

240 Summit Ave

In the Circuit Court of the United States

FOR THE EASTERN DISTRICT OF WISCONSIN.

THE FARMERS' LOAN AND TRUST COMPANY

vs.

NORTHERN PACIFIC RAILROAD COMPANY

ET AL.

ORDER AUTHORIZING ISSUE OF \$5,000,000 RECEIVERS'
CERTIFICATES AND MODIFYING PREVIOUS ORDERS
ON THE SUBJECT.

SULLIVAN & CROMWELL,
JOHN C. SPOONER,
JAMES McNAUGHT,
GEORGE P. MILLER,

Counsel for Receivers.

NEW YORK :

THE EVENING POST JOB PRINTING HOUSE, 156 FULTON STREET.
(EVENING POST BUILDING.)

1894.

At a Stated Term of the Circuit Court of 1
the United States for the Seventh Ju-
dicial Circuit and Eastern District of
Wisconsin, held at the Court House in
the City of Milwaukee, on the 8th day
of October, 1894.

Present—Hon. JAMES G. JENKINS, *Circuit Judge.*

THE FARMERS' LOAN AND TRUST
COMPANY, Trustee,
Complainant,

AGAINST

THE NORTHERN PACIFIC RAIL-
ROAD COMPANY *et al.*,
Defendants.

Consolidated
Cause.

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On reading and filing the petition of Thomas F.
Oakes, Henry C. Payne and Henry C. Rouse, Re-
ceivers, dated September 22, 1894, and upon read-
ing and considering the original petition of said
Receivers herein, dated August 24, 1893, with their 3
supplemental petitions thereto, dated August 29,
1893, and September 13, 1893, and the orders of this
Court made herein on the first and twentieth days
of September, 1893, and the nineteenth day of April,
1894, and the affidavits of G. S. Baxter and J. A.
Barker, verified September 23, 1894, and the report

4 of the Receivers, dated October 5, 1894, and their supplemental petition dated October 6, 1894; and the answers of the complainant and defendant company with the affidavit of W. Smith; and the statement of loans outstanding at this date and affidavit of G. S. Baxter, dated September 25, 1894; and upon proof of due notice to the said Farmers' Loan and Trust Company, as well as the defendants The Northern Pacific Railroad Company, the Wisconsin Central Railroad Company and the Wisconsin Central Company, and the other defendants herein; and upon hearing counsel for Receivers in support of said petition and after argument being had, and it appearing to the satisfaction of the Court that the
5 prayer of the said petition of the Receivers dated September 22, 1894, and of the supplemental petition verified October 6, 1894, ought to be granted, and that Receivers' certificates ought to be issued as hereinafter provided, for the benefit and protection of the property of said Railroad Company, for the purpose of paying off and retiring the Receivers' certificates maturing October 1, 1894, redeeming the securities on the remaining outstanding loans; reimbursing the current income account of the Receivers out of the proceeds of said certificates for moneys of the estate used by them for the redemption of securities in advance of sale of certificates
6 heretofore authorized for the purpose; providing for preferential claims to be paid and providing the necessary funds to reimburse the current income account of the Receivers for moneys of the estate used by them in the payment of preferential claims, and that the order made herein September twentieth, eighteen hundred and ninety-three, should be modified and made in the form herein set forth, in order that the objects sought for by the Receivers, as stated in their said petition of September twenty-second, eighteen hundred and ninety-four, and their said supplemental petition verified October 6, 1894, may be more effectually attained;

THEREFORE, BE IT ORDERED AND ADJUDGED, that 7
 Thomas F. Oakes, Henry C. Payne and Henry C. Rouse, as Receivers of the property mentioned and described in the bill of complaint herein, be and they are hereby authorized and empowered to make and issue their certificates of indebtedness as such Receivers, in denominations of one thousand dollars each, of like tenor and date, to wit, October 1, 1894, and to the aggregate amount of five million dollars; that all of said certificates shall be made payable to bearer, on July 1, 1897, or sooner, as hereinafter provided, in gold coin of the United States of America, of or equal to the present standard of weight and fineness, at the office of the Receivers in the City of New York, and shall bear 8
 interest at the rate of six per cent. per annum, payable quarterly, on the first days of January, April, July and October in each year from the date of the said certificates until the principal sum thereof is paid, upon presentation and surrender of the interest coupons to be thereto attached, as they severally become due and payable; that said Receivers be and they hereby are authorized to issue, sell and deliver said certificates, from time to time, in the manner hereinafter provided, and in such amounts as they may deem necessary for the several purposes aforesaid.

