instant case concluded that it does not violate due process to prohibit property owners from attacking the judgment by intervention or appeal—an issue not directly involved in the *Eiger* case.

The *Eiger* case recognized that the right to deal in intoxicating liquors is a privilege and that prohibition, regulation, and restraint of the sale and manufacture of liquor is justified by the police power of the state. That case recognized that it was in the public interest to place liability on landlords for any harm caused by persons becoming intoxicated in taverns located on the landlord's premises. This insures an injured person that he will be able to recover from a financially responsible person any damages he may be awarded, and centralizes the risk in those in the best position to pay the cost. The landlord can insure himself against any possible liability and pass the cost of the insurance on to the tavern keeper in the form of rent. The tavern keeper, in turn, can pass this cost on to the liquor consumers, thereby placing the ultimate burden on the group primarily responsible for the harm which has been caused to innocent persons.

The liability which the statute imposes does not require that the property owners be denied the opportunity to contest the extent of the harm, or to contest whether the tort is one which arose from their premises. Short of actual fraud or collusion, which the court implicitly recognizes as a defense to the property owners,[31] there are many ways in which the liability of the property owners may be much greater than if they had been permitted to conduct the defense. Their liability should not depend on the degree of enthusiasm with which the tavern keeper defends the original action. Basic notions of justice require that those who must pay should be given the opportunity to defend.

Bankruptcy—Railroad Reorganizations—Confirmation of Plan under Section 77 over Vote of Dissenting Class of Creditors—[United States].— The debtor railroad filed a petition in a United States district court on Nov. 1, 1935, for reorganization under Section 77 of the Bankruptcy Act.[1] Trustees were appointed and during the ensuing decade four different reorganization plans were submitted to the district court by the Interstate Commerce Commission. The first three plans were disapproved by that court; the last, which was under consideration here, was approved in October, 1943.[2] This plan reduced the capitalization of the railroad from about 200 million to about 143 million dollars and allocated to the old senior secured creditors the entire issue of new bonds and approximately 88 per cent of the new common stock, which combination at par equalled the face value of their claims plus accrued interest. Junior secured creditors were allocated the balance of the new common stock, at par

[31] Gibbons v. Cannaven, 393 Ill. 376, 66 N.E. 2d 370, 378 (1946).

[1] 49 Stat. 911 (1935), 11 U.S.C.A. § 205 (1946).

[2] In re Denver & Rio Grande Western R. Co., C. C. H. Bkcy. L. Serv. ¶ 54,562 (D.C. Colo., 1943). The details of the plan are reported in Denver & Rio Grande R. Co. Reorg., 254 I.C.C. 349 (1943).

equal to 10 per cent of the face value of their claims plus accrued interest. Claims of the unsecured creditors and stockholders of the old company were found to be worthless and therefore were denied participation. The effective date of the plan was January 1, 1943.

Enormous wartime earnings had permitted the trustees to expend forty-three million dollars on capital additions and betterments prior to the date of the plan, to accumulate eight million dollars cash in excess of working capital needs as of December, 1943, and to retire in September, 1943, certain senior securities, known as the Junction Bonds, valued at two and three-quarter million dollars. The new securities which under the plan were to be exchanged for the retired issues were cancelled and eliminated from the arrangement.

Of the thirteen classes of creditors to whom the plan was submitted in April, 1944, all assented to it except the junior secured creditors. Seventy-nine per cent of those voting in this class rejected the plan. In November, 1944, the district court overruled the objections and confirmed the plan.[3] The circuit court of appeals reversed, holding that the junior creditors were reasonably justified in rejecting the arrangement, on the grounds that they were entitled to share in the excess cash, and that the new securities freed by the retirement of the Junction Bonds should have been ratably distributed.[4] On appeal to the Supreme Court, *held*, the junior security holders were not reasonably justified in rejecting the plan. The ICC properly considered and determined the rights of all parties as of the effective date of the plan when allocating the new securities. The benefit of the betterments, the excess cash, and the reduction of the old senior issues belonged to the new common stockholders since these elements of value were included in providing full compensation for the senior secured creditors who in part were given the stock in exchange for their old securities. Judgment reversed and order of the district court affirmed. *RFC v. Denver & Rio Grande Western R. Co.*[5]

Section 77 of the Bankruptcy Act as applied to confirmation of railroad reorganization plans has come before the Supreme Court for interpretation only twice previously, in the *Western Pacific*[6] and *Milwaukee*[7] cases. In this latest op-

[3] In re Denver & Rio Grande Western R. Co., 62 F. Supp. 384 (Colo., 1944).

