mr. BROWN. No; but as to the law point, the extra cost to some railroad to haul freight that another railroad could haul cheaper—do you consider that a strain and a burden on interstate commerce?

Mr. SWAINE. I just do not know enough about the problem to pass an opinion about either the factors of the business or the result involved.

Mr. POTTER. The Transportation Act goes very much further, in answer to your question. For instance, the Transportation Act provides that in the division of through rates, that is, the rate from the point of origin to the point of destination, where the traffic moves over several lines, the roads may agree upon divisions of each line. If they fail to agree, the Interstate Commerce Commission may fix the divisions.

Mr. BROWN. May I interrupt again? Am I correct in believing that the division is the proportion of the through rate that one railroad takes?

Mr. POTTER. Yes. It is referred to in common parlance as divisions. The act provides that in fixing divisions the Commission may take into consideration not merely service and relative service, but the necessities of the carriers. That was put in the act of 1920, and the strong carriers claimed that that was unconstitutional and revolutionary. The first case that came up under that law was a case brought up by the New England railroads asking the Commission to give them a larger proportion of the through rate than would be suggested by the mileage or service rendered by the lines. There was an awful fight over that case. The Commission, in the first place, decided it against the New England lines. I happened to be on the minority side, and I dissented. Later the New England lines applied for a rehearing before the Commission, and it was granted, and on the rehearing one of the Commissioners changed his vote, and the increased divisions were accorded to the New England lines, not based on service but on necessities, because of the need to mold the rate structure so as to preserve the transportation agencies that the public needed. On the rehearing, as I say, the Commission decided it the other way. One of the Commissioners switched, and the Commission increased the divisions to the New England lines.

That raised pandemonium. The strong carriers said everything that you could say about a body, about the Interstate Commerce Commission, and they said the courts would brush it aside overnight. They fought it and took it to court. It was tried in New York, and then by the Circuit Court of Appeals and by the Supreme Court of the United States, and the Commission's decision was sustained in every court.

If you are interested on the question as to how far the Commission can go in regulating divisions and the handling of earnings in order to sustain all the agencies, read Mr. Justice Brandeis' opinion in the New England Divisions case, and it is all the "bible" you will need. The principle of that decision can be applied to work out a proper relation among all the carriers

Mr. BROWN. You believe it can be applied to routing also?

Mr. POTTER. Yes.

Mr. BROWN. Under the present law, Mr. Potter, you stated, I believe, that where the shipper routes, his routing governs in general, with a few modifications?

Mr. POTTER. Yes.

Mr. BROWN. Where the shipper does not route, who has the power to route?

Mr. POTTER. The carrier of origin, the initial carrier.

Mr. BROWN. Absolutely and unqualifiedly at the present time?

Mr. POTTER. That is the practice; yes.

Mr. BROWN. I believe you also testified that to a very considerable extent the desire of the railroad influences the routing as designated by the shipper—the desire of the originating carrier?

Mr. POTTER. Yes.

Mr. BROWN. Do you think that the Commission should have power to route all traffic, whether routed by the shipper or not?

Mr. POTTER. I think so; yes.

Mr. BROWN. What principles of routing would you lay down for the Commission to apply?

Mr. POTTER. If I were to guide in the matter of legislation I would want to give it pretty careful thought and work it out with considerable care. The basic principle is the public interest.

Mr. BROWN. Would you care to comment on defining public interest any further?

Mr. POTTER. I would not undertake to do so now; no. But my idea is to handle the traffic of the country over the most efficient and economical and least wasteful route. It requires that there be applied to the railroads the ordinary principle of sound business that applies to everything else except the railroads today.

Mr. BROWN. Mr. Swaine, have you any comments on Mr. Potter's testimony that you care to make?

Mr. SWAINE. No.

FURTHER DIFFICULTIES IN EFFECTING ECONOMIES THROUGH COOPERATION AND COORDINATION

Mr. Brown. Mr. Swaine, you discussed this morning the question of trackage and common tenancy. Do you feel that is a large problem still in the railroad situation?

Mr. Swaine. I do not understand your question.

Mr. Brown. Many of the questions this morning were directed to possible economies, particularly in connection with the Milwaukee, and you testified considerably about joint trackage and trackage rights. My question is directed back to that testimony.

Mr. Swaine. I think there are a great many places throughout the United States—St. Paul is just one of many—where there are parallel lines which furnish a capacity beyond the requirements of any present traffic, and if one of those lines could be abandoned and the traffic of both properties carried over a single retained line, considerable savings in operation could be effected. I gave you one of the obstacles, which is a legal one, because that happens to be my approach. But reference was made to another obstacle that I think is perhaps even more serious from a practical or, shall I say, political angle, and that is that every one of these projects involves a cutting down of labor, and you find intense opposition.

Senator Truman. And it also involves, to some extent, if it were carried to its logical conclusion, the cutting down of the official families of railroads as well as of labor?

Mr. Swaine. Not if you just took pieces of track; and that, I take it, is what the counsel is talking about now, just taking little pieces of track. I do not understand you to suggest an abandonment of an entire system.

Senator Truman. Suppose you had coordination of the Northwestern lines, as was suggested by Mr. Potter this morning: that would necessarily involve it, would it not?

Mr. Swaine. If you have complete consolidation; yes. But I am talking about——

Senator Truman (interposing). Naturally it affects everything in connection with the road, labor as well as everything else, does it not? I think we have got to stare that squarely in the face.

Mr. Swaine. Consolidations would undoubtedly eliminate a great deal of railroad officialdom; and maybe that is one of the reasons why it has not made as much progress as it might have. But coordinations do not involve officialdom at all. They involve the men who work on the track, maintenance-of-way employees, and that sort of employees.

Senator Truman. What I have in view as a member of this committee is a solution of this problem, if we can arrive at it, no matter what it takes, because the transportation system of the country is one of the most important things we have, and it must be saved. I am trying to save it and keep the railroads from becoming a problem for the Government. That is the only thing I have in view.

Mr. Swaine. Mr. Potter this morning pointed out one of the obstacles to the coordination efforts, and that is the provision in the act itself that none of these arrangements shall involve any reduction of labor beyond the amount employed on a certain date.

Senator Truman. We have got to meet the situation squarely.

Mr. Swaine. The primary objective is to save labor; and if you cannot save labor there is not much point in making it.

Senator Truman. That is the reason I was asking you this morning how much of the overhead operation of the railroad was labor.

Mr. Swaine. About 60 percent.

Mr. Brown. If it were on a very large scale it would also mean shrinking the rate base, would it not?

Mr. Swaine. Yes.

Mr. Brown. And that is regarded askance in some quarters, as well as shrinking the job base, shall we say?

Mr. Swaine. I suppose so.

Senator Truman. Proceed.

Mr. Brown. Do you feel it would be in the public interest, Mr. Swaine, for the Interstate Commerce Commission to have broader powers than it now has to compel the granting of trackage or common tenancy rights for joint terminal facilities, or whatever would be called for by the needs of the occasion? Let us leave out for the moment the practical problem of dealing with the management and with labor, and let us just consider whether in your mind it would be abstractly more desirable, if you wanted to do these things, to have more power than anyone now has to do them.

Mr. Swaine. Well, I do not know whether to give the power of compulsion would do it. Probably, yes. I think that the first thing, however, should be to remove the obstacles to voluntary action. Maybe that is because of my general philosophical antipathy to compulsion and the belief that businessmen can work out their problems if they are not unduly obstructed. I think the first effort should be to remove obstructions, subject always to the Commission's power to regulate what they do when it is affected by a public interest.

Mr. Brown. As I recall your testimony, there were two concrete cases, one of which depended on the legal interpretation of the mortgages in regard to the entrance to Council Bluffs. That is correct, is it not?

Mr. Swaine. Yes.

Mr. Brown. The other, in regard to the use of the Northwestern's yard in Chicago, would appear to be something in which a club over the Northwestern would have been useful to you.

Mr. Swaine. You run into a very difficult legal question there, a constitutional question. The Northwestern had built that yard at an expense of some $16,000,000. We, the Milwaukee, were anxious to get the use of that yard on a basis of our use and—I do not know just how to put it—on a wheelage basis, on a charge per car in the yard. The Northwestern's attitude—and I want again to say that this is not critical; perhaps I would probably have done the same thing if I had been in their situation—was that they had spent $16,000,000 on this yard, and they said, "If you are going to use it, and your use is half the use, you must pay half of the cost of carrying $16,000,000," although our use of it, under the then-existing traffic conditions, business being low, might not have been worth to us more than the interest on two or three millions of dollars, not the interest on $8,000,000.

I am not at all sure that to give the Interstate Commerce Commission the power to tell the Northwestern that it had to let us use that $16,000,000 investment on the basis of what it was worth to us, rather than what it cost the Northwestern, would have been valid or wise—business wise, I mean. I certainly would not want to say offhand, without giving it a lot more thought than I can give it here.

Mr. BROWN. Have you any comment on that, Mr. Potter?

Mr. POTTER. My comment exactly coincides with Mr. Swaine's.

Mr. BROWN. Mr. Swaine, moving to another subject, merely to clarify the record in regard to the two exhibits that you introduced this morning, the chart and statistics of earnings of the Milwaukee,[1] I notice that for the years 1918, 1919, 1920, and 1921 you have included approximately $80,000,000 of funds from the Federal Government. That is correct, is it not?

Mr. SWAINE. That is right. That includes the return from Federal control.

Mr. BROWN. Can you briefly state on what conditions those moneys were received from the Federal Government?

Mr. SWAINE. That was rental paid for the road.

Mr. BROWN. What was the basis of the rental?

Mr. SWAINE. Past earnings experience.

Mr. BROWN. So that the earnings and fixed charge coverage for those years are not as shown on your chart——

Mr. SWAINE (interposing). Do you mean, actual earnings by the Director General?

Mr. BROWN. Yes.

Mr. SWAINE. I do not know. My associate tells me that those figures that you are talking about now are in the footnote.

Senator TRUMAN. Just for the record and for the benefit of the reporter, I would like to get the names of the two gentlemen who are with you.

Mr. SWAINE. R. J. Marony, vice president of the St. Paul and financial representative of the trustee, and the other is my assistant, Mr. Gilpatric.

Mr. BROWN. As I understand this chart, these figures at the bottom, of coverage of fixed charges—this top purple line [indicating], the second from the bottom line, includes the rental payment from the Federal Government?

Mr. SWAINE. Yes; for those 4 years.

Mr. BROWN. And that was not based on operations for those years?

Mr. SWAINE. No; because the road was substantially operated as an entire Federal system.

Mr. BROWN. So that in considering the past fixed charges on the St. Paul, do you not think it might be wise to make some allowance for the fact that in those years——

Mr. SWAINE (interposing). I had a notation on the figures.

Mr. BROWN. The notation shows no correction or adjustment of the curve as a result of that. Is it not possible that the actual coverage of fixed charges on the basis of operations of those years was not so great as your chart shows?

Mr. SWAINE. The figures are there. If you want to make a separating line in there, you can draw another line to show the other set of figures.

Mr. BROWN. But in estimating future earnings in the light of past earnings, is not that correction essential?

Mr. SWAINE. I do not think so, because I think the character of operations during Federal control was so different from the character of operations under private operation.

[1] See "Exhibits Nos. 2044 and 2045," appendix, p. 708

Mr. BROWN. Just to touch upon a subject which I believe the committee will go into later, it became necessary, did it not, to write down the value of the equipment of the St. Paul by 35 or 36 million dollars?

Mr. SWAINE. Mr. Wilson, who is the controller of the trustee, tells me it was $31,000,000.

Mr. BROWN. During the same years the St. Paul retired several million dollars worth of equipment which had not been fully depreciated; is not that correct?

Mr. SWAINE. Yes. That is part of the retirement. I do not know the details of all this.

Mr. BROWN. Would you give us those figures, Mr. Wilson, and would you identify yourself for the record?

Mr. WILSON. I will have to get them; I do not have them [referring to memoranda].

Mr. BROWN. If you can just give round figures it would be sufficient.

Mr. WILSON. I find I have not the figures. In 1934 we retired about 5,600 units of equipment.

Mr. BROWN. In the 3 or 4 years prior to that you retired a good many million dollars worth of equipment, did you not, charging it to profit and loss?

Mr. SWAINE. That was the $31,000,000.

Mr. BROWN. That was the $31,000,000? At the same time you wrote down, did you not, the value of the equipment?

Mr. WILSON. The $31,000,000 was not charged to profit and loss. It was charged against the equity in the no-par stock.

Mr. SWAINE. As I understand it, you are getting into technical accounting questions which I do not purport to understand, but I think I can give you what I think the board understood was happening.

Mr. BROWN. Excuse me just a moment. We do not really at this time want to go into that question. We are going into it later.

Mr. SWAINE. I know; and that is why I want to bring out that it does not have anything to do with it. That was really a revaluation of the property. When the company started out in 1928 it had a certain amount of equipment and put a figure on its books. A few years later it became apparent that that figure was wrong, and it was reduced; and, as Mr. Wilson says, it was my understanding at the time that the amount was charged to investment in capital account. It was in effect a revaluation, and as I understand and understood at the time, the effect of that was to reduce the stated value of the no-par value common shares, and it had nothing at all to do with the earnings of the property after 1928.

Mr. BROWN. I understand. But why was the figure too high in 1928?

Mr. SWAINE. Partly because at that time it was thought they did not have too much equipment—indeed, we thought we did not have enough. It turned out that in certain lines there was more than enough equipment, and locomotives were put into white lead and stood on the tracks, and it turned out not to be as valuable as we thought.

Mr. BROWN. Is there not another factor in there, Mr. Swaine?

Mr. SWAINE. What do you mean?

Mr. BROWN. The low depreciation rates of the past.

Mr. SWAINE. The Commission required heavier depreciation.

Mr. BROWN. But aside from the Commission's requirement, is it not your own opinion that the depreciation in the past had been too low?

Mr. SWAINE. I have not given adequate study to tell that.

