

BLOCKS THE BIG MERGER.

Injunction to Restrain Retirement of Northern Pacific Preferred.

Northern Pacific, Great Northern and a Part of the Burlington Are Declared Parallel.

Minneapolis.—(Special.)—Just after the noon hour today Charles S. Mellett, president of the Northern Pacific Railroad company, was served with papers which enjoin the company from retiring the preferred stock.

The order was issued by Judge Elliott of the district court of Hennepin county on the application of Peter Power of New York, who holds 100 shares of the common stock. It was supposed that the failure of the action brought in the New York courts by holders of preferred stock cleared away the last obstacle to the retirement of the preferred on January 1, leaving the Hill interest in control of the road through its majority of the common stock.

The injunction restrains the Northern Pacific Railway company from issuing or selling any certificates of indebtedness or debenture bonds or other evidence of indebtedness or creating any indebtedness or liability for the purpose of raising money with which to pay or retire the preferred stock of the Northern Pacific Railway company, or any part thereof, or from using or appropriating any moneys or proceeds other than the ordinary or surplus net earnings of the Northern Pacific Railway company to the payment and retirement of the preferred stock of the company or any part thereof, and also from creating any indebtedness or liability other than the ordinary indebtedness and liability for the operating expense of its railroad system, and the indebtedness and liability now existing which would be a preference or take precedence of the common stock of said company, also from placing its property, or any part thereof, or the management of its railway system or any part thereof, in the possession or under the control, either directly or indirectly, of the Northern Securities company, or from entering into any agreement or arrangement, either directly or indirectly, through the medium of the Northern Securities company or otherwise with the Great Northern Railroad company, the Chicago, Burlington & Quincy Railway company or either of them, for the purpose of causing the railway system owned and controlled by the Northern Pacific Railroad company to be operated in connection with or under the same rules or by the same authority as the Great Northern Railway company and the Chicago, Burlington & Quincy Railway company, or either of them, or from entering into any agreement with these companies, or either of them for the purpose of avoiding competition and fixing rates for the carriage of freight and passengers upon either of their lines of railway.

DEFINES COMMON AND PREFERRED.

The petition recites briefly the history of the Northern Pacific railroad and the divisions of its stock into common and preferred. It is alleged that the only difference between the preferred stock and the common stock was that the preferred stock was entitled to the 4 per cent dividend prior to anything being paid on the common stock and the bill in this connection alleges that the preferred stock was subject to be retired at any time within twenty years after the time of reorganization of the company and the issuing of the stock out of the surplus net earnings of the company and not otherwise, that in other respects the rights of the preferred and common stockholders were identical.

The next bill recites their organization of the Great Northern, Chicago, Burlington & Quincy lines and alleges that the Northern Pacific railroad company and Great Northern Railway company are parallel lines to the Pacific ocean and that the Chicago, Burlington & Quincy railroad has a parallel line from Billings, Mont., to Chicago and that such lines are competing lines for the business of the northwest.

PURPOSE OF CONSOLIDATION.

It is alleged that the officers of the Great Northern road during last summer and since the plaintiff became the owner of this stock, and without any knowledge on his part, went into a combination with the Great Northern and the Chicago, Burlington & Quincy, the purpose of which was to consolidate the three systems under one management, and knowing that it could not be legally effected, the directors of the three companies, for the purpose of doing indirectly what they could not do directly, caused to be organized the Northern Securities company, a New Jersey corporation, with a capitalization of \$400,000,000, which under its charter was authorized to purchase and hold stocks, bonds and

securities of other corporations, the intention being to cause a majority of the stock of all three railway companies to be transferred to the Northern Securities company, and to be controlled by it, thereby controlling the three systems of railway through the medium of the Northern Securities company, suppressing competition, regulating the tariff rates and conducting the entire business of the three systems as one corporation.

PRONOUNCES SCHEME ILLEGAL.

It is further alleged that thereupon the Northern Securities company commenced to advertise on terms of exchange, all the stock of the Great Northern company, and that the whole scheme was illegal, in violation of the law of this state and other states through which the railway lines pass, against the public laws of the United States and of each of the places.