[4] In re Denver & Rio Grande Western R. Co., 150 F. 2d 28 (C.C.A. 10th, 1945).

[5] 66 S. Ct. 1282 (1946). Mr. Justice Frankfurter dissented, stating that he would file an opinion later.

Mr. Justice Frankfurter's dissenting opinion, which was published as this issue of the Review was going to press, appears at 66 S. Ct. 1384 (1946). In this opinion Mr. Justice Frankfurter upheld the position of the Circuit Court of Appeals with regard to the excess cash and the retirement of the Junction Bonds, and he went somewhat further in questioning the ICC's estimate of future earnings and implying that the valuation found by the ICC was too low. He likewise questioned the majority's interpretation of the "cram down" provision with regard to the effect of the dissenting vote; further comments on this aspect of his opinion will be found at the end of this note.

[6] Ecker v. Western Pacific R. Corp., 318 U.S. 448 (1943).

[7] Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific R. Co., 318 U.S. 523 (1943).

portunity of the Supreme Court to elucidate the statutory provisions relating to completed plans, the Court faced one additional problem, declined a chance to clear up an ambiguity contained in the two previous decisions, and reaffirmed two interpretations rendered in the prior cases.

This is the first decision in which the Supreme Court considered the provisions of Section 77 which give the district courts power to bind a dissenting class.[8] The statute provides that any plan which is not assented to by two-thirds of those voting in each participating class may nevertheless be confirmed if the district court finds that the plan makes adequate provision for fair and equitable treatment of the dissenters, and that their rejection was not reasonably justified. The use of the provision, popularly known as the "cram down," has come before a circuit court of appeals for review only once previously, in the *Chicago & Northwestern* case.[9] In that case the plan was confirmed by the district court, although one class of creditors, small in number and amount of claim, could muster only a 51 per cent vote in favor of the plan; this action was upheld by the Circuit Court of Appeals for the Seventh Circuit, and the Supreme Court denied certiorari.[10] The insignificance of the interest of the objecting class compared with the extent of the claims of the other classes of creditors, who assented by large majorities, obviously influenced the court's decision, as did the fact that there was no overwhelming rejection of the plan by the dissenting class. In the present case the voting junior security holders, 79 per cent of whom rejected the plan, owned almost a fourth of the bonded indebtedness of the road. In employing the "cram down" provision to bind a substantial class, which dissented decisively, the court resolved any doubts as to the scope of the provision which might have been left by the peculiar facts of the *Northwestern* case.

By finding that the rejection was not reasonably justified, the Supreme Court in effect indicated that a dissenting class cannot block a reorganization unless it can show that its rejection is reasonable from the standpoint of all creditors.[11]

[8] 49 Stat. 919 (1935), 11 U.S.C.A. § 205(c) (1946).

[9] In re Chicago & Northwestern R. Co., 126 F. 2d 351 (C.C.A. 7th, 1942). The court took the novel position that it represented those security holders who had not exercised their voting privilege. These "proxies" it cast in favor of the plan. Ibid., at 367.

[10] Chicago & Northwestern R. Co. v. Mutual Savings Bank Group Committee, 318 U.S. 793 (1943).

[11] The provision of the statute allowing an assenting majority to bind a dissenting minority in any class of creditors had been sustained against constitutional objections in Continental Illinois Bank & Trust Company v. Chicago, Rock Island & Pacific R. Co., 294 U.S. 648 (1935). The junior bondholders contended that that decision was distinguishable by the fact that a majority of them had objected. Since in the Continental Illinois Bank case the court relied on an analogy to the statutory composition under Section 12, 30 Stat. 549 (1898), which went only so far as to bind a dissenting minority, Canada Southern R. Co. v. Gebhart, 109 U.S. 527 (1883), some doubt remained as to the constitutionality of binding a dissenting majority. Finletter, Corporate Reorganizations 448 (1937); Friendly, The 1935 Amendments of the Railroad Reorganization Act, 36 Col. L. Rev. 28, 33 (1936); cf. Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555 (1935). But if the rights of a secured creditor can be modified at all, it should be immaterial that the affected creditor belongs in a class where the majority of creditors have objected.