Mr. Wilson, counsel asks us whether depreciation in the past had been too low. You can answer that better than I can.

Mr. WILSON. Depreciation on new equipment is now approximately the same as it has been since about 1925. I think that was the date of the Colpitts report.

Mr. SWAINE. You mean, after the Colpitts report the depreciation rate increased?

Mr. WILSON. Yes.

Mr. BROWN. About how much—by two or three times?

Mr. WILSON. The depreciation on equipment acquired in the reorganization. The rate of depreciation on the old equipment was somewhat raised.

Mr. BROWN. Was it raised very considerably?

Mr. WILSON. I would not say it was raised considerably. It was raised—I think I can give you those rates.

Mr. SWAINE. Would you like a readjustment of the income over a back period based upon an application of the depreciation rates as later put into effect?

Mr. BROWN. I think it would be more useful than this statement [indicating]; yes.

Mr. SWAINE. I do not know that it would be any more useful, but I can get an additional statement which will show the earnings during those years had the rates of depreciation been in effect which are now in effect.[1]

Senator TRUMAN. We will appreciate it if you will do that, Mr. Swaine.

Mr. SWAINE (addressing Mr. Wilson). Will you see that those are furnished? I have got to ask the trustees for that. I have no control over that, you understand.

Senator TRUMAN. This committee will ask the trustees to furnish it for the record.

Mr. ROSIER. Mr. Chairman, I would like to offer in evidence a group of 23 letters, bearing on the subject that was discussed this morning, the subject of cooperation and coordination, and ask that they be separately identified.

Senator TRUMAN. They will be received.

(The letters referred to were marked "Exhibits Nos. 2061 to 2083," inclusive, and are included in the appendix on pp. 7115–7138.)

THE POWER CONTRACTS—MR. COLPITTS' FEE

Mr. ROSIER. Mr. Ecker, do you recall that at some time shortly after the company came out of reorganization in 1928, some time after that the new company was able to revise certain power contracts? Do you recall that?

Mr. ECKER. Yes; I do recall that.

Mr. ROSIER. The question of those power contracts had been one of the subjects of inquiry in the Commission's investigation of the St. Paul in 1925 and 1926, had it not?

[1] This data, as later furnished, was marked "Exhibit No. 2257" and is included in the appendix on p. 7088 immediately following "Exhibit No. 2044." In this connection see Hearings, Part XVII, p. 7230

Mr. ECKER. I have some recollection of that; yes.

Mr. ROSIER. Do you recall that some time in 1929 and 1930 the company was able to obtain a revision of those power contracts?

Mr. ECKER. I have a recollection that there was a revision. The exact details of it I cannot tell you without referring to the records.

Mr. ROSIER. As a result of that revision the amount of money that the company had to pay for its power was less than it had been previously?

Mr. ECKER. I understood that the revision was advantageous to the railroad.

Mr. ROSIER. Do you recall, Mr. Ecker, that independent engineers were engaged by the company to determine which of several plans for the revision of those contracts would be more advantageous to the railroad company? Specificially, was Coverdale & Colpitts——

Mr. ECKER (interposing). My recollection is that Coverdale & Colpitts were consulted and made studies and reports. But, again, I would like to go by the record rather than by my recollection.

Mr. ROSIER. Mr. Ecker, do you know of your own knowledge what work Coverdale & Colpitts did in connection with those power contracts?

Mr. ECKER. Beyond the fact that they made a study, no.

Mr. ROSIER. Mr. Colpitts, by the way, at that time was a member of the board of directors?

Mr. ECKER. He was.

Mr. LOWENTHAL. Was Mr. Colpitts one of the men who was put on the board shortly after or at the time of the reorganization in 1928?

Mr. ECKER. I could not tell you what time he came on. It may have been right from the beginning. The record would show that, and of course I would accept the record.

Mr. ROSIER. I think the record so shows. That is the fact, is it not, Mr. Swaine?

Mr. SWAINE. Mr. Hanauer so testified.

Mr. ROSIER. Did you know that the organization of the new company, the operating staff, had itself done a lot of work in connection with the revision of those contracts?

Mr. ECKER. Only this, that we were impressed by the capacity of the organization that had to do with operating the road over the electrified sections, and while I have not a distinct recollection of what they had to do with this change in the contract, it is my impression that they were a part of the investigation that was made at the time, which led to the amendment of the contract.

Mr. ROSIER. Do you by any chance recall how much Mr. Colpitts was paid for his work in that matter?

Mr. ECKER. I do not recall.

Mr. ROSIER. Mr. Chairman, I would like to offer for the record a letter from Mr. Scandrett to Mr. Colpitts, dated January 3, 1930.

Senator TRUMAN. It will be received.

(The letter referred to was marked "Exhibit No. 2084" and is included in the appendix on p. 7140.)

Mr. ROSIER. The letter reads as follows:

> As requested in your letter of December 30th, I am enclosing herewith voucher check in favor of Coverdale & Colpitts for $20,000 in payment of bill for services and expenses in connection with the power contract matter.

Does that refresh your recollection at all, Mr. Ecker, that he received $20,000?

Mr. ECKER. No. That must be 7 or 8 years or more ago, and I would not remember that detail. If I was present at the meeting when that was authorized, I undoubtedly voted for it. Again I would have to go by the record as to whether I was there.

Mr. ROSIER. I would like to offer for the record, Mr. Chairman, another letter from Mr. Scandrett to Mr. Colpitts, dated the same date, January 3, 1930. This is a copy of the original letter found in Mr. Colpitts' files. The letter is dated the same date as the previous letter that was introduced, and is addressed to "Dear Walter" and is signed "Henry."

Senator TRUMAN. It will be received.

(The letter referred to was marked "Exhibit No. 2085" and is included in the appendix on p. 7140.)

Mr. ROSIER. The letter reads as follows:

> Because your letter of December 30th calls for an expression of my opinion about the bill of your firm for services in connection with our power contract matter, and because our long friendship makes it our duty to at all times be absolutely frank and candid with each other, I am telling you that the bill is much larger than I anticipated it would be. I, of course, do not know how much time was expended nor how much expense incurred by your organization and if I did it might change my opinion.
>
> Before I presented to the Board the proposals for a new contract a great deal of work had been done by our officers and there had been extended negotiations with officers of the power companies in which I, to some extent, participated. In point of fact the negotiations had been so extended that the power companies would not have agreed to any substantial modification of their different proposals and the work of your firm resolved itself largely into the question of which of the different proposals seemed to be the best for the Railroad Company.
>
> The report prepared by your firm was an excellent one and the recommendation of the report was to accept the proposal which I and the other officers felt was the best basis for the new contract. While I do not anticipate any question will ever be raised as to the propriety of our action, if it is we will be fortified in having the opinion of your firm. Even though no question is ever raised, it is a satisfaction to me to have our opinion so fortified.
>
> I would have liked to have had an opportunity to go over this personally with you in advance of payment of the bill, but because of your request for prompt payment I have not waited to do so. As I have stated above, I of course do not know the amount of work which was done by members of your organization, and in the last analysis the man who does the job and knows just what has gone into the doing of it is in the best position to say what it is worth, and so I am leaving it entirely to you. I have written you as I have because I know that you would want me to tell you just how the bill impresses me.

Mr. LOWENTHAL. Mr. Potter, did you know at all of this correspondence between Mr. Scandrett and Mr. Colpitts prior to this date?

Mr. POTTER. I do not recall that I ever saw it or heard of it.

Mr. LOWENTHAL. You do not recall that the president informed the board at any time that he had paid a bill of Mr. Colpitts' firm?

Mr. POTTER. I do not recall. By that I do not mean to say that he did not advise the board. He may have, and I may have approved of it; but I do not recall anything about it.

Mr. LOWENTHAL. Did Mr. Scandrett have the power to pay a bill of this size without first getting the authority of the board of directors?

Mr. POTTER. I do not know that the board ever defined by resolution or by bylaws any limitation on the authority of the president.

Mr. LOWENTHAL. Do you remember, Mr. Ecker?

Mr. ECKER. No; I do not. I would suppose in this case it would depend upon the authority when it was given by the board to have the work done. I have no recollection about it.

Mr. LOWENTHAL. You do not know whether or not Mr. Scandrett had the power to make such a payment to Coverdale & Colpitts without first getting the authorization?

Mr. ECKER. I do not know that he did so. As a matter of fact, was it not authorized by the board?

Mr. LOWENTHAL. Do you know, Mr. Swaine?

Mr. SWAINE. I do not know. You are speaking of the question of power. I think he probably did have the power. I would expect to find that a good many bills of this size had been paid without ever having been submitted to the board.

Mr. LOWENTHAL. Was there any rule that you can remember, Mr. Ecker, that required that in the case of the payment of a bill to a director or to a firm of which he was a partner, or to a corporation with which he was connected, that in such cases at least the bills must first come before the board for approval prior to being paid? Do you know whether there was any such resolution of the board?

Mr. ECKER. I do not recall whether there was or not.

Mr. LOWENTHAL. Do you know whether or not there was any rule that might have been of that nature for bills of over a certain amount?

Mr. ECKER. Only as it relates to the budget forecast for the year, which was always approved by the board, and that budget always gave the officers some latitude in the expenditure of the authorization of the budget, depending upon developments as we went through the year. All I recollect of this is that the whole subject was one that was brought to the board's attention. The question of amending or changing the contract and the detail of it and the bills in connection with it I do not remember.

Mr. LOWENTHAL. Do you remember, Mr. Potter, whether there was any rule or resolution of the board which required submission to the board or to its executive committee of bills tendered by directors or firms or corporations with which they were connected, prior to being paid, whether all such bills were bills above a certain amount?

Mr. POTTER. Having in mind what I have always understood, or did, years ago—I am a little bit rusty on my law—the general rule, as I have understood it, was that a director rendering services was not entitled to compensation for services unless there was a specific agreement made to that end.

Mr. LOWENTHAL. An agreement between whom?

Mr. POTTER. The company and the director.

Mr. LOWENTHAL. You mean, it might apply simply to an agreement between the president of the company and the director, or would it have to be ratified by the board?

Mr. POTTER. The rule would require that the board approve of the employment of this man, and I would think it would carry with it the idea that the board would approve of the compensation.

Mr. LOWENTHAL. That is, that the compensation would have to be approved by the board before it was paid?

Mr. POTTER. I would think it would carry with it the idea that the board would approve of the compensation.

Mr. LOWENTHAL. That is, that the compensation would have to be approved by the board before it was paid?

Mr. POTTER. I would think so, unless in the nature of the employment there was some idea what it would be, perhaps. I am speaking of the general rule.

Mr. LOWENTHAL. You are speaking of the general rule of law?

Mr. POTTER. Yes.

Mr. LOWENTHAL. You do not know whether there was any general rule adopted by the board of directors of the St. Paul?

Mr. POTTER. No.

Mr. LOWENTHAL. Do you think it would be desirable to have such a rule in corporations, at least as to bills over a certain amount, whatever that minimum might be?

Mr. POTTER. Yes. I am president of another corporation now where I have had the board of directors pass a resolution restricting my authority to incur any obligations beyond $3,000. That illustrates my general idea.

Mr. LOWENTHAL. Restricting your authority to incur obligations of any kind with anybody above $3,000?

Mr. POTTER. Yes.

Mr. LOWENTHAL. With respect to contracts between the corporation that you have mentioned and yourself as an individual, or any other director as an individual or as a member of the firm, you would always submit them to the board of directors, and the amount to be paid you would submit before you would pay it?

Mr. POTTER. Yes; I would do that, I think. I do in every case. I do not say that is necessary. I think where you have a large corporation and a president you have confidence in, confidence in his judgment and integrity, in ordinary practice more latitude might be permitted.

Mr. LOWENTHAL. Do you think it would be desirable in the case of railroad corporations to require that in paying bills of directors or their firms or corporations, bills over a fixed minimum, whatever that minimum might be, ought to be submitted to the board for approval prior to being passed by any officer of the company?

Mr. POTTER. I would think that would be good business practice; yes.

Mr. LOWENTHAL. What do you think, Mr. Ecker?

Mr. ECKER. I would think it good business practice.

Mr. LOWENTHAL. And a desirable thing for the railroads?

Mr. ECKER. Desirable for any corporation. I would not limit it to the railroads.

Mr. LOWENTHAL. As a matter of fact, Mr. Ecker, is there not some rule or practice in the banking world that before a loan can be made to a director of a bank it must be approved by the board of the bank or its executive committee?

Mr. ECKER. It is my impression that there is either a law or regulation. It is practiced in many banks, regardless of that.

Mr. LOWENTHAL. And it is sound practice?

Mr. ECKER. I regard it as sound practice; yes. I think that it should be said, in connection with this, that there was a special situation, that there was great benefit to come to this railroad through the change that was made in that contract, and much saving to the railroad. It involved questions that were highly technical in which the services of an engineer were of a great deal of value; and I say here in the study and in the examination of this question, when authorized by the board or undertaken with the board's approval it might well have carried with it the authority to pay the expenses of the investigation and coming to the conclusion with reference to what extent and in what form the contract should be changed.

Mr. LOWENTHAL. That is, to leave it to the president to adjust with the person performing the services what the amount should be?

Mr. ECKER. I do not say it was done, but I say it was possible that it was understood in this case.

Mr. LOWENTHAL. You think that might be the proper way to handle it?

Mr. ECKER. Again, I say it depends on the circumstances, and it might have been, with the full explanation to the board, that whatever was done must have appeared to the board to be appropriate at that time.

Mr. LOWENTHAL. Did you know, Mr. Ecker, that Kuhn, Loeb & Co. had called Mr. Colpitts' firm into this receivership situation about 1925?

Mr. ECKER. Prior to the receivership?

Mr. LOWENTHAL. Yes.

Mr. ECKER. I do know that they had; yes.

Mr. LOWENTHAL. And that they performed services which were paid?

Mr. ECKER. They performed services. I do not know about the payment. I presume they were paid.

Mr. LOWENTHAL. Do you remember, Mr. Swaine?

Mr. SWAINE. They were called in by the company originally.