Said Receivers are hereby authorized and empowered to negotiate and sell such certificates at not less than the par value thereof 9
 and the accrued interest, and thereon to pay a banker's commission of not exceeding two per centum and such incidental expenses as they find necessary, and to apply the proceeds thereof first to the retirement and cancellation of the outstanding Receivers' certificates and thereafter to the other purposes aforesaid, to wit, \$1,198,074.25 and the interest thereon, or so much thereof as they may deem it advisable to so apply, to the redemption of securities on the said outstanding loans; \$531,000 thereof to reimburse current income account of the

- 10 Receivers for moneys of the estate used by them for the redemption of securities in advance of sale of certificates heretofore authorized for the purpose and necessary for the present uses of the trust estate; \$500,000 thereof on account of preferential claims ordered to be paid, and the remainder thereof to reimburse the current income account of the Receivers for moneys of the estate used by them in the payment of preferential indebtedness heretofore ordered to be paid, all in such manner and proportions as they may deem most advantageous to the trust.

The said certificates and all of said issue shall be and are hereby secured equally and alike as follows,

- 11 and without regard to the time of issue, to wit:

(1) As a primary security.

The following described securities composed in part of securities redeemed under previous orders of this Court and of free assets in the hands of the Receivers, together with the securities hereafter redeemed with Receivers' certificates or their proceeds, are hereby pledged as a primary security for the redemption of the principal and interest of such Receivers' certificates, to wit:

	Northern Pacific Consolidated Mortgage Bonds.....	\$4,626,000
12	Northern Pacific General Second Mortgage Bonds.....	10,000
	Northern Pacific General Third Mortgage Bonds.....	9,000
	Northern Pacific Collateral Trust Notes..	424,000
	Chicago & Northern Pacific R. R. Co. First Mortgage Bonds.....	1,127,000
	Minnesota Transfer Ry. Co. First Mortgage Bonds.....	3,000
	Chicago & Calumet Terminal Ry. Co. First Mortgage Bonds.....	1,800,000
	Northern Pacific & Manitoba Ry. Co. First Mortgage Bonds.....	100,000

St. Paul Eastern Grand Trunk Ry. Co.		13
First Mortgage Bonds.....	\$10,000	
Chicago & Calumet Terminal Ry. Co.		
Stock.....	5,000,000	
St. Paul & Northern Pacific Ry. Co.		
Stock.....	1,210,000	
Puget Sound & Alaska Steamship Co.		
Stock.....	600,000	
Yellowstone Park Association Stock.....	303,800	
Northern Pacific Coal Co. Stock.....	100,000	
Northern Pacific Express Co. Stock.....	100,000	
Chicago Union Transfer Railway Com-		
mon Stock.....	40,000	
Chicago Union Transfer Railway Com-		
pany Preferred Stock.....	40,000	14
Duluth Union Depot Co. Stock.....	25,000	
St. Paul Union Depot Stock.....	50,000	
Minnesota Transfer Railway Co. Stock..	7,000	

The said shares to stand registered in the names of the Receivers and to be assigned in blank upon such deposit.

Upon the deposit with the said depository of the securities specifically set forth in the foregoing list, as hereinafter directed, the Receivers may issue and sell such certificates to the par value of three million eight hundred and one thousand nine hundred twenty-five dollars and seventy-five cents, and the depository shall duly register and certify the same. 15

Thereafter as the Receivers redeem, under the said orders of this Court, the securities on the loans now remaining unredeemed, or any part thereof, and as they shall pay off the indebtedness against which the same may be respectively held, the same shall be deposited with said depository, and the Receivers may issue and sell such certificates to the amount and at the price herein fixed that shall equal the amount of the principal and interest of the loans thereon, but not exceeding the total issue of \$5,000,000 hereby authorized, and the depository

16 shall duly register and certify the same; except, however, that if the ninety thousand dollars par value of St. Paul and Northern Pacific Railroad Company First Mortgage Bonds, held upon one of said loans, be redeemed by the Receivers, the same shall be delivered by them to the St. Paul and Northern Pacific Railway Company in addition to the \$48,000 of such bonds heretofore redeemed and delivered to it, said bonds having been loaned by said company to the defendant corporation.