The bill also alleges that under and by virtue of the charter of the Northern Pacific Railway company and under the provisions of the reorganization agreement the preferred stock can only be paid for and retired out of the net surplus earnings of the Northern Pacific Railway company and not otherwise.

That notwithstanding these provisions the directors of said company, for the first step in carrying out their plan of transferring the control of the defendant corporation to the Northern Securities company, have served notice upon the holders of the preferred stock, that on January 1, 1902, they would retire such preferred stock. The bill alleges further that since its reorganization the Northern Pacific Railway company has conducted a successful and profitable business and has paid 4 per cent on its preferred stock and is now paying 4 per cent on the common, out of the earnings, after paying the fixed charges and the operating expenses; that there is a fund of about \$2,000,000 set aside to secure payments of dividends on preferred stocks and between \$2,000,000 and \$3,000,000 of a general surplus; it has now on hand exceeding \$3,000,000 derived from the earnings of the road, wherewith to pay the \$75,000,000 of preferred stock at par, but that in order to retire such preferred stock the directors of the company are threatening to issue and sell certificates of indebtedness or debenture bonds, amounting to \$75,000,000 of the Northern Pacific Railway company, and out of the proceeds pay off the stockholders of the preferred stocks at par, January 1, 1902.

NOTICE OF RETIREMENT.

It is alleged that the Northern Pacific Railway company has caused to be sent to each of its preferred stockholders a notice that it would retire the whole of the preferred stock at par on January 1, 1902, and that the transfer books of the company were closed Tuesday, December 10, 1901, at 5 o'clock, for the retirement of the preferred stock aforesaid.

The plaintiff says he has been unable to obtain a copy of the resolutions of the board of directors as to the issue and sale of the certificates of indebtedness or debenture bonds, but the general effect of the resolution, he alleges, is set forth in a circular issued by the Northern Pacific railway to the stockholders, a copy of which circular is made a part of the bill.

It is alleged in the bill that no meeting of the shareholders of the defendant company has been called to make the issue of the certificates of indebtedness or debenture bonds; that the board of directors is without power to issue such call; that at the time of the issue of the certificates of stock to the common stockholders when the company reorganized in 1898 and by the reorganization agreement provided "that the company shall not put a mortgage on its property embraced in the property in the Northern Pacific system, nor shall the amount of the preferred stock be increased except after obtaining in each instance the consent of the majority of holders of the whole amount of the preferred stock and the consent of the holders of the majority of common stock, to be voted separately; that the plaintiff is unable to ascertain whether certificates are to be secured by a mortgage on the property of the Northern Pacific company or not, but whether secured by mortgage or not it constituted an indebtedness due and payable not later than 1907, with interest at 4 per cent, whether the company has any earnings or not out of which to pay it, and an indebtedness upon which judgment can be obtained, the property of the company sold, the rights of the common stockholders foreclosed and that if the common stockholders foreclosed and a portion of them take advantage of the option offered them to take common stock for their certificates of indebtedness, the common stock is greatly increased without the vote of the stockholders of the company and without the authority of the law of the state where it was incorporated.

NOT A LIEN ON PROPERTY.

The petition alleges that it was proposed in this way to substitute for the present preferred stock, which in no way constitutes a lien upon the property of the Northern Pacific company and is not a charge against the earnings of the company and has no prior

right over the common stock except in priority of dividends, a convertible, negotiable security or debenture bond, bearing interest at the rate of 4 per cent per annum, which said amount of 4 per cent per annum is a fixed charge against the earnings of the company and its property and must be paid whether the earnings for any year amount to 4 per cent upon said issue of convertible certificates of indebtedness or debenture bonds or not, and under which, if default is made in the payment of said interest or any payment of the principal when due in 1907 or at any time prior thereto under the provision of said certificates of indebtedness or debenture bonds, the entire property of the Northern Pacific Railway company be sold to satisfy the judgment or judgments which may be obtained thereunder and all equities and rights of the common stockholders extinguished.