Mr. LOWENTHAL. They were paid out of the receivership estate?

Mr. SWAINE. Yes.

Mr. LOWENTHAL. About $70,000?

Mr. SWAINE. I do not remember.

Mr. LOWENTHAL. Do you have any recollection as to whether it was in the neighborhood of $70,000?

Mr. SWAINE. No. You have the figure there.

Mr. LOWENTHAL. Subject to correction, our records show that Coverdale & Colpitts received $72,000 for their services.

Mr. Ecker, have you heard that there was testimony before this subcommittee to indicate that Kuhn, Loeb & Co. had considerable to do with bringing Mr. Scandrett in as president of the St. Paul?[1]

Mr. ECKER. I do not know the testimony that has been given, but I do know that the bankers had much to do with bringing Mr. Scandrett in.

Mr. LOWENTHAL. Was he reelected president from time to time, or did he just continue without any reelection?

Mr. SWAINE. He was reelected every year.

Mr. ECKER. I would say the minutes must show what the practice was. I would suppose he was reelected from year to year.

Mr. LOWENTHAL. He was reelected every year by the board of directors?

Mr. ECKER. If the minutes show that, I would assume that he was.

Mr. LOWENTHAL. And one of those directors was Mr. Colpitts?

Mr. ECKER. Oh, yes.

Mr. ROSIER. Mr. Chairman, I want to offer for the record at this time a group of letters, the first of which is from Mr. Byram to Mr. Gray, president of the Union Pacific Railroad Co., dated July 19, 1924; copy of a letter from Mr. Goetz to Mr. Byram, dated April 8, 1925; copy of a letter from Mr. Byram to Mr. Greer, dated August 18, 1925; copy of a letter from Mr. Byram to Mr. Greer, dated September 22,

[1] See supra, p. 6819 et seq.

1925; copy of a letter from Mr. Byram to Mr. Harrison, dated April 6, 1927——

Mr. POTTER (interposing). What Mr. Harrison is that?

Mr. ROSIER. Mr. Fairfax Harrison.

Also copy of a letter from Mr. Byram to Mr. Pollock, vice president and general manager of the Boston & Maine Railroad Co., dated August 12, 1926; copy of a letter from Mr. Byram to Mr. Gillick, dated October 5, 1927; copy of letter from Mr. Pierpont to Mr. Byram, dated October 18, 1927; copy of telegram, signed "J. L. B.", dated October 25, 1927; copy of letter from Mr. Frank C. Jones to Mr. Scandrett, dated July 3, 1928; copy of letter from Mr. Scandrett to W. B. Storey, president of the Atchison, Topeka & Santa Fe Railway Co., dated July 21, 1928; copy of letter from Mr. Byram to Mr. Dietz, dated June 14, 1930; memorandum signed "W. A. D." for Mr. Harstad, undated; copy of letter from Mr. Scandrett to Mr. Fred W. Sargent, president, Chicago & North Western Railway Co., dated October 21, 1933; copy of letter from Mr. Sargent to Mr. Scandrett, dated October 27, 1933; copy of letter from Mr. Scandrett to Mr. Sargent, dated November 1, 1933; copy of memorandum from Mr. Scandrett to Mr. Gillick, dated May 27, 1934; copy of response from Mr. Gillick to Mr. Scandrett dated May 31, 1934; copy of letter from Mr. Scandrett to Mr. Sargent, president of the Chicago & North Western Railway, dated August 15, 1934; copy of letter from Mr. J. J. Osley to Mr. W. B. Dixon, dated October 10, 1934.

Senator TRUMAN. The documents will be received.

(The documents referred to were marked "Exhibits Nos. 2086 to 2105", and are included in the appendix on pp. 7141–7147.)

Senator TRUMAN. The subcommittee will now take a recess for about 10 minutes, and meet again at quarter of 3.

(A brief informal recess was taken, at the conclusion of which the following proceedings took place:)

PROBLEM OF SALARY REDUCTION FOR COUNSEL TO BOARD OF DIRECTORS

Mr. ROSIER. Mr. Swaine, do you recall that in the summer of 1933 an effort was made on behalf of the Chicago, St. Paul, Milwaukee & Pacific to have their interest rate on the loans from the Reconstruction Finance Corporation reduced?

Mr. SWAINE. Yes.

Mr. ROSIER. And in that connection the Reconstruction Finance Corporation requested that before there be an interest-rate reduction, certain salaries would be reduced?

Mr. SWAINE. Yes.

Mr. ROSIER. Do you recall that there was, in that connection, discussion as to the reduction of the salary of yourself, Mr. Swatland, and Mr. Wood?

Mr. SWAINE. Yes.

Mr. ROSIER. Who were counsel to the board?

Mr. SWAINE. Yes.

Mr. ROSIER. Do you recall, Mr. Swaine, that Mr. Scandrett conferred with Mr. Jones, the chairman of the Reconstruction Finance Corporation, about that matter, and wrote some correspondence?

Mr. SWAINE. I attended no such conference. I know Mr. Scandrett told me he had. I might say that as soon as the question came up

I said to Mr. Scandrett, and said to the board, that I would be very happy to resign as counsel for the board, or I would be very happy to have the services rendered without salary and on a basis of quantum meruit, after the services were rendered, in an amount to be fixed by the members of the board.

Mr. ROSIER. Do you recall, Mr. Swaine, what figure Mr. Scandrett was attempting to have the Reconstruction Finance Corporation agree on with respect to your fee?

Mr. SWAINE. I do not. So far as I was concerned I did not want him to agree on any amount, and I so stated to the board—not merely to Mr. Scandrett, but to the board.

Mr. ROSIER. Do you recall that the figure was $17,500?

Mr. SWAINE. No; I do not recall that.

Mr. ROSIER. Mr. Chairman, I should like to offer for the record at this time a copy of a letter from Mr. Scandrett to Mr. Jones, chairman of the Reconstruction Finance Corporation, dated June 28, 1933.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2106" and is included in the appendix on p. 7148.)

Mr. ROSIER (reading):

> In accordance with our telephone conversation on Monday, I shall put into effect July 1st the reductions in salaries as arranged at our meeting Washington on the 16th.
>
> I of course regret the necessity for making another reduction in the salaries of officers who are working harder and more efficiently than ever before, but they are all good soldiers and are taking the reduction in the best of spirit.
>
> I do want you to know I appreciate your cordial, friendly attitude and the consideration you accorded me in this matter. I realize something of the difficulties of your position and I am happy to do my part in the emergency situation which confronts us all.

Mr. Chairman, I should like to offer a copy of a letter from Mr. Swaine to Mr. Scandrett, dated July 1, 1933.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2107" and is included in the appendix on p. 7148.)

Mr. ROSIER (reading):

> Thanks for your note of June 26. As I told you when we talked the matter over, we want whatever is paid us to be entirely satisfactory to you, and we greatly appreciate that the amount finally agreed upon is above the minimum amount for which we said we thought we could afford to do the work.
>
> With this reduction, I assume that it is understood that should any major financial transaction develop, as, for example, a readjustment under the Bankruptcy Act, we would be entitled to special compensation. Of course, should such a matter develop it would be agreed in advance that it was one coming within this understanding.

Mr. SWAINE. I think, if you are going to introduce those letters, you ought to introduce all the other letters and the record before the board, where I stated—and I state it now—that I would very much have preferred to resign as counsel for the board of directors of the St. Paul at that time, because of the character of question that was raised. I think, if you look at the minutes of the board meeting, you will find that I only remained at the insistence of the board.

Senator TRUMAN. Mr. Swaine, if there are any letters that are not introduced at this time, that you care to have introduced, they will be put in the record.

Mr. SWAINE. Your examiners, Senator Truman, took copies of all these letters.

Mr. ROSIER. Mr. Swaine, there are quite a number of letters in this connection.

Mr. SWAINE. You did not worry about that when you introduced thirty-odd letters about Mr. Scandrett's private car. There are about 5 or 6 letters here that you have, and I request that you introduce the copies you have. I do not have them here.

Mr. ROSIER. Mr. Swaine, I am sure that we can supply them for the record later.

Mr. SWAINE. Please do so.

Mr. ROSIER. If you will tell me which ones you want.

Mr. SWAINE. I want all the correspondence and all the records of the board with reference to this matter of my remaining as counsel to the board, and my salary. You have all those letters.

Senator TRUMAN. We will introduce as many letters as you want put into the record, Mr. Swaine. Proceed.

Mr. ROSIER. I should like to offer for the record at this time, Mr. Chairman, a copy of a letter from Mr. Scandrett to Mr. Jones, dated August 28, 1933.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2108" and is included in the appendix on p. 7149.)

Mr. ROSIER (reading):

> I am asking you at this time to consider further the question of compensation for Messrs. Swaine, Wood, and Swatland, Counsel for Board of Directors of this Company.
>
> At the time of our discussion in Washington on June 16th their salary was \$28,300. It was originally \$35,000 and was reduced to \$31,500 on October 1, 1931, and further reduced to \$28,350 on February 1, 1933, at which time corresponding reductions were made in the salaries of all officers of this company in excess of \$3,600. At our conference you fixed their salary at \$17,500, which was just 50% of the salary they received prior to October 1, 1931. I ought so say in justice so Messrs. Swaine, Wood, and Swaltand that prior to the time I met with you they themselves brought up the propriety of a further reduction in their salary because the volume of work they were doing for us was somewhat lighter than it had been in prior years. I ought also to say it would be entirely agreeable to them if they were paid on a fee basis instead of a fixed annual salary. In my view, however, it is better for the company and more economical to have them on a salary basis.
>
> As to the desirability and, in fact, necessity of this company having lawyers in New York, there can, I think, be no question. The meetings of the Board and of the Executive Committee are held in New York and the Board has occasion frequently to ask advice and call for opinions. Our New York office also has frequent occasion to consult these lawyers, as do I when I am in New York and also by correspondence. They went through the reorganization of the company and have been active for the new company from its inception. They are thoroughly familiar with our financial set-up and their advice on questions arising thereunder is most valuable to us.
>
> I understand the only question there has been in your mind is as to whether they should be on a salary or a fee basis, because, of course, you recognize that if the Board of Directors of the Company feel they should have a lawyer or firm of lawyers in New York City they should act on their judgment in the matter. The Board feels strongly, as I do, that the salary basis is the more satisfactory arrangement, and I am also of the opinion, as stated previously, it will work out more economically. I very much hope, therefore, you will approve a salary of \$17,500 per annum.

Another letter, Mr. Chairman, that I should like to offer for the record at this time is a letter from Mr. Scandrett to Mr. Swaine, dated August 28, 1933.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2109" and is included in the appendix on p. 7149.)

Mr. ROSIER (reading):

> Chairman Jones, of the Reconstruction Finance Corporation, called me on the telephone on Saturday and in the course of the conversation said that the question of New York lawyers for our Company was still under consideration. He asked me if I had changed my view on the subject, and I told him I had not. He then suggested that I write him a letter incorporating my views and this I have done as per attached copy, which, of course, is only stating in a somewhat different way the substance of what I said to him in my previous letter.
>
> The only figure he mentioned in his conversation was \$15,000. I told him I thought the figure he had set at our conference in June of \$17,500 was as low as he should go. He asked my view of a retainer on a fee basis, with a maximum of \$15,000 or possibly \$17,500. I told him I did not think it was practicable if he went to a fee basis to make any limitation on the amount, and that I was sure the salary basis would be more satisfactory as well as more economical. He indicated I would hear from him shortly after receipt of my letter.

KUHN, LOEB PARTNERS REQUEST FAVORS OF ST. PAUL OFFICERS

Mr. Chairman, I should like at this time to offer in evidence a copy of a letter from Mr. Hanauer to Mr. W. W. K. Sparrow, dated January 9, 1928.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2110" and is included in the appendix on p. 7150.)

Mr. ROSIER. That was a few days, Mr. Ecker, prior to the time when the new company started functioning—January 9, 1928?

Mr. ECKER. Yes.

Mr. ROSIER (reading):

> I have a letter from Mr. Rawson, Chairman of the Board of the Union Trust Company in Chicago, saying that he hopes that the new St. Paul company will continue the account which the Receivers have kept with his company. I have replied that this is a matter which is entirely in your hands, but I might say to you that this company is one of the very important and influential companies in Chicago and they are very good friends of ours.

Do you know, Mr. Ecker, whether the St. Paul continued their account at the Union Trust Co. in Chicago?

Mr. ECKER. I do not recollect. I go by the record.

Mr. ROSIER. Do you know, Mr. Potter?

Mr. POTTER. No.

Mr. ROSIER. Do you know, Mr. Swaine?

Mr. SWAINE. I do not know.

Mr. ROSIER. Mr. Chairman, I should like to offer for the record at this time a copy of a letter from Mr. Mortimer L. Schiff to Mr. Scandrett, dated January 24, 1928.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2111" and is included in the appendix on p. 7150.)

Mr. ROSIER. Mr. Schiff was a partner of the firm of Kuhn, Loeb & Co., Mr. Ecker?

Mr. ECKER. Yes.

Mr. ROSIER (reading from "Exhibit No. 2111"):

> I am permitting myself to give this letter of introduction to you to Mr. W. B. Tracy, of the Tracy-Parry Company, advertising agents.
>
> Mr. Tracy, whom I have known favorably for a number of years, is very desirous of securing an opportunity to figure on the publicity work of the Chicago,

Milwaukee, St. Paul and Pacific Railroad Company. I have explained to him that these are matters which are in the hands of the operating officials and that we would not venture to even make suggestions as to who should be employed for such a purpose. I have thought it due him, however, to give him an opportunity to be heard by you, if you will be good enough to extend such an opportunity to him.

Mr. Chairman, I should like to offer for the record at this time a copy of a letter from Mr. Mortimer L. Schiff to Mr. Scandrett, dated March 5, 1928.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2112" and is included in the appendix on p. 7150.)