All of such securities so from time to time deposited shall be held equally and alike for the *pro rata* benefit and security of all certificates issued under this order.

17 The Mercantile Trust Company, of the City of New York, is hereby constituted the depository of the securities which may be deposited as a primary pledge, and the Receivers shall make such deposits with said Trust Company upon its declaration or receipt to the effect that it will hold the same subject to the provisions of this order.

In the event that default shall be made in the payment of the principal or interest upon said Receivers' certificates, and such default shall continue for the period of sixty days, then and in any and every such event the said Mercantile Trust Company is hereby authorized and empowered upon the written request of the holders of a majority in amount of the said certificates at the time being
18 outstanding, or upon the order of this Court without such consent to sell and dispose of such securities or so much thereof as may be necessary, at public auction, in the City of New York, upon thirty days' notice thereof to the Receivers and by publication in one or more newspapers published in said city, for the purpose of providing the funds for paying the interest or principal then in default, and shall apply the proceeds thereof, after deducting the expenses of such sale or sales, to the *pro rata* payment of the principal or interest as the case may be, then in default.

And default in interest shall not operate to make the principal due and payable before the expiration of the period herein provided. 19

The Receivers shall also have and are hereby given the right to redeem any part of the said securities which may be deposited with the depositary, when not in default, upon payment to said depositary of the following prices therefor, respectively:

BONDS.	Par Value.	Redeemable at	Redeemable Value.
Northern Pacific R. Co. Consolidated Mtge....	\$4,726,000	25%	\$1,181,500
Northern Pacific R. Co. Collateral Tr. Notes...	781,000	75%	585,750
Northern Pacific R. Co. Second Mortgage.....	10,000	85%	8,500
Northern Pacific R. Co. Third Mortgage.....	9,000	60%	5,400
Chicago & Northern Pacific R. R. Co. First Mtge.....	1,750,000	40%	700,000
Chicago & Calumet Ter'l R. Co. First Mtge...	1,800,000	40%	720,000
Minnesota Transfer Co. First Mortgage.....	103,000	80%	82,400
Northern Pacific & Manitoba Ter'l Co. First Mortgage.....	100,000	30%	30,000
St. Paul East Grand Tr. R. Co. First Mtge.....	10,000	80%	8,000
	\$9,289,000		\$8,321,550

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STOCKS.	Shares.	Par Value.	Redeemable at	Redeemable Value.
Chicago & Calumet Ter'l Ry. Co.....	50,000	\$5,000,000	5%	\$250,000
St. Paul & Northern Pac. Ry. Co.....	21,400	2,140,000	75%	1,605,000
Puget Sound & Alaska Steamship Co.....	6,000	600,000	50%	300,000
Yellowstone Park Ass'n.....	3,088	308,800	50%	154,400
Northern Pacific Coal Co.....	1,000	100,000	100%	100,000
Northern Pacific Express Co.....	1,000	100,000	500%	500,000
Chicago Union Transfer Co., Common.....	400	40,000	25%	10,000
Chicago Union Transfer Co., Preferred.....	400	40,000	75%	30,000
St. Paul Union Depot Co.....	500	50,000	50%	25,000
Duluth Union Depot Co.....	250	25,000	50%	12,500
Minnesota Transfer Co.....	70	7,000	50%	3,500
	84,108	\$8,410,800		Stocks.. \$2,990,400 Bonds.. 3,321,550 Total... \$6,311,950

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or at such lower prices as may be approved in writing by the holders of a majority in amount of such certificates at the time being outstanding; the pro-

22 ceeds thereof, after deducting the expenses of such sale or sales to be applied to the retirement of such certificates under the direction of the Receivers in the exercise by them of the right to pay off the same before maturity, as hereinafter provided.