SCHEME PROVOKES LITIGATION.

The bill sets forth that the scheme has already provoked litigation, which is now pending, and plaintiff swears that by reason of public criticism other serious litigation will be instituted unless the defendant railway company be restrained from carrying out its illegal scheme and design, and in this connection it is alleged that proceedings are about to be instituted against the Northern Securities company, the Northern Pacific Railway company, the Great Northern Railway company and the Chicago, Burlington & Quincy Railway company by some one or more of the states through which the roads pass, to prevent the consolidation in the manner alleged in the bill, and that the action of these companies will invite and arouse hostile and punitive legislation by all states through which the roads pass, and that in this case the railway company should carry out and accomplish the plans and schemes mentioned it will be subject to have its charter rights forfeited.

The bill recites the provision for the constitution of the state of Montana prohibiting the consolidation of competing and parallel lines of railway, and also the laws of the state of Washington prohibiting the consolidation of parallel and competing lines, and alleges that the Northern Pacific and Great Northern Railway companies are parallel and competing lines.

GIVE PURPOSE OF COMPANY.

It is particularly alleged in the bill of complaint that the Northern Securities company is a railroad corporation and was organized for the express and sole purpose of uniting under its management and control the defendant, Northern Pacific Railway company, the Chicago, Burlington & Quincy Railroad company and the systems of railways controlled and operated by each of these railway companies, respectively, and for no other purpose, and that the Northern Securities company was organized for the purpose of owning, holding and controlling all three of the corporations mentioned in the bill and their various systems of railway, so that all competition between these companies may be stifled and prevented, and that unjust and inequitable exorbitant rates for both freight and passenger traffic may be obtained by them.

The bill further sets forth that it is the design and purpose of the Northern Pacific Railway company, the Great Northern Railway company and the Chicago, Burlington & Quincy Railroad company to consolidate and merge in the Northern Securities company, the complete and exclusive control of each and all of these railway systems and that the proposed attempted retirement of the preferred stock of the Northern Pacific Railway company is solely for the purpose of enabling the Northern Pacific company to turn over to the Northern Securities company a majority of the stock of the Northern Pacific Railway company; that the proposed and attempted creation of an indebtedness of \$75,000,000 on the part of the Northern Pacific Railway company is solely for the purpose of paying off and retiring the preferred stock, to the end that a majority of the common stock may be so turned over to the Northern Securities company.

It is alleged that in case the Northern Pacific company proposes to and does carry out the plans and scheme alleged in the complaint that the plaintiff will be irreparably damaged and that he had no remedy at law for his damage or injury or any part of it, either against the company or the officers thereof.

The bill then prays for the writ of injunction as issued by Judge Elliott.

MEAT SELLING AT RUINOUS FIGURES.

Denver, Colo.—(Special.)—Meat is selling at ruinous figures, a fact caused by the war between the butchers' union and the Swift Packing company. Retail shops became involved and the prices dropped 50 per cent, which makes them 30 per cent less than the cost on the hoof. The union has warned retailers that a boycott will be declared on all shops handling the Swift product. The fight was caused by the refusal of the Swift company to pay a fine of \$500, imposed by the union for selling to a non-union shop. The state of Colorado is involved, and the company announces it has \$1,000,000 to spend in order to win out.

Call on the President.

Washington, D. C.—(Special.)—Senator Watkins of California introduced to the president Prof. Campbell, superintendent and director of the Lick observatory, and Prof. Simon Newcomb, the celebrated astronomer. Prof. Campbell invited the president to visit the Lick observatory. The president told him that it was his intention to make a trip to the Pacific coast next summer and that if his plans were carried out it would give him great pleasure to visit the observatory.

JOE BARTLEY IS PARDONED.

The Defaulting Ex-Treasurer is Released From the Penitentiary.

Governor Savage Declares He Has Been Punished Enough, Gets Many Petitions.