Mr. ROSIER (reading):

We have been asked by valued friends to say a word on behalf of the Bettendorf Company, of Bettendorf, Iowa, manufacturers of railroad cars who have participated in the car business of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company in the past. I understand that they are located on your lines and that they are very reliable people. I hope, therefore, that you will be able to give them the opportunity they seek for a portion of the equipment which I am told you are about to order.

I should like to offer, Mr. Chairman, Mr. Scandrett's response to Mr. Schiff, dated March 8, 1928.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2113" and is included in the appendix on p. 7151.)

Mr. ROSIER (reading):

I have received on the line today your letter of March 5th in regard to the Bettendorf Company. I have no doubt they will be given every opportunity to bid on our equipment requirements, but in order to be certain I am today writing our Chief Purchasing Officer.

USE OF PRIVATE CARS

Mr. LOWENTHAL. Mr. Ecker, will you tell us the States which represent the eastern and western termini of the St. Paul Railway?

Mr. ECKER. Eastern and western?

Mr. LOWENTHAL. Yes.

Mr. ECKER. Subject to correction, I should say Illinois——

Mr. SWAINE. How about the Chicago & Terre Haute?

Mr. ECKER. The Chicago & Terre Haute goes into Indiana.

Mr. LOWENTHAL. Mr. Swaine, would you suggest that the eastern State is Indiana?

Mr. SWAINE. I do not know. A straight line drawn due north from the eastern terminus would go up into Michigan. We have a line in Michigan. I do not think it gets that far east. I should guess that Indiana was probably the farthest east.

Senator TRUMAN. Indiana and Michigan are about on a level.

Mr. LOWENTHAL. And the western State, Mr. Ecker?

Mr. ECKER. The State of Washington.

Mr. LOWENTHAL. Mr. Ecker, would you tell us the State in which is the eastern terminus of the principal or main line of the St. Paul?

Mr. ECKER. Illinois.

Mr. LOWENTHAL. That would be at Chicago.

Mr. ECKER. At Chicago.

Mr. LOWENTHAL. Mr. Ecker, where did the board of directors of the St. Paul Railway hold its meetings?

Mr. ECKER. As a general thing, in New York City. I am not sure that every meeting was held there, because I think there were some occasions when they were held in other places.

Mr. LOWENTHAL. But mostly in New York?

Mr. ECKER. In New York.

Mr. LOWENTHAL. Were most of the directors of the St. Paul, in the period between 1928 and the bankruptcy of 1935, New York men?

Mr. ECKER. Mr. Van Dyke was not, surely.

Mr. LOWENTHAL. I say "most."

Mr. ECKER. Most of them were; yes.

Mr. LOWENTHAL. You had a director in Seattle.

Mr. ECKER. Joshua Greene was in Seattle; yes.

Mr. LOWENTHAL. He was what was called an on-line director?

Mr. ECKER. It would be an appropriate term; yes.

Mr. LOWENTHAL. That is to say, that term has been used in some of the documents that were put into the record of the subcommittee. Is that a customary phrase in the railroad world?

Mr. POTTER. It is new to me.

Mr. ECKER. I have never used it, but I think it is appropriate.

Senator TRUMAN. It was used in connection with the Missouri Pacific.

Mr. LOWENTHAL. I think, Mr. Ecker, the representatives of the Stedman committee in the Missouri Pacific referred to their desire to have some on-line directors.

Mr. ECKER. I can see the reason for it.

Mr. LOWENTHAL. Mr. Ecker, do you think it desirable or undesirable, in the case of a railroad such as the St. Paul, geographically situated between Indiana and the Pacific coast, to have the directors' meetings mostly in New York?

Mr. ECKER. Looking at the complexion of the Board, I would say so; yes.

Mr. LOWENTHAL. Do you think it is desirable for the railroad, and from the point of view of the public interest?

Mr. ECKER. I see no objection to it.

Mr. LOWENTHAL. Mr. Potter, do you agree?

Mr. POTTER. I think it was desirable in this case, yes.

Mr. LOWENTHAL. Mr. Chairman, I should like to offer for the record a series of copies of letters, the first of which is a letter from Edward J. Brundage, receiver, to Mr. H. E. Byram, receiver, dated November 6, 1925.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2114" and is included in the appendix on p. 7151.)

Mr. LOWENTHAL (reading):

A party of friends, which may include Judge Wilkerson, want to go to Oshkosh November 19, returning November 21st. If it is possible, could I have the use of a private car as I intend to accompany them? And will it be possible to make arrangements over the Chicago & North Western, leaving on their three o'clock train November 19th, and returning from Oshkosh one PM November 21st.

P. S.—Of course I understand tickets will have to be purchased for the guests accompanying me.

Mr. Potter, the receivers were entitled to travel on the St. Paul without paying transportation, were they not?

Mr. POTTER. Yes.

Mr. LOWENTHAL. And if they used a private car and had friends with them, the friends would have to pay the regular charge for a ticket?

Mr. POTTER. Yes.

Mr. LOWENTHAL. I should also like to offer, Mr. Chairman, a copy of a letter from H. E. Byram to Mr. Brundage, dated November 6, 1925.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2115" and is included in the appendix on p. 7151.)

Mr. LOWENTHAL. This letter is headed "Proposed Trip to Oshkosh, Wis." [Reading:]

> Replying to your letter of November 6th:
> We shall be glad to furnish a private car for the party referred to covering the proposed trip to Oshkosh, Wisconsin, and return, and I have placed car "Milwaukee" at your disposal.

Mr. Potter, that was one of the private cars of the St. Paul?

Mr. POTTER. Yes.

Mr. LOWENTHAL. How many private cars did they have during the period of the receivership, do you remember? That was between 1925 and 1928.

Mr. POTTER. As a guess, I should say three or four or five, perhaps.

Mr. LOWENTHAL. Does that include, or not, business cars?

Mr. POTTER. Yes.

Mr. LOWENTHAL. That is, the private cars and the business cars numbered some four or five, or perhaps three?

Mr. POTTER. I should say possibly as many as four, or perhaps five.

Mr. LOWENTHAL. A business car is something on the order of a private car, but it is run at a different part of the train, is it not?

Mr. POTTER. No. The words "business car" and "private car" are really interchangeable in railroad parlance. Railroad people call them business cars. They really have not any private cars.

Mr. LOWENTHAL. I should like to offer, Mr. Chairman, a copy of a letter to Mr. Byram from Mr. Fred W. Sargent, headed "Chicago and North Western Railway Company," indicating that the arrangements were made by Mr. Byram with the North Western to take care of the private car to carry the party referred to in Mr. Brundage's letter of November 6, 1925.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2116" and is included in the appendix on p. 7151.)

Mr. LOWENTHAL. Mr. Potter, you would not remember, or perhaps have known, whether that trip in that private car was taken, as requested by Mr. Brundage?

Mr. POTTER. I do not think I ever knew of it.

Mr. LOWENTHAL. You would not be informed whenever any of your coreceivers or others were using private cars during the period of the 1925–28 receivership?

Mr. POTTER. No.

Mr. LOWENTHAL. Mr. Chairman, I should like to offer for the record a copy of a letter from Mr. Byram to Mr. J. T. Gillick, chief operating officer, dated June 10, 1926.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2117" and is included in the appendix on p. 7152.)

Mr. LOWENTHAL (reading):

> I enclose herewith itinerary of Mr. Brundage's trip to California. Please arrange for the movement of business car "Milwaukee" occupied by himself and family from Chicago to Omaha on train No. 7, leaving here at 6:10 p. m. Saturday, June 12th.
> On arrival at Omaha the car is to be delivered to the Union Pacific for movement to San Francisco on their trains Nos. 5–9.

Mr. Potter, when a private car of one railroad is routed over the line of another railroad, does the first road pay to the second the charges for transporting that private car?

Mr. POTTER. I think not.

Mr. LOWENTHAL. You think not?

Mr. POTTER. I think not.

Mr. LOWENTHAL. That is to say, in this case the Union Pacific would haul that private car without charge?

Mr. POTTER. Yes.

Mr. LOWENTHAL (continuing reading from "Exhibit No. 2117"):

> The car will move deadhead from West Yellowstone to Butte——

Deadhead meaning without passengers in it?

Mr. POTTER. Yes.

Mr. LOWENTHAL (continuing reading):

> and on arrival at Butte should move direct to Three Forks—

and so forth.

I shall not read the balance of it, except the last sentence:

> Arrangements have already been made with the Union Pacific and Southern Pacific for movement of the car over their lines.

On the basis of your testimony, Mr. Potter, the Union Pacific and the Southern Pacific would each be drawing that private car, in which Mr. Brundage and family were traveling, without cost to the St. Paul?

Mr. POTTER. Yes. That is right, is it not, Mr. Wilson? We did not pay the other roads?

Mr. WILSON. That was true. It is not the case now. Charges are made now.

Mr. LOWENTHAL. When did that change come, Mr. Wilson?

Mr. WILSON. I do not remember; several years ago.

Mr. LOWENTHAL. Was it after the Interstate Commerce Commission had objected to what had been done in the past?

Mr. WILSON. I think it was.

Mr. LOWENTHAL. Do you remember Commissioner Mahaffie made some very vigorous objections to the old practice?

Mr. WILSON. I do not know whether it was on that occasion or not, but it was changed.

Mr. LOWENTHAL. It was some time during this decade, was it not?

Mr. WILSON. Yes; within the last few years.

Mr. POTTER. There was a tightening up in the use of private cars about that time.

Mr. LOWENTHAL. I should like to offer for the record, Mr. Chairman, a copy of a letter from Mr. T. B. Hamilton to Mr. Byram, dated September 13, 1926.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2118" and is included in the appendix on p. 7152.)

Mr. LOWENTHAL. Do you remember, Mr. Potter, who Mr. J. H. Hiland was?

Mr. POTTER. I do not recall.

Mr. LOWENTHAL. Was he in the employ of the receivers?

Mr. POTTER. J. H. Hiland?

Mr. LOWENTHAL. Yes.

Mr. POTTER. I do not remember.

Mr. LOWENTHAL. He is referred to in this copy of a letter as a retired vice president. Do you know whether it was their practice to permit retired vice presidents of the road to have private cars or business cars?

Mr. POTTER. I do not know of any practice in that regard. I do not remember Mr. Hiland at all.

Mr. LOWENTHAL. You do not remember whether there was any rule against it?

Mr. POTTER. No; I am sure there was no rule against it.

Mr. LOWENTHAL. I should like to offer for the record, Mr. Chairman, a copy of a letter from Mr. Byram, as receiver, to Mr. Storey, as president of the Atchison, Topeka & Santa Fe Railway, dated December 7, 1926.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2119" and is included in the appendix on p. 7152.)

Mr. LOWENTHAL (reading):

> Referring to telephone conversation with your office this morning regarding the movement of C. M. & St. P. official car "Milwaukee" occupied by Mr. Edward J. Brundage and family from Chicago to San Diego and return.

By the way, Mr. Potter, did the lines of the St. Paul run to San Diego?

Mr. POTTER. No.

Mr. LOWENTHAL. The nearest point of the St. Paul lines to San Diego was very far distant from San Diego, was it not?

Mr. POTTER. Yes.

Mr. LOWENTHAL. You would have to travel all the way down the coast from Seattle to San Diego, Calif., or else go to the southwest, would you not?

Mr. POTTER. Yes.

Mr. LOWENTHAL. Over some other line.

Mr. POTTER. Yes.

Mr. LOWENTHAL (continuing reading from "Exhibit No. 2119"):

> Mr. Brundage would like to leave here on your train No. 21 Sunday evening, December 26th, and return on train No. 22 leaving San Diego 6:30 P. M., Wednesday, January 5th, and if you can consistently handle the car on this schedule it will be very much appreciated.
>
> Car "Milwaukee" is of all-steel construction.
>
> Trip pass requests covering transportation for all members of the party, the car and attendants, are enclosed.

Mr. Potter, was it the practice to issue passes to attendants of the person who was himself entitled to a pass, in a case like this?

Mr. POTTER. I do not recall the regulation in that regard.

Mr. LOWENTHAL. Apparently Mr. Byram enclosed requests for passes for all members of the party and its attendants and the car itself, which covered Mr. Brundage, the Receiver, and his family.

Mr. Chairman, I offer for the record a copy of a letter from Mr. Byram to Mr. Brundage, dated December 27, 1926.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2120" and is included in the appendix on p. 7153.)

Mr. LOWENTHAL (reading):

> Peninsular Occidental Steamship Company will place transportation Key West to Havana and return with their depot ticket agent Key West to be called for.

Do you happen to know, Mr. Potter, whether passes on steamship lines were ever made available for officers or receivers of the railroad during the period 1925 to 1928?

Mr. POTTER. Of the St. Paul Railroad?

Mr. LOWENTHAL. Yes. I am just asking whether you know.

Mr. POTTER. I do not know. I do not recall.

Mr. LOWENTHAL. I offer for the record, Mr. Chairman, a copy of a letter from Mr. Brundage to Mr. Byram, dated February 19, 1927.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2121" and is included in the appendix on p. 7153.)

Mr. LOWENTHAL (reading):

> I may want to have a car to bring the family home from Ormond on April 4th. Will it be possible to have the use of one without inconveniencing others.

Is Ormond in Florida or California?

Mr. POTTER. Florida.

Mr. LOWENTHAL. The St. Paul gets no nearer to Florida with its lines than the State of Indiana or Michigan, does it?

Mr. POTTER. No. Kansas City——

Mr. LOWENTHAL. Possibly Kansas City might be nearer to Florida.

Mr. POTTER. Yes.

Mr. LOWENTHAL. A man traveling from Chicago to Florida might go by way of Kansas City?

Mr. POTTER. He would not, ordinarily.

Mr. LOWENTHAL. I have a copy of a letter that I should like to offer for the record, Mr. Chairman, apparently from Mr. Byram to the officials of various railroads, dated March 9, 1927.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2122" and is included in the appendix on p. 7153.)