Conceivably any class would, from its own point of view, be reasonably justified in rejecting a plan which drastically reduced its claims; but it now appears that if the plan as a whole is fair and equitable the dissenting class can not be reasonably justified in withholding acceptance. The requirement that the dissenting class be reasonably justified thus becomes mere surplusage, since in any event no plan can be approved or be submitted to a vote unless it is first found to be fair and equitable. This result is not surprising in view of the previous cases and the comparable situation under Chapter X of the Bankruptcy Act,[12] but there is considerable evidence to show that Congress did not expect the Section 77 "cram down" to be used to override a large dissenting class. For instance, the late Joseph B. Eastman, Federal Coordinator of Transportation and one of the draftsmen of Section 77, wrote as follows in a letter to Congress: "Arbitrary compulsion of plans over the dissents of interested creditors is not intended, nor is it believed that courts will override strong dissents . . . . by a large single class. . . . ."[13]

A phase of Section 77 which had been left somewhat in doubt by the prior Supreme Court decisions is the respective function of the district court and the ICC in the allocation of new securities among the various participating classes of creditors. The Court recognized in the *Western Pacific* and *Milwaukee* cases that the district court must examine the ICC plan to determine whether the allocation is fair and equitable, but these decisions were vague in indicating the nature and extent of the findings which the district court would be required to make in order to have its disapproval of a plan sustained on review. It has been thought the *Western Pacific* case held that the district court could not disapprove a plan if there were some evidence supporting the ICC's determination that the allocation was equitable.[14] On the other hand, the *Milwaukee* decision appeared to announce that if the district court had some independent evidence to support its disapproval, it would be sustained on appeal.[15] The opinion of the Court in the instant case did not consider the degree of finality to be accorded to the ICC's findings by the district court.[16] This omission may be a corollary

[12] 52 Stat. 895 (1938), 11 U.S.C.A. 616 (1946). Although this statute and its predecessors provided alternative means of treating dissenting classes, such as appraisal and sale subject to the dissenter's lien, when a fair and equitable plan has been worked out the objections of a dissenting class have been held not to affect the plan. National City Bank of New York v. O'Connell, 155 F. 2d 329 (C.C.A. 2nd, 1946); Country Life Apartments Inc. v. Buckley, 145 F. 2d 935 (C.C.A. 2nd, 1944).

[13] H. Doc. 89, 74th Cong. 1st Sess. (1935). The sense of the comments and debate in Congress on this provision is clearly that it was to be used only when small classes of creditors obstructed reorganizations in the hope of wringing concessions from other classes. 79 Cong. Rec. 13,298–301, 13,764–68 (1935).

[14] Swaine, A Decade of Railroad Reorganization under Section 77 of Federal Bankruptcy Act, 56 Harv. L. Rev. 1037, 1047 (1943).

[15] Ibid., at 1050.

[16] The junior bondholders had asked the district court to disapprove the plan and order a reallocation of the new securities freed by the retirement of the Junction Bonds, pointing out that in a similar situation in the reorganization of the New York, New Haven & Hartford, In re New York, New Haven & Hartford R. Co., 54 F. Supp. 595 (Conn. 1943), the lower court

of the Court's restatement that the statute was intended to limit appellate review of the findings of "the district court and the ICC"[17] under Section 77. The Court did, however, reaffirm one clear assignment of exclusive power to the ICC in the previous cases, namely, to determine the amount and structure of the new capitalization as long as all relevant valuation factors are considered.

The interpretation of Section 77 in this and previous cases has served to produce a result which appears to be unduly harsh on the junior secured creditors in the present case, especially in view of the protracted nature of the proceedings. Between 1935, when the Denver & Rio Grande first filed a petition for reorganization, and 1943, the effective date of the plan under consideration, interest accruals increased senior claims by over thirty-seven million dollars. If the capitalization eventually approved had been adopted and a plan consummated within one year of the road's petition for reorganization, there would have been new securities available to fully compensate all senior classes of creditors and give the junior secured creditors new paper equal to the full value of their claims. The increase in senior claims by the running of interest reduced the participation by junior creditors from 100 per cent of the face value of their claims to 10 per cent; if there had been a delay of only one additional year in the effective date of the present plan, there would have been nothing for the junior security holders, who were losing ground to the seniors at the rate of over 10 per cent of their original claims per year.[18]

Measuring the Denver & Rio Grande plan by the standards of prior railroad reorganizations under Section 77 also tends to indicate that senior creditors were unusually favored. In the *Western Pacific* reorganization, and in many others which were not appealed from the district courts, the ICC allocated to senior claimants new bonds and stocks of substantially the same type distributed here, also in the face amount of their claims, but without compensation for their loss of rights in taking securities with less favorable terms.[19] In this reorganiza-

had ordered the reallocation. The Colorado district court refused, stating that it felt itself without power to issue such an order. Although the point was presented to the Supreme Court, the Court declined to comment.