Lincoln.—(Special.)—With his wife on one side and his daughter on the other former State Treasurer Joseph S. Bartley walked out of the doors of the state penitentiary last week with a full pardon in his hand to commence the year 1902 a free man. Governor Savage signed the papers which brought Bartley into the world again.

The time served by the former state treasurer in the walls of the prison is, counting the time put in in the Douglas county jail, five years, seven months and eight days.

Governor Savage commuted his sentence to this period and the time expired at midnight, December 31.

Private Secretary Clancy was sent to the Bartley residence with the papers. He placed them, together with a discharge from the penitentiary, in Mrs. Bartley's hands.

The house was a scene of the utmost excitement as the family hastily received the carriage of Charles O. Whedon and drove with all speed for the big gray stone building.

Warden Davis had been expecting them and had the prisoner ready. His incarceration was all the more bitter since the taste of liberty he had had by the parole granted by the governor July 13 and recalled July 28.

The scene, when the family met in the warden's office, was an affecting one. But after the first greetings and congratulations the party went to the carriage and drove directly to the Bartley home.

Here it was but a few minutes until crowds of friends began to gather and overwhelm him with good wishes. Invitations to New Year dinners were given almost without number, but the former treasurer refused them all, preferring to remain at home for the day.

Bartley's real imprisonment commenced when he was first placed in the Douglas county jail, June 24, 1897. The supreme court approved his sentence of twenty years in the penitentiary July 4, 1898.

The recall of the parole of July 13 was due to the action of the state republican convention, where resolutions were passed.

With the commutation of the sentence Governor Savage has issued a long statement of his reasons. He has, he says, come to the conclusion that Bartley has suffered enough for his crimes and that the sentence should be shortened.

The primary question to be considered in all cases involving executive clemency is, "has the prisoner been punished in a degree commensurate with his offense?" the governor says. His action answers the question as he sees it.

A thorough examination into the details of the matter has been made. Governor Savage says, and this has convinced him that the demands of organized society have been met.

He also gives attention to the statements that have frequently been made that Bartley's offenses were more bitterly criticized than they might have been through the fact that the state was then in the throes of a campaign and that Bartley's sentence had in it something of a personal equation.

In closing the governor says he has petitions containing the names of more than 4,000 of the state's most prominent citizens, asking for Bartley's freedom.

STIRRED BY THE BARTLEY PARDON.

Lincoln, Neb.—(Special.)—Governor Savage has left for a short tour of the southern states, his final destination being New Orleans. At the state house it was understood the pardon of Joseph Bartley was to be the final act of executive clemency for the present holiday season. No local happening for months has caused the sensation that did the release of the former state treasurer.

Governor Savage said he had received many personal expressions of approval of his act, as well as messages of congratulation. Telegrams of the same tenor poured into the Bartley home, and friends and former neighbors called to express their good will.

In this city there were also expressions condemning the governor's action, accompanied by predictions that it would have an important political bearing. Mr. Bartley would make no statement. The theory that the governor was actuated by the belief that the pardoned man would be in a position to make restitution of part of the funds lost to the state was neither affirmed nor denied.

Congratulated on Honor From Kaiser.

Washington, D. C.—(Special.)—Miss Alice Roosevelt, the daughter of the president, was much complimented today by her friends and acquaintances over a cablegram from Berlin, conveying the information that the Kaiser wanted her to name his new yacht. Thus far no official intimation of the international compliment has reached the White house. The Kaiser's request, when officially made, will take some time to reach Miss Roosevelt, through the usual diplomatic channels.

FIGHT MEMBER IN THE COURTS.

Helena, Mont.—(Special.)—A definite plan of action to defeat the proposed consolidation of the Northern Pacific, Great Northern and Burlington railway systems was today unanimously agreed upon by the governors and attorneys-general of several northwestern states in which those roads have mileage.

Legal action will be instituted immediately in Minnesota courts with this object in view, and to quote Attorney General Douglas of Minnesota, "the thing will be fought to a finish." Just how, when or where these suits will be brought, neither Governor Van Sant of Minnesota or Attorney General Douglas would state. The conference adjourned late this afternoon after adopting resolutions condemning the proposed merger as contrary to sound public policy and pledging support to any proper legal action which may be brought to test its validity.