Mr. LOWENTHAL (reading):

> Trip—Mr. Edward J. Brundage & Family: Mr. Edward J. Brundage, one of my co-receivers, plans on making a trip to Ormond, Florida, and return with his family, using Chicago, Milwaukee & St. Paul Railway all steel official car "Montana", and if entirely consistent I shall be glad if you will arrange for movement of the car on the following basis—

Then it gives the details—

> Requests for transportation covering the car and all members of the party over your respective lines are inclosed.

It is addressed to officers of the Illinois Central, the Atlantic Coast Line, and the R. F. & P. Railway Co. What would that be—Richmond, Fredericksburg & Potomac?

Mr. POTTER. Richmond, Fredericksburg & Potomac.

Mr. LOWENTHAL. Which would indicate that the trip to Ormond was made, not by way of Kansas City, but east and south.

Mr. POTTER. Through Washington.

Senator TRUMAN. By way of the Capital City. Proceed.

Mr. LOWENTHAL. It is addressed also to officers of the Central of Georgia, the Florida East Coast, and the Baltimore & Ohio.

I also offer for the record, Mr. Chairman, a copy of a letter to Mr. Downs, President of the Illinois Central, dated April 19, 1927.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2123" and is included in the appendix on p. 7154.)

Mr. LOWENTHAL. This is headed "Movement—Car Snoqualmie." Was the Snoqualmie one of the private cars of the St. Paul road?

Mr. POTTER. Yes.

Mr. LOWENTHAL (reading from "Exhibit No. 2123"):

> Mr. E. J. Brundage, one of my co-receivers, has planned a trip to New Orleans in C. M. & St. P. official car Snoqualmie, and if entirely consistent it will be appreciated if you can arrange to handle the car on the following schedule—

Then the schedule—

> If it can be arranged conveniently Mr. Brundage would like to have the car parked for occupancy at New Orleans.
>
> Request for transportation covering the car and attendance is enclosed.

Do you know the occasion of that trip to New Orleans, Mr. Potter?

Mr. POTTER. I do not.

Mr. LOWENTHAL. Had you ever heard of it?

Mr. POTTER. No.

Mr. LOWENTHAL. Had you ever heard of any references to the party that went down with Mr. Brundage on that trip?

Mr. POTTER. No, sir. I never knew of the trip.

Mr. LOWENTHAL. Do you know whether Judge Wilkerson was ever on a trip in a private car of the company to New Orleans?

Mr. POTTER. I have not the slightest idea.

Mr. LOWENTHAL. I offer for the record, Mr. Chairman, a copy of a letter dated June 17, 1927, from Mr. Brundage to Mr. Dietze, care of Mr. Byram.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2124" and is included in the appendix on p. 7154.)

Mr. LOWENTHAL. Who was Mr. Dietze, Mr. Potter?

Mr. POTTER. Mr. Dietze was an office assistant, perhaps in charge of Mr. Byram's office in Chicago, the receiver's office. He was sort of chief clerk and general factotum.

Mr. LOWENTHAL (reading from "Exhibit No. 2124"):

> I have written to Mr. Byram asking if I might have a business car to take me and my family to Vancouver over the Canadian Pacific from Minneapolis.

Minneapolis is on the line of the St. Paul road?

Mr. POTTER. Yes.

Mr. LOWENTHAL. Then the route from there over the Canadian Pacific would be through what point, do you know?

Mr. POTTER. I do not recall.

Mr. LOWENTHAL (continuing reading from "Exhibit No. 2124"):

> I want to be connected with the Baker tour, of which I am enclosing itinerary, and also a memorandum from Mr. Baker showing the train numbers and departure time from Minneapolis, Banff, and Lake Louise.
>
> I would like to have you get transportation for Mrs. Brundage, myself, and son Robert (8), on the Canadian Pacific boat, *Princess Louise*, to Skagway; the White Pass & Yukon Railroad; and if possible, the Alaska Railroad and the Alaska Steamship Company from Seward to Seattle on the steamship Yukon.

> Mr. Baker has made all of the steamboat reservations but if transportation can be extended it will save that much. I will talk later about the return home from Seattle. I mentioned to Mr. Haynes before I talked to Mr. Baker the matter of this trip and he had Mr. Schilling of the Passenger Department come and see me. I am taking it up with him on account of the business car and I would prefer that you would make the application for passes.

I offer for the record, Mr. Chairman, a copy of a letter apparently taken from the president's file of the St. Paul, dated June 12, 1927, to Mr. H. W. Beatty, chairman and president of the Canadian Pacific Lines.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2125" and is included in the appendix on p. 7155.)

Mr. LOWENTHAL (reading):

> One of my co-receivers, Mr. Edward J. Brundage, has made plans for a trip to Alaska with Mrs. Brundage and their son Robert.

This was not written by you, Mr. Potter?

Mr. POTTER. No.

Mr. LOWENTHAL. So it must have been written by Mr. Byram. He was the only other receiver. (Continuing reading from "Exhibit No. 2125"):

> They will make the Grand Circle Tour, of the Baker Tours, leaving Chicago on July 30th. Mr. Brundage will have one of our all steel business cars and will use our line to Minneapolis, joining the party at that point.
>
> I have written to Mr. Jaffrey—

Is he connected with the Soo Line?

Mr. POTTER. Yes; he was then president.

Mr. LOWENTHAL (continuing reading):

> I have written to Mr. Jaffrey in regard to handling the car on their train No. 12 leaving Minneapolis at 12:25 P. M., Sunday, July 31st, and would like to inquire if it will be consistent for you to handle the car through to Banff on that train.

The Soo Line is connected with the Canadian road, is it?

Mr. POTTER. Yes.

Mr. LOWENTHAL. That is, the Soo Line is a subsidiary, or is affiliated with the Canadian road?

Mr. POTTER. I have forgotten.

Senator TRUMAN. Mr. Potter, was Mr. Brundage paid a salary while he was a receiver of the Milwaukee road?

Mr. POTTER. He received a monthly payment.

Senator TRUMAN. How much was that payment?

Mr. POTTER. $4,000 a month.

Mr. LOWENTHAL. Mr. Brundage received $4,000 a month during the receivership?

Mr. POTTER. Yes.

Mr. LOWENTHAL. And at the close of the receivership, which ran for some 2 years and 9 months, Mr. Brundage received an additional payment?

Mr. POTTER. Of $100,000.

Mr. LOWENTHAL. How much?

Mr. POTTER. $100,000. I received the same monthly payment and the same allowance at the end.

Senator TRUMAN. It is apparent, though, that you did not do quite as much traveling as Mr. Brundage. You must have been busy running the railroad while he was traveling around.

Mr. POTTER. He will come to some traveling that I enjoyed.
Senator TRUMAN. I believe I would like to be a receiver for one of these big railroads. It is a very lucrative and pleasant job. Proceed.
Mr. POTTER. There are pleasant aspects.
Mr. LOWENTHAL. I should like to offer for the record, Mr. Chairman, a copy of a letter from Mr. Byram to Mr. Smith, General Manager of the Alaska Railroad, at Anchorage, Alaska, dated June 20, 1927.
Senator TRUMAN. It may be received.
(The letter referred to was marked "Exhibit No. 2126" and is included in the appendix on p. 7155.)
Mr. LOWENTHAL. This is headed "Transportation." In the railroad world "transportation" sometimes means passes, Mr. Potter?
Mr. POTTER. Yes.
Mr. LOWENTHAL. It sometimes means passes.
Mr. POTTER. Passes always mean transportation.
Mr. LOWENTHAL. And transportation sometimes means passes.
Mr. POTTER. Yes.
Mr. LOWENTHAL. This was headed "Transportation" [reading from "Exhibit No. 2126"]:

One of my Co-receivers, Mr. Edward J. Brundage, has made plans for a trip to Alaska with Mrs. Brundage and their son Robert. They will make the Grand Circle Tour, of the Baker Tours, leaving Chicago on July 30th.
The party will arrive at Skagway on the morning of August 10th. The itinerary includes a trip over the Alaska Railroad and I would like to inquire if it would be consistent to provide Mr. Brundage with transportation for himself, Mrs. Brundage, and son Robert (8).

I offer for the record, Mr. Chairman, a copy of a letter from Mr. Byram to Mr. Elliott, President of the White Pass & Yukon Railroad, with offices at Chicago. The letter is dated June 20, 1927.
Senator TRUMAN. It may be received.
(The letter referred to was marked "Exhibit No. 2127" and is included in the appendix on p. 7155.)
Mr. LOWENTHAL. This closes with a similar inquiry to that in the letter just referred to [reading]:

I would like to inquire if it would be consistent to provide Mr. Brundage with transportation for himself, Mrs. Brundage, and son Robert (8).

Mr. Chairman, I should next like to offer a copy of a letter from Mr. Elliott to Mr. Byram, dated June 21, 1927.
Senator TRUMAN. It may be received.
(The letter referred to was marked "Exhibit No. 2128" and is included in the appendix on p. 7156.)
Mr. LOWENTHAL. Mr. Elliott says, "we enclose herewith trip passes covering the railway and steamboat lines operated by us, over which they will travel in making the circle tour."
Meaning Mr. Brundage, wife, and son.
Senator TRUMAN. Mr. Potter, did Mr. Byram travel around this way too?
Mr. POTTER. Mr. Byram made some trips, I have no doubt, when he used a private car. I do not know to what extent.
Senator TRUMAN. Proceed.
Mr. LOWENTHAL. Mr. Chairman, I should like to offer for the record a copy of a memorandum or letter, apparently, to Mr. Byram, signed with the initials "W. A. D."
Senator TRUMAN. It may be received.

(The memorandum referred to was marked "Exhibit No. 2129" and is included in the appendix on p. 7156.)
Mr. LOWENTHAL. "W. A. D." was Mr. Dietze, Mr. Potter?
Mr. POTTER. I do not know.
Mr. LOWENTHAL. Mr. Wilson, who is "W. A. D." Dietze?
Mr. WILSON. Mr. Byram's secretary and chief clerk.
Mr. LOWENTHAL. Are "W. A. D." the initials of Mr. Dietze?
Mr. WILSON. I do not know.
Mr. LOWENTHAL. This is dated July 16, 1927, to Mr. Byram [reading from "Exhibit No. 2129"]:

The "Wisconsin"—

That was one of the private cars?
Mr. POTTER. Yes.
Mr. LOWENTHAL (continuing reading)

The "Wisconsin" is available for the trip west. Rather than hold the car on the Coast during the three weeks Mr. Brundage is in Alaska, shall I have it returned deadhead and line up the "St. Paul" for the return trip from Seattle?

The "St. Paul" was also one of the private cars?
Mr. POTTER. I do not remember.
Mr. LOWENTHAL. This was in July 1927. Do you recall the private car "St. Paul"?
Mr. POTTER. I do not remember.
Mr. LOWENTHAL. Do you remember, Mr. Wilson, whether there was a private car named the "St. Paul"?
Mr. WILSON. There was one named "Milwaukee."
Mr. POTTER. There was the "Milwaukee", the "Montana", the "Snoqualmie", and the "Wisconsin." I remember them. I do not remember the "St. Paul."
Mr. LOWENTHAL. Mr. Chairman, I should like to offer for the record a copy of a letter dated December 15, 1926—or perhaps it is a memorandum—addressed to the presidents or vice presidents and other officers of various railroads—the C. C. C. & St. L., the Southern Railway, the Central of Georgia, the Atlantic Coast Line, the Florida East Coast Line, the Louisville & Nashville, the Nashville, Chattanooga & St. Louis, and the Chicago & Eastern Illinois.
Senator TRUMAN. It may be received.
(The memorandum referred to was marked "Exhibit No. 2130" and is included in the appendix on p. 7156.)
Mr. LOWENTHAL (reading):

This is to confirm my telegram of even date and telephone conversation with Mr. Powell's office regarding the movement of C. M. & St. P. Railway official car "Milwaukee" occupied by Mr. and Mrs. Edward J. Brundage, Maid (Nancy Swanson), sons Edward J., Jr. (11 Yr.), Robert V. (7), daughter Margaret G (9 yrs.), and Nurse (Alice Survais), on the following schedule:

Then follows a detailed schedule.
Is the Central of Georgia in receivership?
Mr. POTTER. I do not know. I think it is now.
Mr. LOWENTHAL. Do you know, Mr. Ecker?
Mr. ECKER. It is my impression that it is.
Mr. LOWENTHAL. The Florida East Coast is in receivership?
Mr. ECKER. Yes.
Mr. LOWENTHAL. The Chicago & Eastern Illinois is in receivership.
Mr. ECKER. Yes.

Mr. LOWENTHAL. The transportation charges on that car might have been a little helpful to those roads that were later to go into receivership.

I offer for the record, Mr. Chairman, a copy of a letter from Mr. Byram to Mr. Earling, Western Representative—that was western representative of the receivers during receivership?

Mr. POTTER. Yes.

Mr. LOWENTHAL. This letter is dated July 29, 1927.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2131" and is included in the appendix on p. 7157.)

Mr. LOWENTHAL. Mr. Earling is the son of one of the previous presidents of the St. Paul?

Mr. POTTER. A brother, I think.

Mr. LOWENTHAL. Is that your recollection, Mr. Ecker?

Mr. ECKER. That is my impression.

Mr. LOWENTHAL. The brother of a previous and deceased president of the St. Paul.

Mr. POTTER. A. E. Earling was the former president.

Mr. LOWENTHAL. I shall not trouble to read that, Mr. Chairman.

Mr. Chairman, I offer for the record a copy of a letter from Mr. Byram to Mr. Brundage, dated November 28, 1927, headed "Transportation".

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2132" and is included in the appendix on p. 7158.)

Mr. LOWENTHAL (reading):

> Replying to your letter of November 28th—

They were in the same city, were they not?

Mr. POTTER. Yes.

Mr. LOWENTHAL (continuing reading):

> I shall be glad to arrange for a car for your family to use on the trip to Florida between Christmas and New Years if you will kindly advise me in advance when they wish to leave Chicago.

That is headed "Transportation". That would refer to passes?

Mr. POTTER. Yes.

Mr. LOWENTHAL. Mr. Chairman, I offer for the record a copy of a letter from Mr. Brundage to Mr. Dietze, dated December 2, 1927.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2133" and is included in the appendix on p. 7158.)