[17] Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific R. Co., 318 U.S. 523, 566 (1943).

[18] Between Jan. 1, 1943, and Dec. 31, 1944, accrued interest had increased senior claims almost nine million dollars. Respondent's brief, chart at p. 44.

[19] In nearly all reorganizations under Section 77, including that of the Denver & Rio Grande, fixed interest bonds, contingent interest bonds, and preferred and common stock have been issued in varying proportions to almost all participating creditors. Those who participate fully get new paper having a face value equal to the face value of their old claims. There is no consideration given to market values, nor do creditors ever get new securities with a face value of over 100 per cent of their claim. Full compensation, in the sense of an absolute quid pro quo, is thus never given, since the new securities almost invariably have less favorable terms than those surrendered. As one writer has suggested, what is called full compensation is really a relative priority, because all that senior creditors can demand is complete paper satisfaction before junior claimants can participate. Friendly, Relative Treatment of Securities in Railroad Reorganizations under Section 77, 7 Law & Contemp. Prob. 420 (1940). The following reorganizations are typical: Missouri Pacific R. Reorg., 239 I.C.C. 7, 95 (1940); Chi-

tion, however, the situation was somewhat novel in that the trustees had accumulated eight million dollars in cash in excess of ordinary working capital needs by November, 1943, much of it earned during a period when the junior creditors reasonably could have had expectations of participating in the plan to a much larger extent than that eventually provided. The allocation also gave the new stockholders the advantage of physical betterments more extensive, in proportion to the size of the railway system, than those which had been made by any other major road during reorganization.[20] The value of the new stock was further enhanced by the retirement, after the effective date but before confirmation of the plan, of the Junction Bonds, since fixed interest charges were reduced and more income was available for dividends. The result of all these factors seems to be that the probable market value of the common stock received by the seniors more nearly approximated its par value than that received by senior creditors in prior major reorganizations under Section 77.

This relatively strict treatment of the junior secured creditors may be viewed as being at least in part a consequence of the ICC's treatment of the total valuation of the enterprise. The betterments of the road's physical capital, although made out of current earnings which would otherwise have been surplus to the needs of the road and which might have been used to retire part of the senior debt, were thought by the ICC to add nothing to the road's earning capacity and therefore could not be used to increase the capitalization. The cash on hand in excess of working capital needs likewise did not add to the earning capacity of the road, since the ICC valued the road without reference to the cash. Hence this cash must have been something in addition to the going concern value of the road, and the use of the cash to supplement the compensation given the junior secured creditors would have subtracted nothing from the value of the road. Likewise if the earnings of the road during reorganization had been used by the trustee to retire senior securities or to reduce interest claims instead of to improve the physical plant or to increase the excess cash reserve, the junior secured creditors would have benefited. On the other hand, the ICC was undoubtedly justified in excluding wartime earnings from consideration in forecasting future revenues as a basis for capitalization, in view of their evanescent character.

At first impression it might appear that the ICC in declaring the plan effective as of January 1, 1943,[21] added to the harshness of the treatment of the juniors by depriving them of the benefit resulting from the retirement of the Junction Bonds, since it was admitted by the Court that if the bonds had been re-

cago & Eastern Illinois R. Reorg., 230 I.C.C. 199 (1938); and Chicago Great Western R. Reorg., 228 I.C.C. 585 (1938).

[20] This was determined by comparing the data on expenditures in S. Rep. 1170, 79th Cong. 2d. Sess., at 41 (1946), with the total investment in road and equipment in the major roads, as reported in Moody's Railroads (1945).

[21] That the statute empowers the ICC to select the date on which the reorganization is to go into effect was decided in Ecker v. Western Pacific R. Corp., 318 U.S. 448, 510 (1943).

tired prior to the effective date the new securities thus freed would go to increase the compensation of the juniors.[22] But if the effective date had been revised in the light of subsequent developments so as to come after the retirement, the continued running of interest on the senior securities would have more than absorbed the amount of new securities freed. The ICC could, however, have taken account of the excess cash in the plan it proposed, and, without modifying the effective date, provided for the use of the cash in discharging senior obligations. By this means the discharge of the Junction Bonds and any other senior securities might have been used to produce more favorable treatment for the juniors.