The first resolution is as follows:

"In our opinion the consolidation or threatened consolidation of the Great Northern, Northern Pacific and Burlington railway systems in the several states through which they run as parallel and competing lines is contrary to sound public policy and also, with the exception of Idaho, is in violation of the constitution and laws of said states, and mindful of the obligation which the law imposes in such cases upon the officials of the several states here represented we hereby give our unqualified approval and endorsement to any proper and suitable proceedings which may be instituted in any court having jurisdiction by the sovereign state of Minnesota or any other state affected thereby, designed and intended to speedily and finally test and determine the validity of such consolidation or threatened consolidation and to that end we hereby pledge our earnest co-operation, and, further, we unanimously protest against any combination or consolidation which restricts or stifles free competition in the trade or commerce of the country."

This resolution was unanimously adopted. The second resolution, which was a substitute for the one offered by Governor Hunt of Idaho, along the same lines, was as follows:

"Whereas, A consolidation of the great transcontinental railway lines is threatened, which, in the opinion of the members of this conference, is inimical to the public welfare, therefore be it

"Resolved, First, That the congress of the United States be and hereby is requested to investigate the general subject and take suitable action thereon.

"Resolved, Second, That power should be granted to the Interstate Commerce Commission to fix maximum rates upon interstate traffic and to regulate the same.

"Resolved, Third, That a copy of these resolutions be forwarded to the senators and representatives in congress of their states here represented."

Governor Van Sant expressed himself as much gratified over the result of the meeting which had been requested by him.

"So far as I am concerned," said he after the meeting adjourned, "I am thoroughly satisfied with the work of the meeting. It accomplished all that could be desired. I am very much pleased."

BOER CALLS ON THE PRESIDENT.

Washington, D. C.—(Special.)—Commandant W. D. Snyman, who was a member of General Dewet's staff in South Africa up to a year ago, and who for some time has represented the Boer cause in the west, called upon President Roosevelt. Commandant Snyman is a tall, fine-looking Boer and talks English with a slightly broken accent.

"I called upon the president," said he, "to thank him for having sent to my wife, who is in South Africa, some money I desired her to have. I shall always feel grateful to President Roosevelt. I saw my wife's signature today for the first time in months."

"How did you wife get the money?"

"Through the United States consul at Capetown and her answer to my letter was returned through the same channel."

He did not think the war in South Africa a proper subject to discuss with the president. He simply wanted to thank him for getting the money to his wife. "The Boers," said he, "can see easily that the president can do nothing to stop the war even if he were so disposed. But we will appeal to congress for an expression of opinion. We hope that both political parties in this country will unite in such an expression. We do not want the matter made a party question so as to embarrass the United States in any way. I believe the English people would welcome an interference sufficient to cause the authorities to drop the war. We are willing to make some concessions."

Guarded By Dogs.

Rawlins, Wyo.—(Special.)—Guarded faithfully by his two dogs, the body of W. M. Mooney, one of the herders of the Pacific Sheep company, who was frozen to death, was found by searchers and brought to this city. The dogs had been by him several days, and kept the coyotes away.

Governor Rodgers Funeral.

Tacoma, Wash.—(Special.)—The funeral of John Rankin Rogers, the third governor of Washington, was held yesterday. The entire city was draped in black and thousands of people thronged the streets. The remains were escorted to the Hillside cemetery at Puyallup, by several companies of the National Guard, and fifty files of Masons, besides a long procession of friends and the public. The services at the grave were under Masonic auspices.

Must Eat Pot Dogs To Sustain Life.

Berlin.—(Special.)—The distress among the agrarians is most serious. The farmers are flocking to the cities in the hope of obtaining food. Many have been compelled to eat their pot dogs, in order to escape starvation. Things have reached such an extremity that the authorities in the village of Geben are seriously considering a proposition to open a dog butchery, in order to properly prepare carcasses for consumption.