Mr. LOWENTHAL. This letter reads:

> Since speaking to Mr. Byram about the car we have changed our plans; instead of going south, Mrs. Brundage is going to Europe.
>
> If it is possible, without any inconvenience, would like the car to leave Chicago the forepart of January in time to catch steamer sailing from New York the afternoon or night of January 7th. Would like to have the car taken to Washington where I can leave the two children who are attending school there, and thence home.

Senator TRUMAN. What was Mr. Brundage's business before he became receiver for the Chicago, Milwaukee & St. Paul?

Mr. POTTER. Practicing law.

Senator TRUMAN. I thought he might be a traveling salesman. [Laughter.]

Mr. LOWENTHAL. Mr. Chairman, I offer for the record a copy of a letter from Mr. Brundage to Mr. Dietze, dated December 8, 1927.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2134" and is included in the appendix on p. 7159.)

Mr. LOWENTHAL (reading):

> Referring to your memorandum of the proposed itinerary for the eastern trip, I think the schedule will have to be set back a day as the steamer "France" upon which Mrs. Brundage is sailing leaves at 1 a. m. January 7th. Consequently it will be necessary to be in New York the day before.
>
> My sister, Mrs. Margaret Freisinger, is going to accompany us and I ask that you be kind enough to have transportation issued to her to cover the round trip, that is, Chicago, New York, Washington, and return.

Senator TRUMAN. His sisters and his cousins and his aunts all made use of this transportation. I think that is rather disgraceful I cannot approve of that at all. This road was in receivership.

Mr. LOWENTHAL. Mr. Chairman, I offer for the record a copy of a telegram from Mr. Earling, the western representative, Mr. Potter——

Mr. POTTER. Yes.

Mr. LOWENTHAL. To Mr. O'Brien, at Portland, dated August 24, 1927.

Senator TRUMAN. It may be received.

(The telegram referred to was marked "Exhibit No. 2135" and is included in the appendix on p. 7159.)

Mr. LOWENTHAL. Who was Mr. O'Brien, do you know?

Mr. POTTER. I do not remember.

Mr. LOWENTHAL. Mr. J. P. O'Brien. Do you know, Mr. Wilson?

Mr. WILSON. No.

Mr. LOWENTHAL. At Portland. The telegram reads as follows [reading from "Exhibit No. 2135"]:

> If convenient to handle will you please arrange for movement of cars "Milwaukee" and "Loemis" with Mr. Byram and party, on your train No. 583 leaving Tacoma tomorrow, Thursday night, for Portland, returning from Portland on your train No. 564 Friday night for Seattle. Please answer. A–211.

Senator TRUMAN. Has the Interstate Commerce Commission ever passed on this exaggerated use of private cars?

Mr. LOWENTHAL. There were some suggestions by the Commission on the subject in this decade, and we hope to produce some material for the record on that, Mr. Chairman.

This was to someone connected with the Oregon-Washington Railway & Navigation Co.

Mr. POTTER. I think, to answer your question, Senator, that the Commission dealt with it very critically.

Senator TRUMAN. Has it been substantially stopped? Do they still carry on this practice?

Mr. POTTER. I think it has been completely stopped.

Senator TRUMAN. I hope it has.

Mr. LOWENTHAL. There are some loopholes, Mr. Potter. I think we will have some evidence on that, perhaps this afternoon.

Mr. POTTER. I see.

Mr. LOWENTHAL. I offer for the record, Mr. Chairman, in response to Mr. Potter's comment of a few minutes ago, a copy of a memorandum headed "Receiver's File No. 541.21, Company wire 7/12/26, 11:00." This is addressed to "J. J. F. Davenport" and other people at Savannah, Ottumwa, and Kansas City, and initialed at the foot "J. L. B."

Senator TRUMAN. It may be received.

(The memorandum referred to was marked "Exhibit No. 2136" and is included in the appendix on p. 7159.)

Mr. LOWENTHAL (reading):

> Ill. No. 25 from here tonight will have business Car Milwaukee next ahead of the coaches with Mr. Potter and party for Kansas City to move Kansas City to Chicago returning on No. 26 ahead of the coaches tomorrow P. M. arrange Answer MW 6422.

Mr. POTTER. I am not certain, but I think that was in connection with receivership business.

Mr. LOWENTHAL. You think so?

Mr. POTTER. I think so. I am not certain about that.

Senator TRUMAN. I am not quarreling with any trips that had to be made by the receivers or any other officials of the road on official business, but when you see all these other trips being made at the expense of a road in receivership; certainly I cannot approve of it.

Mr. LOWENTHAL. I offer for the record a copy of a letter to Mr. Byram from Mr. Potter, "per F. Kerster."

Who is Mr. Kerster, Mr. Potter?

Mr. POTTER. I do not recall that name.

Mr. LOWENTHAL. "Per F. Kerster", dated August 10, 1927.

Mr. POTTER. Is that from New York?

Mr. LOWENTHAL. From New York.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2137" and is included in the appendix on p. 7159.)

Mr. LOWENTHAL (reading):

> Mrs. Potter and I are now planning to leave Buffalo on next Wednesday to go with Commissioner Aitchison and his wife to Duluth over the Great Lakes. The Aitchisons will return by boat from Duluth.

That was not a trip on a railroad, was it, Mr. Potter? That trip from Buffalo to Duluth over the Great Lakes was by boat, was it not?

Mr. POTTER. Was that trip taken?

Mr. LOWENTHAL. I do not know. Perhaps some of the further correspondence will show.

Mr. POTTER. I think not.

Mr. LOWENTHAL. In any event, such a trip would be by boat.

Mr. POTTER. Yes.

Mr. LOWENTHAL (reading):

> The Aitchisons will return by boat from Duluth.

Mr. POTTER. Yes.

Mr. LOWENTHAL. In fairness to Commissioner Aitchison, it should appear that they were not traveling on any railway passes or anything of the kind.

Mr. POTTER. That is right. I do not think that trip ever took place.

Mr. LOWENTHAL (continuing reading from "Exhibit No. 2137"):

> Mrs. Potter and I hope to go on to the West. I have not as yet decided how we will go. We might like to go out over the Great Northern so as to stop at Glacier Park and come back over the St. Paul. Mr. and Mrs. Arthur G. Meyer of this city, and a cousin of mine, Mrs. Herbert M. King, and a cousin of Mrs. Potter, Miss May B. McCann, may meet us at Duluth and make the trip west with us. Of course, these four will pay fare.

> You were kind enough to say that you could arrange to have a comfortable car for our use. I shall probably want the car to meet me at Duluth or St. Paul. Perhaps, it could be arranged so that my four guests can occupy the car from Chicago to the place where they are to meet me.

That is to say, they would be traveling in the St. Paul Railway's private car by themselves, and they would meet you when you landed from the boat?

Mr. POTTER. That was apparently in contemplation when that letter was written. What happened was this: The plans were changed and the party left Chicago in the private car—the party composed of Mrs. Potter, Mrs. King, Mr. and Mrs. Meyer, and myself. This may be as good a time as any to tell you about that trip, and where we went. Would you like to have it?

Mr. LOWENTHAL. If you wish to put it on the record.

Mr. POTTER. We went from Chicago to Minneapolis or St. Paul and spent a day there, and then went out over the Milwaukee road to the Milwaukee entrance to Yellowstone Park. We left the car there and spent a couple of days in the park, and in the meantime the car was taken around to the west entrance—I don't recall the name, Mr. Wilson.

Mr. WILSON. West Yellowstone.

Mr. POTTER. West Yellowstone. There we took the car and went to Salt Lake City, where we spent a day, and from there we went down over the Los Angeles & Salt Lake—now Union Pacific property—to Los Angeles, and I think we went on to San Diego. From San Diego we went north to Seattle. At Seattle we took the boat to Vancouver, had the car sent to Vancouver, where we picked it up again, and came back again through Banff, Lake Louise, and Winnipeg, and down to St. Paul, where we left the car. I think that was the only trip I ever took in the private car for personal convenience or pleasure.

Mr. LOWENTHAL. Mr. Potter, your letter refers to Hynes. Was he the private car steward?

Mr. WILSON. He is a stenographer, Mr. Lowenthal—Mr. Byram's stenographer.

Mr. LOWENTHAL. I offer for the record, Mr. Chairman, a copy of a letter to Mr. Potter, dated August 12, I think it is, 1927, which I shall not bother to read.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2138" and is included in the appendix on p. 7160.)

Mr. LOWENTHAL. I also offer, Mr. Chairman, a copy of a telegram to Mr. Byram, for Mr. Potter, dated August 12, 1927, apparently on the same subject. This copy is rather illegible.

Senator TRUMAN. It may be received.

(The telegram referred to was marked "Exhibit No. 2139" and is included in the appendix on p. 7160.)

Mr. LOWENTHAL. I also offer for the record, Mr. Chairman, a copy of a telegram dated August 29, 1927, from Mr. Byram, to the President of the Canadian Pacific Railway.

Senator TRUMAN. It may be received.

(The telegram referred to was marked "Exhibit No. 2140" and is included in the appendix on p. 7160.)

Mr. LOWENTHAL. I also offer, Mr. Chairman, a copy of a letter from the chief operating officer of the St. Paul, dated September 9, 1925, to Mr. Potter. This was some time before the trip with the family that you were discussing a moment ago.

Senator TRUMAN. It may be received.

(The telegram referred to was marked "Exhibit No. 2141" and is included in the appendix on p. 7161.)

Mr. LOWENTHAL. This letter reads:

> I am planning to start you out of here on No. 17 at 8:15 a. m. the morning of Sunday the 13th for Mobridge on your hunting trip.

That was a few months after the beginning of the receivership.

Mr. POTTER. Would you mind reading that again? That gets me.

(Mr. Lowenthal handed a paper to Mr. Potter.)

Mr. POTTER. I never went to Mobridge on a hunting trip.

Mr. LOWENTHAL. Was there no trip, or was there some other place? As to the other trip, you were not sure about your exact plans.

Mr. POTTER. This is a complete enigma. Greer, chief operating officer, September 25—I have no recollection of any such trip. I cannot imagine why I would have gone to Mobridge, and I do not do much hunting. I just cannot account for that letter at all. Perhaps my memory is defective.

Mr. LOWENTHAL. I also offer for the record a copy of a memorandum, apparently, from Montreal, signed "Grant Hall," to Mr. Byram, dated August 30, 1927.

Senator TRUMAN. It may be received.

(The telegram referred to was marked "Exhibit No. 2142" and is included in the appendix on p. 7161.)

Mr. LOWENTHAL. I also offer a copy of a letter from Mr. Byram to Mr. Brundage, dated September 7, 1927.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2143" and is included in the appendix on p. 7161.)

Mr. LOWENTHAL. I offer a copy of a memorandum from Mr. Dietze to Mr. Gillick, dated September 22, 1927.

Senator TRUMAN. It may be received.

(The memorandum referred to was marked "Exhibit No. 2144" and is included in the appendix on p. 7161.)

Mr. LOWENTHAL. I offer for the record a copy of a memorandum from Mr. Greengard, at Seattle, to Mr. Dietze, dated September 10, 1927.

Senator TRUMAN. It may be received.

(The memorandum referred to was marked "Exhibit No. 2145" and is included in the appendix on p. 7162.)

Mr. LOWENTHAL. I wish to read this, Mr. Chairman.

> Referring to attached regarding pass issued by the Union Pacific to W. W. Colpitts and wife, from Seattle to Portland, at our request:
>
> We obtained this pass from the Union Pacific at the verbal request of Mr. Byram, and will be glad if you will arrange for confirming request from the Pere Marquette Railroad.
>
> Will you please return attached papers, advising.

Mr. Colpitts was not then a director of the St. Paul, so far as you can remember, Mr. Potter?

Mr. POTTER. When was that?

Mr. LOWENTHAL. September 10, 1927.

Mr. POTTER. He could not have been.

Mr. LOWENTHAL. That was about 3 or 4 months before the new company took over the property in reorganization.

Mr. POTTER. Yes.

Mr. LOWENTHAL. But apparently there had been a request by Mr. Byram, one of the coreceivers of the St. Paul, to get Mr. Colpitts a pass over another railroad.

Mr. POTTER. To where?

Mr. LOWENTHAL. From Seattle to Portland, over the Union Pacific. He had, however, 2 years earlier been employed as consulting engineer to advise the St. Paul Co.

Mr. POTTER. That was what was in my mind. My conjecture would be that we wanted him to go out there for some reason, and the convenient route for him to take was that route. That would be my conjecture.

Mr. LOWENTHAL. You say you conjecture that. Did you know anything about it?

Mr. POTTER. No; but he would not have asked for transportation unless he had become entitled to it, because of some employment he was under at the time.

Mr. LOWENTHAL. Was he working for the receivers in September 1927?

Mr. POTTER. I do not recall; but it may well be that there was a matter that we wanted him to look into. I do not remember anything about it.

Mr. LOWENTHAL. Mr. Potter, was he working for the receivers or for the Ecker committee, or for somebody else, or did he go out on a business trip at all in September 1927?

Mr. POTTER. I do not know; but he certainly did not ask us to get him transportation unless he went out there on receivership business. I will bet my life on that.

Mr. LOWENTHAL. I offer for the record, Mr. Chairman—we tried to get Mr. Colpitts here, as I said, but he was tied up with a directors' meeting in Louisiana that was to run all week during the week of these hearings.

Mr. POTTER. He can explain that.

Mr. LOWENTHAL. I offer for the record a copy of a letter from Mr. Powers to Mr. Byram, dated October 26, it seems to be, 1927.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2146" and is included in the appendix on p. 7162.)

Mr. LOWENTHAL. I offer also, Mr. Chairman, a copy of a telegram from Mr. Scandrett to Mr. Byram, dated July 9, 1928.

Senator TRUMAN. It may be received.

(The telegram referred to was marked "Exhibit No. 2147" and is included in the appendix on p. 7162.)