And it appearing that a part of said securities are under default and that the mortgages under which the same are issued are under process of foreclosure, and that measures should be taken for the protection thereof, the Receivers and said depository are jointly empowered to enforce the lien and provisions of any mortgages securing any of the deposited collateral, and exercise all the rights and powers of bondholders or stockholders, as the case may be, in
 23 protection of the rights appurtenant to said bonds or stocks, and in such manner as they may deem wise; and they are also empowered to secure and avail of the benefits or terms of any reorganization plans or agreements of any committee representing bonds or stocks of such classes respectively, and in that connection to deposit such bonds or stocks under or agree to be bound by and secure the benefits of such reorganization agreement or plans; and all certificates or receipts issued therefor and all proceeds or results thereof shall be substituted for and held as security under the Receivers' certificates in lieu of the bonds or stocks so deposited with such committee, as fully as would be the bonds
 24 or stocks in question; but the Receivers and the depository are directed not to exercise the power to join in the deposit of any of said securities with any committee, or make any such agreement except upon the further order of the Court, to be made upon notice to all parties to the cause.

(2.) As a secondary security: Said certificates shall be and are hereby constituted a lien upon and made payable out of the income derived from the operation of the properties in the hands of such Receivers, subject, however, to the payment of the expenses of their trust and the payment of the

preferential claims provided for in the order appointing said Receivers, and of any other claims, whether against the Northern Pacific Railroad Company or against the Receivers, which shall or may be adjudged to be equitable liens or charges upon or to be paid out of the said income prior to such certificates; but this lien created under this subdivision two shall not be enforced until after the application of the proceeds realized from the securities held as a separate trust fund and primary security as aforesaid. 25

(3.) As an ultimate security: Said certificates shall be and are hereby constituted a further lien upon the *corpus* of said railroad and property prior to the lien of the several mortgages and deeds of trust upon the railroad property, save and except only the mortgage heretofore, to wit, on the first day of January, 1881, made and executed by the Northern Pacific Railroad Company to the Central Trust Company of New York, and known as its General First Mortgage, and the Missouri and Pend d'Oreille Divisional mortgages underlying it; but this lien created under this subdivision third shall not be enforced until after the application, in the order named, of all the proceeds of securities held as a separate trust fund, as aforesaid, for the redemption of said certificates, and of the income of the said properties in the hands of said Receivers, held to be applicable thereto. 26 27

Upon payment in full of said Receivers' certificates and the interest thereon, the securities then remaining in the hands of the depository shall, without further order of Court, be returned and delivered to the Receivers.

The Receivers shall have the right, hereby conferred upon them, to pay off and redeem all or any number of said certificates from time to time, before maturity at one thousand and ten dollars gold and the accrued interest, in the following manner: Whenever and as often as the said Receivers desire

- 28 to pay and redeem any of said certificates, they shall cause the desired number of such certificates to be drawn by lot by said depository out of the whole number of certificates then outstanding, and the certificates so drawn shall be paid and redeemed by the Receivers at one thousand and ten dollars gold and the accrued interest, at a day to be specified in a notice thereof to be given by publication of the same on three different days, beginning at least thirty days prior to such specified date, in one or more daily newspapers of general circulation published in the City of New York. On and from the day named in the said notice for such payment and redemption, the interest on
- 29 the certificates so drawn and advertised shall cease and determine, and the coupons representing the interest from that day shall thenceforth and forever be void and of no force or effect, and the said Receivers shall not thenceforth be liable for any of such interest. All such certificates so paid and redeemed, together with all coupons thereto belonging, shall thereupon be canceled by said Receivers. But the Receivers are directed to not exercise the right of redemption of certificates and securities otherwise than by and through the sale of securities deposited under said certificates or in their treasury, except upon the further order of Court to be made upon notice to all parties to the cause.

30 AND IT IS FURTHER ORDERED AND ADJUDGED, however, that nothing in this order contained shall prevent the sale, from time to time, of the lands of the Railroad Company, under orders of this Court heretofore or hereafter made, and the application of the net proceeds of such sales in accordance with any such order heretofore or hereafter made.

IT IS FURTHER ORDERED AND ADJUDGED, that none of said certificates or the proceeds thereof, when negotiated, shall be used for other than the purposes herein authorized.

AND IT IS FURTHER ORDERED AND ADJUDGED, that 31
the said certificates shall be in the form hereto at-
tached and made a part of this order.

AND IT IS HEREBY FURTHER ORDERED, that the
orders herein dated September 20, 1893, and April
18, 1894, be and the same are hereby modified in
accordance with the terms hereof.

AND IT IS FURTHER ORDERED that the Receivers
report to the Court on the 22d day of October, 1894,
at two o'clock P. M., at the Court House, in the City
of Milwaukee, such offers as they may have then
received for said certificates, or any part thereof;
and any party in interest may, up to said time, make
written propositions to the Receivers to purchase the 32
whole or any part of such certificates, and the price
which they will pay for the same, to be then re-
ported to the Court.