DISOLVES THE INJUNCTION.

Federal Court Decides in Favor of the Northern Pacific.

Refuses to Allow Appeal from Order Setting Aside Injunction to Restrain Retirement of Stock.

Minneapolis.—(Special.)—Judge William Lochren of the United States circuit court today dissolved the temporary injunction issued in the case of Peter Power against the Northern Pacific Railway company by Judge Elliott of the district court of Hennepin county Monday.

The injunction which was dissolved by the order of Judge Lochren restrained the Northern Pacific from issuing any evidence of indebtedness to retire the preferred stock of the company or to retire the preferred stock in any other manner than by the use of the surplus net earnings of the road. It also restrained the Northern Pacific and its officers from entering into any agreement or doing any act by which the road would be consolidated or merged, through the medium of the Northern Securities company with the Great Northern or the Burlington, or either of them.

After the decision was made orally by Judge Lochren at the close of a day's argument by the attorneys for both sides, an effort was made by the plaintiff's attorneys to have the court fix the amount of bond which would be required in order to appeal from the decision and to stay all further proceedings in the lower court pending the appeal.

Judge Lochren refused to allow a supersedeas bond in any amount to be given.

Judge Lochren held that the Northern Pacific was acting within the authority of its charter, of the contract entered into between it and its stockholders as incorporated in the certificates of preferred stock and of the agreement of November 13, in attempting to retire the \$75,000,000 of preferred stock in the manner alleged by Mr. Power.

He also held that railroad corporations could not do indirectly what the law prevented them from doing directly, and that any method by which consolidation of two or more competing and parallel lines would be brought about would be illegal and a writ of injunction would be to restrain the consummation of the plan, but that there was nothing in the case as presented to him that would indicate that the stockholders of the Northern Pacific Railway company were attempting such a consolidation or merger.

Judge Lochren in his decision made a ruling which the attorneys of J. J. Hill aim to settle the question of the legality of the proposed merger. Said the court:

"If the Northern Pacific Railroad company never thought of consolidation, but to pay off the preferred stock holders and issue common stock, it had authority to do that, and that of itself would certainly have no tendency toward consolidation.

"It seems to me that the preferred stock may all be retired without the Northern Securities company being formed and if unlawfulness consists not in the retiring of this stock but in the acts which result in the formation of that company and placing other securities in that company."

Mr. Powers' attorneys tonight authorized the statement that the fight had just begun and that they would appeal to the United States supreme court.

RUMOR MISS STONE IS FREE.

London.—(Special.)—A dispatch to the Central News from Vienna says a report has been received there via Sofia to the effect that Miss Helen Stone, the captive missionary, has been released. The report lacks confirmation.

Washington, D. C.—(Special.)—The state department officials say they have no recent news bearing on the case of Miss Stone and therefore cannot confirm the dispatch from London transmitting a report that she has been released. At the same time such a consummation of the efforts in her behalf would not be surprising, as the latest information received here shows that responsible parties are in communication with the brigands who hold her captive and the latter know these parties have all the money that can be raised with which to ransom the captives.

London.—(Special.)—The Sofia correspondent of the Daily Telegraph has cabled an unconfirmed rumor to the effect that Miss Stone and Miss Tilkka were liberated in Turkey on January 1 and that the Americans who conducted the negotiations resulting in this reported release agreed, in the presence of the captives, to maintain absolute silence regarding the capture.

BOYS WHITE MAN MUST OBLE.

Cleveland, O.—(Special.)—General Joseph Wheeler was in this city today in the interest of a new army rifle. In a newspaper interview he stated, in response to a question on the possibility of a national bank to the south:

"It is no question that the establishment of the white race in the south is the main thing. Any man who goes to the south under the rule of the white race, or if it was through

after the war, can understand why this must be so. For one reason white supremacy alone can insure financial stability. There will be no political break in the 'solid south' by any party which tries to interfere from the north, through the medium of politicians, with the solving of the color problem by the south.

Wheeler, Ill., officials are closed to reports of an epidemic of influenza in that town.