Mr. LOWENTHAL. That was after the receivership and when the company had been reorganized.

Mr. POTTER. Yes.

Mr. LOWENTHAL. It is a cable to Mr. Byram, at the Hotel D'Iena, Paris. [Reading from "Exhibit No. 2147":]

> What day will you wish car New York?

I offer for the record, Mr. Chairman, a copy of a Western Union telegram dated July 17, from Mr. Scandrett to Mr. Byram, at 52

Wall Street, New York. Is that the fiscal office of the St. Paul in New York?

Mr. Potter. Yes.

Senator Truman. It may be received.

(The telegram referred to was marked "Exhibit No. 2148" and is included in the appendix on p. 7162.)

Mr. Lowenthal (reading):

> Welcome home. I cabled you tenth asking when you would want car in New York but as I received no reply have not sent it assuming you will wish to return Friday or Saturday. Sparrow and I will bring car Milwaukee to New York—

Sparrow was the vice president in charge of finances for the road?

Mr. Potter. Yes.

Mr. Lowenthal. By the way, Mr. Potter, do you remember whether Mr. Joshua Greene, of Seattle, attended many of the meetings of the board of directors of the St. Paul?

Mr. Potter. Yes; I remember. He did not attend a great many meetings. Perhaps he attended a meeting once in 3 months.

Mr. Lowenthal. Do you think as often as that?

Mr. Potter. Well, I would think so. Perhaps not; perhaps once in 4 months, or 5 months. I do not know.

Mr. Lowenthal. I offer for the record, Mr. Chairman, a copy of a communication from Mr. Earling—he was the western representative?

Mr. Potter. Yes.

Mr. Lowenthal. To Mr. Scandrett, dated October 20, 1928.

Senator Truman. It may be received.

(The communication referred to was marked "Exhibit No. 2149" and is included in the appendix on p. 7162.)

Mr. Lowenthal (reading):

> Mr. Greene left Seattle last night going to Bonilla, S. D., on his hunting trip with car Snoqualmie.

That was one of the private cars?

Mr. Potter. Yes.

Mr. Lowenthal. Mr. Greene was a director of the road in October 1928?

Mr. Potter. Yes. I should like to say a word about Mr. Greene, Senator.

Senator Truman. All right.

Mr. Potter. When the matter of selecting the directors was up, I recall a conference with someone—I do not know—it may have been Mr. Ecker; it may have been Mr. Hanauer; probably Mr. Hanauer was present. Perhaps it was at a luncheon, where we frequently met at the Mid-Day Club. The question came up as to the directors, and either Mr. Hanauer or I suggested that it would be desirable to have a representative man of fine standing out on the coast, and something prompted me to select Mr. Greene, and Mr. Greene was accepted after some inquiry. I recommended Mr. Greene because he was a man of the highest type, and enjoyed the highest possible standing on the coast. He was a banker, a wealthy man, the owner of a very large building there, and I believed, and still believe, that it was highly desirable for the Milwaukee to have such a man. I always felt that Mr. Greene's indirect assistance in keeping us in a good atmosphere on the coast, making friendships and keeping his eye open, would be of greater service to us than any attendance at a board meeting. He was not as active as the rest of us at board meetings, but he rendered

very valuable service to us. He was alert and watchful and always pushing for business and getting business for us—a fine western representative.

Mr. Lowenthal. In connection with the Commission investigation of the St. Paul receivership in 1925 and 1926, I have a vague recollection that there was some comment by one of the persons connected with that investigation, or perhaps in the Commission's report on that investigation, as to why it was necessary for the wealthy man to get the passes and the private cars instead of paying when such facilities were used by him. You refer to the fact that Mr. Greene was a banker and a wealthy man.

Mr. Potter. I do not attach importance to that, except that it was evidence of his standing in the community. There was no reason why a wealthy man should be given passes, of course, any more than anyone else; but the practice that was followed at that time was in accordance with the general custom, be that custom good or bad. I think that the Milwaukee road extended courtesies to other roads far in excess of the courtesies extended by other roads to the Milwaukee.

Mr. Lowenthal. You mean the directors of other roads moving in private cars, and so forth?

Mr. Potter. I do not know about the directors so much, but officials. I would suggest this, in response to your criticism, Senator. I have very serious doubt whether that trip that I took to the coast, on which there were three passengers that paid full fare, was an abuse of the other roads or reduced their net income. I am inclined to think that the fares which they received for those passengers paid the extra expense of hauling that car, hauled, as it was, in a regular train, by the crew that was employed otherwise. There was no cost except the coal consumed by the carrier and the oil and grease if there was a hot-box.

Mr. Lowenthal. How many persons traveling in that car paid fare?

Mr. Potter. Three.

Mr. Lowenthal. And there was yourself besides.

Mr. Potter. And Mrs. Potter.

Mr. Lowenthal. You were on a pass, as a director.

Mr. Potter. Yes. There were four on the way back that paid fare.

Mr. Lowenthal. Do you think, Mr. Potter, that the ordinary public traveling in Pullmans, if they wanted to travel four to a car, would be permitted to do so, in case the company carrying that car had other passengers who wanted to travel?

Mr. Potter. I will have to ask you to repeat that question.

Mr. Lowenthal. Let me put it this way. Suppose four ordinary individuals offered to pay Pullman rates provided they got a car all to themselves. Would any railroad in the country permit them to do that?

Mr. Potter. It could not under the regulations, which require that 25 fares be paid under those circumstances.

Mr. Lowenthal. If it is not a losing proposition, or if it is profitable, why would not the railroads do that?

Mr. Potter. I do not know why. That is the regulation. I would be interested to have some transportation man figure it out. I still say that I am inclined to think that the fare for four passengers, at the regular rates for hauling a car, took care of the extra out-of-pocket expenses of the road hauling them.

Senator TRUMAN. I still say, Mr. Potter, that receivers receiving $4,000 a month and a bonus at the end of that time of $100,000 would have been much better employed than in using the transportation facilities of the Milwaukee Railroad for pleasure.

Mr. POTTER. Perhaps that is so.

Senator TRUMAN. Proceed.

Mr. LOWENTHAL. Mr. Chairman, the exhibit introduced with respect to Mr. Greene's hunting trip relates to a period subsequent to the receivership, when the road had been reorganized and was out to make good as a reorganized road. Subsequent exhibits to be introduced relate also to that post-reorganization period and indicate how recently in railroad history and the history of the St. Paul, private cars were used in this way.

I offer for the record a letter from Mr. Hamilton, of the Pennsylvania Railroad, to Mr. Scandrett, of the St. Paul, with respect to a private car for Mr. and Mrs. Byram and daughter.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2150" and is included in the appendix on p. 7163.)

Mr. LOWENTHAL. I offer also a copy of a wire from Mr. Dietze to Mr. Scandrett in Washington, dated May 2, 1929, relating to a trip of Mrs. Potter and three guests going to Kansas City.

Senator TRUMAN. It may be received.

(The telegram referred to was marked "Exhibit No. 2151" and is included in the appendix on p. 7163.)

Mr. LOWENTHAL. I should like to offer, Mr. Chairman, the balance of this batch of letters, in view of the fact that you have to hurry away, and we will furnish copies to counsel for the company. May these be received?

Senator TRUMAN. They may be received, and anybody who wants copies of them can have them. If there is any correction to the record by anybody who has been mentioned today or in the past, as I have always said, the record is open for that purpose.

(The documents referred to were marked "Exhibits Nos. 2152 to 2166" and are included in the appendix on pp. 7163-7167.)

Senator TRUMAN. The committee will now take a recess until 10 o'clock tomorrow, and I am serving notice that with conditions as they are developing in the Senate now, there will be no session after 1 o'clock tomorrow. We will meet in this room.

(Whereupon, at 4 p. m., an adjournment was taken until the following day, Friday, Dec. 10, 1937, at 10 a. m.)

APPENDIX

EXHIBIT No. 1887

Directorships of Jerome J. Hanauer from 1933 to December 6, 1937

[As given in Poor's Register of Directors for the years 1933 to 1937, inclusive]

	1933	1934	1935	1936	1937
American Sealcone Corporation	----	----	X	X	X
Hudson & Manhattan Railroad Company	X	X	X	X	X
Illinois Central Railroad Company	----	----	X	X	X
Indiana & Illinois Coal Corporation	X	X	X	X	X
Mexican Central Railways Company, Ltd	X	X	X	X	X
Mexican National Construction Company	X	X	X	X	X
Mid-Continent Petroleum Corporation	X	X	X	X	X
National Railways of Mexico	X	X	X	X	X
National Railroad Company of Mexico	X	X	X	X	X
Sealed Containers Corporation	----	----	X	X	X
Westinghouse Acceptance Corporation	X	X	X	X	X
Westinghouse Electric International Co	X	X	X	X	X
Westinghouse Electric & Manufacturing Co	X	X	X	X	X
Yazoo & Mississippi Valley Railroad Co	X	X	X	X	X

EXHIBIT No. 1888

[Copy of photostat taken from Treasury Department File—C. M. & St. P. Ry. Co. (Sec. 210)]

TREASURY DEPARTMENT,
Washington, March 16, 1925

Assistant Secretary—For the Files:

On Saturday, March 14, 1925, I had a conference with Mr. Carl DeGersdorff of the firm of Cravath, Henderson and DeGersdorff, relative to the situation of the Chicago, Milwaukee and St. Paul Railroad. Mr. DeGersdorff's firm represents Kuhn, Loeb & Company. Mr. Guy Cary of the firm of Sherman and Sterling represents the National City Bank. Apparently these two lawyers are taking an active part in considering all problems relating to the Milwaukee road.

Mr. DeGersdorff presented certain financial data in accordance with the request in my letter of March 10, 1925, which is attached hereto. Mr. DeGersdorff stated that the possibility of a voluntary reorganization along the lines suggested by Mr. Mitchell in his talk with Secretary Mellon seemed out of the question because of the great variety of creditors. I asked for a balance sheet and he did not have it. I asked what floating debt there was in the banks and he seemed to think that there is none. He stated, however, that the management of the road had been asked how many vouchers payable were outstanding and that the first figure given had been something over a million dollars, but upon further investigation it was found that this was nearer eight million. I asked if these were of the kind of a claim which would be given priority in a receivership, and he said that he presumed that they all came within the six months' rule.

I had asked Mr. DeGersdorff in the morning on the telephone who were to be the receivers. He stated that Mr. Byram would be one of the receivers and that they had given careful consideration to the appointment of a second receiver. They determined that there should be a second receiver and practically made up their minds that Mr. Mark Potter, who had just resigned from the Interstate Commerce Commission, would be an appropriate appointment. Mr. Potter is a lawyer but very well known in railroad circles. Mr. DeGersdorff asked if the Treasury would approve of this appointment. I agreed to speak to Secretary Mellon about it Monday morning and have done so just before writing this memorandum, and Mr. Mellon has no objections to offer.

Mr. DeGersdorff stated that the Board of Directors would meet on Tuesday or Wednesday of this week; that they had a considerable interest payment coming due at the end of this month on a bond issue—something over $1,000,000; that the money was not in hand and that the situation might be forced by this small payment now rather than forced by the large maturities of June 1. Apparently, with this in mind, every preparation is being made. Preparations are being made to form Bond Holders' Committees, and my impression was that the plan to go into receivership was as definite as it might well be at this time.

I asked Mr. DeGersdorff as to the liens of the Puget Sound Extension 4's of which some 26,000,000 are outstanding in the hands of the public. He stated that this lien would be diluted in case of receivership by the fact that some 154,000,000 of these bonds are deposited as collateral for the general and refunding issue. The holders of the General and Refunding Bonds, therefore, would come into possession of ⅚, or thereabouts, of the first mortgage on the Puget Sound Extension.

Mr. DeGersdorff agreed to keep the Treasury fully posted and offered to send any information that we desired. His impression was that the bond chart about which I inquired in my letter of March 10 was substantially correct.

I asked Mr. DeGersdorff if he thought it would do any good for the Treasury to demand other collateral at this time. He seemed to feel that the directors would not be willing to put up more collateral with the affairs so closely approaching a crisis. I asked him if he thought they would have a few weeks ago if the Treasury had asked for it. He expressed the opinion that they might have but was not sure.

Mr. DeGersdorff stated that he supposed that all the collateral held by the Government could be pooled as being applicable to any or all of the three notes. I stated that the Treasury so understood it. Mr. DeGersdorff stated that the receivership would not contemplate disturbing general mortage bonds, of which the government holds 18,000,000; that, therefore, this collateral was good and that with 72,000,000 of the general and refunding mortgage bonds, the government was almost fully secured, if not quite.

(Signed) Eliot Wadsworth,
Assistant Secretary.

Exhibit No. 1889

[Copy of carbon copy of telegram in Kuhn, Loeb & Co. File No. 1095]

98–F

June 2, 1925.

H. E. Byram,
Chicago, Milwakuee & St. Paul Railway Co.,
Chicago, Illinois:

Plan has been approved by all committees and will be announced tomorrow. Am sending you copies.

Jerome J. Hanauer.

MEG.

Exhibit No. 1890

[Copy of carbon copy of letter in Kuhn, Loeb & Co. File No. 1095]

June 2, 1925.

H. E. Byram, Esq.,
Chicago, Milwaukee and St. Paul Railway Co.,
Chicago, Illinois.

Dear Mr. Byram: This is to confirm my telegram of today, advising you that the Plan has been approved by the three Committees, and that we are going ahead with it at once.

I am sending you herewith several copies of the Plan, and remain,

Very truly yours,

(Signed) J. J. Hanauer.

MEG.
Encl.

Exhibit No. 1891

[Copy of telegram in Kuhn, Loeb & Co. File No. 1095]

1925, Jun 3—A. M. 9:55.
Pine Street, N. Y.
13W AUT DH.

Washington, D. C. 906A, *June 3, 1925.*

J. J. Hanauer,
Care Kuhn, Loeb and Co.,
52 William St., New York, N. Y.:

Congratulations; plan is first class and will place St. Pauls' financial position in front rank among western railroads and believe it will be acceptable to security holders. Expect be in New York tomorrow.