JAS. G. JENKINS,
United States Circuit Judge.

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No. -----

NORTHERN PACIFIC RAILROAD COMPANY.

RECEIVERS' CERTIFICATE OF INDEBTEDNESS.

THIS IS TO CERTIFY that the undersigned, THOMAS
F. OAKES, HENRY C. PAYNE and HENRY C. ROUSE,
as Receivers of the NORTHERN PACIFIC RAILROAD 33
COMPANY, and not individually, are, for value re-
ceived, indebted to the bearer in the sum of ONE
THOUSAND DOLLARS, payable in gold coin of the
United States of America of the present standard at
the office of the said Receivers in the City of New
York, on the first day of July, 1897, or sooner, as
hereinafter provided, with interest thereon from the
date hereof, in like gold coin, at the rate of six per
centum per annum, payable quarterly, on the first
days of January, April, July and October in each
year from the date hereof until said principal sum is
paid, upon presentation and surrender of the annexed

34 interest coupons as they severally become due and payable.

This certificate is part of an issue of certificates of like amount, tenor and date, amounting in the aggregate to the sum of five million dollars, and numbered consecutively from one upwards, authorized by the order of the Circuit Court of the United States for the Eastern District of Wisconsin, in the consolidated cause in equity pending in said Court, wherein The Farmers' Loan and Trust Company, as trustee, is complainant, and the Northern Pacific Railroad Company and others are defendants, which said order bears date the day of September, eighteen hundred and ninety-four, and declared in and by
35 said order to be a debt of the undersigned as such Receivers, incurred for the benefit and protection of the property of said railroad company.

The payment of this certificate is primarily secured by the special pledge, in trust, of the securities or the proceeds thereof referred to in said order and held by the depositary under and subject to the provisions of said order, and secondarily by a lien on the income of the railroad and property of the Northern Pacific Railroad Company, subject to the payment of the expenses of the trust and the payment of the preferential claims provided for in the order appointing said Receivers and of any other claims, whether against the Northern Pacific Railroad Company or against the Receivers, which shall
36 or may be adjudged to be equitable liens or charges upon or to be paid out of the said income, prior to such certificates, as provided in said order, and, lastly, by a lien upon the corpus of said railroad and property, prior to the lien of the several mortgages or deeds of trust upon the railroad and property of said company, save and except only as to the General First Mortgage of said company and the Missouri and Pend d'Oreille divisional mortgages underlying it, as set forth in said order.

This certificate may be paid and redeemed at any time before maturity, at one thousand and ten dol-

lars gold and the accrued interest, as provided in 37
 said order upon thirty days' previous notice to that
 effect given by publication thereof in one or more
 daily newspapers published in the City of New York;
 and on and from the day named in such notice for
 the payment and redemption hereof, interest hereon
 shall cease.

This certificate and all rights and liens thereunder
 shall be transferable by delivery; but shall not be
 valid until authenticated by the certificate of the
 Mercantile Trust Company, as registrar, endorsed
 hereon.

IN WITNESS WHEREOF, the said undersigned Re-
 ceivers have, pursuant to the order of the Court 38
 hereinbefore recited, hereunto set their hands the
 first day of October, in the year one thousand eight
 hundred and ninety-four.

as Receivers of
 the Northern
 Pacific Rail-
 road Company.

[FORM OF COUPON.]

\$15.

Coupon No.

The Receivers of the Northern Pacific Railroad
 Company will pay to the bearer at their office in the 39
 City of New York, on the first day of
 189 ,

FIFTEEN DOLLARS

in gold coin of the United States of America, being
 three months' interest then due on their Certificate
 of indebtedness of October 1, 1894, No.

Receivers of the
 Northern Pa-
 cific Railroad
 Company.

40 [CERTIFICATE OF REGISTRAR, TO BE ENDORSED ON
THE MARGIN.]

This certificate is one of five thousand certificates
of like amount, tenor and date, issued under and
pursuant to the order therein specified, and regis-
tered , 18 .

THE MERCANTILE TRUST COMPANY,
Registrar.

By

Secretary.

James J. Hill Papers
Minnesota Historical Society

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