H. E. Byram.
952A

Exhibit No. 1892

[Extract from Wall Street Journal, June 5, 1925]

Favor St. Paul Plan

Commenting on the proposed reorganization plan for the C. M. & St. P., H. E. Byram, receiver of the system, said that he considered it a very good plan. "If it is approved it will place the St. Paul in the front rank of roads from the standpoint of capital structure," Mr. Byram added "The Committee has worked out a plan as equitable as possible for all concerned.

Exhibit No. 1893

[Extract from New York Herald Tribune (Thursday) June 18, 1925]

Potter Won To St. Paul Plan, Calls It Sound

FORMER I. C. C. COMMISSIONER AND NOW RECEIVER OF ROAD SAYS PROPOSAL WILL STAND WIDEST SCRUTINY

Mark W. Potter, former Interstate Commerce Commissioner and now one of the three receivers for the C. M. & St. P. concurs wholeheartedly in the opinion of President H. E. Byram, also a receiver, that the bankers' plan for the reorganization of the property is an excellent one and that it should be executed without unnecessary delay.

"My experience was somewhat unusual", said Mr. Potter yesterday when asked for his views of the present controversy over the reorganization plan, "Before this proposal was put forward I was of the belief that it might be well to mark time for a while in this affair. I leaned in other words, toward the opinion of some of those who are now opposing the reorganization. Since I have seen and studied the plan, however, I have been completely won over. The bankers' proposals will stand scrutiny, it seems to me, from any angle. They fit in perfectly with the results of the study of the St. Paul situation made by the engineers and not only take into consideration the immediate difficulties of the system but take cognizance of the entire picture as it is drawn by that report, present and future combined."

Mr. Potter was not prepared to say whether E. J. Brundage, the third receiver appointed for the road, was as sympathetic with the plan for the road's reorganization as were he and Mr. Byram. Mr. Brundage, he said, so far as he could recall, had not expressed himself definitely on the question.

On his way to this city from Chicago early this week, Mr. Potter stopped over at Washington, where he conferred with President Coolidge and with members of the Interstate Commerce Commission on the St. Paul situation. There was nothing "of public interest" to report, he said, however, regarding these discussions.

According to advices from Washington yesterday there was some uncertainty expressed as to just what the plains of the I. C. C. were regarding Hearings on the St. Paul. It was reported that these hearings might be postponed and combined with the hearings later on the reorganization plan.

"I cannot see any immediate connection between the two," was Mr. Potter's opinion when asked if he regarded this as a possibility. He said that he could not, of course, speak for the commission, and was not acquainted with its plans in detail. It is probable, he said, that the investigation into the situation leading up to the receivership would consume six months. Besides hearings, he said, it will probably include a "field survey" by experts appointed by the commission. These men he suggested would go over much of the ground covered by the engineering firm which analyzed the road's position, making a thorough investigation on the ground, going into reports, studying the road's physical condition, conferring with persons familiar with the history of the road during the last decade, and in a general way getting at the facts in the situation. The hearings would be supplemental to this exhaustive study of the situation. While the latter might be commenced July 1, as has been suggested, Mr. Potter said he doubted if they would proceed very far until the report of the field group had been submitted.

It was reported yesterday that Charles Hayden, of Hayden, Stone & Co., might soon be found in the ranks of those actively opposing the St. Paul plan, but Mr. Hayden himself would not go on record on the matter.

Exhibit No. 1894

[Extract from Wall Street Journal, June 19, 1925]

Potter Praises St. Paul Plan

Considerable buying which took place in the St. Paul issues was based on the statement of Mark W. Potter, former Interstate Commerce Commissioner and now a receiver for the road. Mr. Potter concurs in the opinion of Receiver H. E. Byram that the reorganization plan is excellent and should be executed without unnecessary delay. Mr. Potter says before reorganization plan was put forward he favored waiting for a while, but after intensive study of the program he has been completely won over.

Exhibit No. 1895

[C. M. & St. P. Ry. Co. Excerpt from I. C. C. Docket #17021]

Examination by Mr. Fisher of Mortimer N. Buckner on April 24, 1926, at Pages 4762 and 4763

(P. 4762:) Q. Are you prepared to say, Mr. Buckner, whether it is feasible for receivers to organize—to reorganize a property such as the St. Paul under the circumstances that exist?

A. I don't see why. It is not difficult if you get a plan that appeals to the security holders. I do not see why a receiver could not put it through just as well as any other group of men.

(P. 4763:) Q. Just as well as Kuhn, Loeb & Company and the National City Company?

A. Surely. Of course, the receivers may have to be in a position to underwrite some of the securities, and in that event they would have to have banking affiliations or banking backing in some way. Of course, that is a detail that could be arranged.

Exhibit No. 1896

[File 2799. Client—Kuhn, Loeb & Co. Short title, Chicago, Milwaukee & St. Paul]

Date	Lawyer	Description of Service
4/26/26	Swatland	Conferences with Mr. de Gersdorff, Mr. Hanauer, and Mr. Murray regarding I. C. C. hearings; in particular, Mr. Buckner's faux pas.
4/25/26	Swatland	Telephone call from Mr. Hanauer re Mr. Buckner's faux pas; getting copy of Mr. Buckner's testimony; conference with Mr. Swaine and Mr. Hanauer regarding the same.
4/28/26	C. A. de Gersdorff	Various conferences with Mr. Buckner, Mr. Hanauer, and others.

Exhibit No. 1897

[Copy of carbon copy of telegram procured from the files of Mr. Mark W. Potter, former director of Chicago, Milwaukee, St. Paul & Pacific Railroad]

June 19, 1925.

Edward J. Brundage,
Westminster Building, Chicago.

Mention has been made of the fact that while Byram and I expressed approval of the reorganization plan, you have not expressed your view. They seem to feel that a statement of your view to the Associated Press would be helpful.

Mark W. Potter.

Exhibit No. 1898

[Copy of original signed letter procured from the files of Mr. Mark W. Potter, former director of Chicago, Milwaukee, St. Paul & Pacific Railroad]

Brundage, Landon, Holt, and Boord,
720 Westminster Bldg.,
110 S. Dearborn Street, Chicago, June 22, 1925.

Mr. Mark W. Potter,
100 East 45th Street,
New York, N. Y.

My Dear Mr. Potter: I received your telegram Saturday but did not wish to answer until I had an opportunity of conferring with Judge Wilkerson. I have remained non-commital on the question of reorganization for fear that any utterancy be me upon that subject might be misconstrued as being the attitude of the court, in view of the manner of my appointment as Receiver.

I talked with Judge Wilkerson this morning, and he felt as I did; in other words, that I ought not at this time to express any opinion concerning the reorganization plans. My duty as the officer of the court was to assist in administering the property while in the court's possession; beyond that I ought not to express myself.

Instead of answering by telegram I have written and feel quite sure that you will understand and be able to explain my position to anyone making inquiry.

Very truly yours,

(Signed) Edward J. Brundage.

Exhibit No. 1899

[Copy of carbon copy of letter procured from the files of Mr. Mark W. Potter, former director of Chicago, Milwaukee, St. Paul & Pacific Railroad]

June 23, 1925.

Hon. Edward J. Brundage,
720 Westminister Building, 110 S. Dearborn Street,
Chicago, Ill.

Dear General: I have your letter of the 22nd. I understand perfectly your position about the Reorganization Plan. While I think probably you are right, I would not want anyone to feel that the expression of my opinion would commit anyone, and I know it would not. I agree with you that your position is a little different. As you know, I thought for a long time that the Road should not be reorganized until it has time to make a better showing. In my statement to the press I recognized that there are two sides to this question. I became convinced, however, that if I owned all the stock of the company, I would rather have my interest after the reorganization than before. This is all on the assumption that stockholders can put up the so-called assessment and will not be frozen out. Mr. Hanauer, the leading spirit in preparing the Reorganization Plan, told me that they stood ready to finance any stockholder who needed help and that no one need be shut out. The objectors to the plan continue to talk about the stockholders being shut out, but I do not understand there is any possibility of this happening.

It is not at all unusual for receivers to give to the parties interested their views of a Reorganization Plan. Of course, my opinions are given as an individual and are not intended to relate in any way to the policy of the receivership. For instance, if we put through the rate readjustment which I have worked out, I think it quite likely that a reorganization might be dispensed with.

Yours very truly,

[Mark W. Potter.]

Exhibit No. 1900

[Copy of carbon copy of telegram from the files of Cravath, de Gersdorff, Swaine & Wood file no. 2790, drawer 13, designated: "Chicago, Milwaukee & St. Paul Railway Company—Readjustment—Vol. 2 Correspondence—from June 1, 1925, to July 14, 1925"]

June 18, 1925.

Robert T. Swaine,
Care of Milton Harrison,
Poland Springs House, Poland Springs, Maine:

Hanauer suggests as further ammunition if necessary interview this morning's Tribune by Potter endorsing Plan. Interview states Potter inclined first to favor delay but study of Plan has won him completely over. "The Bankers' proposals will stand scrutiny, it seems to me, from any angle; they fit in perfectly with results of the study of the Saint Paul situation made by the Engineers and not only take into consideration the immediate difficulties of the System but take cognizance of the entire picture as it is drawn by that report present and future combined."

D. C. Swatland.

30.
T Western Union Swatland Dillon St. Paul St. Paul 96 Poland Springs, Maine.

Exhibit No. 1901

[Extract from "Savings Bank Journal", published at New York, N. Y., July 1925, recording proceeding, at the Sixth National Conference of Mutual Savings Banks at Poland Springs, Maine, June 17, 18, and 19, 1925]

St. Paul Plan Discussed

REORGANIZATION MEETING BROUGHT OUT MANY VIEWS OF DELEGATES AND RAIL EXPERTS

The meeting to consider the St. Paul reorganization convened at 2:15 o'clock on Thursday afternoon Milton W. Harrison, Executive Vice-President of the Association, presiding.

* * * * * * *

Chairman Harrison. Are the present receivers in favor of the plan?

Mr. Swaine. I just received a telegram of interest in that connection. Mr. Mark W. Potter, one of the receivers, who, as you probably know, was an Interstate Commerce Commissioner until within the last year, this morning gave out in New York an interview from which I want to quote.

He said: "I was first inclined to favor delay, but my study of the plan has won me completely over. The bankers' proposal will stand scrutiny, it seems to me, from any angle. They fit in perfectly with the results of the study of the St. Paul situation made by the engineers, and not only take into consideration the immediate difficulties of the system, but take cognizance of the entire picture as it is drawn by that report, present and future combined."

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Exhibit No. 1902

[Copy of original signed letter in Kuhn, Loeb & Co., file no. 1095]

Mark W. Potter,
One Hundred East Forty-Fifth Street,
New York, June 5, 1925.

Mr. Jerome J. Hanauer,
Of Kuhn, Loeb & Co.,
52 William Street, New York City.

Dear Mr. Hanauer: I think it worth while to send a copy of the proposed reorganization plan to Ray W. Clarke, who has written me the enclosed letter. Clarke was in the Commission for some time, participating in the handling of finance applications. He is an able fellow, who is thought well of everywhere and it will do no harm to have him equipped so as to defend the plan in conversation, etc.

Very truly yours,

(Signed) Mark W. Potter.
F.

Exhibit No. 1903

[Copy of typewritten copy of letter in Kuhn, Loeb & Co. file 1095]

Schubring, Ryan, Clarke & Petersen,
Attorneys at Law,
First Central Bldg., Madison, Wisconsin.

Mr. Mark W. Potter,
Room 3018, 100 E. 45th Street, New York City.

Dear Mr. Potter: I am much interested in the plan for the reorganization of the St. Paul road which was announced in the press today, and would greatly appreciate it if you would have a copy of the complete plan mailed to me as soon as it is available for distribution. Judging from the newspaper accounts, it seems to me that the plan is a very fair one, especially from the standpoint of the stockholders.

Colonel Colston appears to be having his work cut out for him these days in Washington, if the proceedings are being correctly reported in the Traffic World. However, he usually gets away with what he undertakes, and I have not much doubt that the Commission will take the broad view of his case.

I trust you are very happy in your new work, as I am in mine.

With sincere regards, I am,

Very truly yours,

(Signed) Ray W. Clarke.

MEG.

Note.—This letter bears no date, but is stamped as received by Kuhn-Loeb & Co. Filing Department, June 10, 1925.

Exhibit No. 1904

[Copy of carbon copy of letter from the files of Mark W. Potter]

November 13, 1926.

Hon. Edward J. Brundage,
Westminster Building, Chicago, Illinois.

Dear General: I have your letter of the 12th inst., telling me of your talk with Judge Wilkerson and his thought that we should attend the sale. I think this settles it and we ought to go. I think the Judge is right about it.

I am wondering how we should go. Personally, I would a little rather not go out with the reorganization people. I think Mr. Byram feels he should go with them, but, if you think you and I should not go with them perhaps we could combine a sort of an inspection trip. I do not know that there is anything in my thought, but I am inclined to avoid a cut-and-dried appearance or of being any closer to the reorganization people than to the Jameson people.

Very truly yours,

[Mark W. Potter.]

Exhibit No. 1905

[Copy of original letter from the files of Mark W. Potter]

Chicago, Milwaukee & St. Paul Railway,
Office of Receivers,
Chicago, Illinois, November 12, 1926.

Hon. Mark W. Potter,
100 East 45th Street, New York, N. Y.

My Dear Mr. Potter: I came down on the train this morning with Judge Wilkerson and he inquired if the receivers were going to attend the sale at Butte November 22nd. I told the Judge I thought that Mr. Byram was going to, but that you and I had not planned on doing so. The Judge said he thought you and I should be there, unless we had private business that interferred. He thought so because this property being sold is in the custody of the receivers and they ought to be there.

I told the Judge that I would write you at once what he had said and would arrange myself to be at Butte. I have written to Mr. Byram and presume he will make arrangements for us, if you decide to go.

Very truly yours,

(Signed) Edward J. Brundage.