The harsh treatment of junior claimants which has resulted from Section 77 reorganization proceedings,[23] typified by the treatment received by the junior bondholders and stockholders of the Denver & Rio Grande, has given rise to much criticism among railroad men, from the reorganization bar, and in Congress.[24] This criticism in part has been manifested in a number of proposals for new legislation, all of which embody so-called "nonforfeiture" principles, designed to retain the existing capitalizations.[25] It may be doubted whether attempts to preserve old capital structures are really sound. The railroad debt burden,[26] incurred mainly in the first quarter of this century, has proved too large for many lines to carry,[27] especially in view of the industry's changed position in the nation's transportation picture.[28] Since most of these roads have not

[22] RFC v. Denver & Rio Grande Western R. Co., 66 S. Ct. 1282, 1298 (1946).

[23] In the eleven years of the statute's operation investments of two and a half billion dollars have been declared valueless in plans formulated by the ICC. S. Rep. 1170, 79th Cong. 2nd Sess. (1946). Critics of Section 77 have characterized these losses as "forfeitures," but from a more realistic viewpoint it may be said that the securities representing these investments were in fact valueless when the railroad petitioned for reorganization; thus the ICC has merely faced the facts.

[24] Hearings before the Senate Committee on Interstate Commerce on S. 1253, Part 1, 79th Cong. 1st Sess., Part 2, 79th Cong. 2nd Sess. (1946).

[25] Two proposed railroad relief measures, both of which contemplated retention of the existing capital structures, were the Wheeler-Reed bill, S. 1253, 79th Cong. 2nd Sess. (1946), and the Hobbs bill, H.R. 4960, 78th Cong. 2nd Sess. (1944). A third proposal, S. 1869, 76th Cong. 1st Sess. (1939), would establish a special court, which would handle nothing but railroad reorganizations; see Clay, The Case for a Special Railroad Reorganization Court, 7 Law & Contemp. Prob. 450 (1940).

[26] The ratio of debt to equity in railroad financial structures has generally exceeded the requirements of sound finance. Moore, Railroad Fixed Charges in Bankruptcy Proceedings, 47 J. Pol. Econ. 100 (1939). Prior to reorganization the bonded debt of the Milwaukee was 67.7 per cent, the Rock Island 70.92 per cent, and the Missouri Pacific 72.39 per cent of total capitalization. Spaeth and Windle, Valuation of Railroads under Section 77 of the Bankruptcy Act, 32 Ill. L. Rev. 517 (1938).

[27] Of the 136 Class I railroads (those having an operating revenue of over a million dollars) twenty-two have sought reorganization under the statute. These twenty-two comprise almost 30 per cent of the nation's railroad mileage.

[28] The recent downward trend in railroad earnings and the demands for increased freight rates are testimony to the wisdom of the ICC's position. In some cases, notably that of the Erie, earnings are unable to support even a recapitalized financial structure. N.Y. Times, p. 1, col. 2 (April 16, 1946), p. 23, col. 6 (April 27, 1946), p. 33, col. 4 (June 22, 1946).

substantially reduced funded debt voluntarily, the public interest might require that a reduction be made through the reorganization process. The instant case indicates the value of any new legislation which would preserve to some degree the former interests in railroads by cutting down the duration of reorganization proceedings.[29] This is probably the furthest extent to which preservation of old junior interests is justified, however, and thus if this result were attained additional legislation would become unnecessary.

. . . .

Mr. Justice Frankfurter, in a dissenting opinion published too late for comment in the foregoing note, joins issue with the majority of the Court as to the proper interpretation of the "cram down" provision of Section 77.[30] Specifically he disagrees with the majority view that a dissenting class cannot be "reasonably justified" in rejecting a plan if the plan as a whole is found to be fair and equitable. This position, he asserts, renders the reasonable justification requirement mere "empty dialectic" and does violence to the intent of Congress. The essence of the majority interpretation is that creditors are denied the protection afforded by a vote predicated on their own interests and are compelled to accept as a substitute safeguard the finding of the district court as to the general fairness of a plan.

Even if a dissenting class cannot upset a fair and equitable plan its vote serves a useful purpose. The existence of a large dissenting class should be a warning to the district court to scrutinize the portions of the plan thus called into question with much more care than might otherwise be thought necessary. Moreover, the possibility of provoking a large dissenting vote should lead the ICC to use more caution in its formulation of the plan. As a corollary, a certain amount of bargaining power is conferred upon the junior classes included in the plan by the possibility that they may later dissent.

Mr. Justice Frankfurter's view, that in dissenting a class is "reasonably justified" from a consideration of its interest alone, might place the ICC in a confining position as to its formulation of a plan. After having determined the total capitalization the ICC must provide fair and equitable compensation for all senior creditors upon the "strict priority" theory. In a situation where this distribution leaves only enough to partially compensate a junior group, the threat that this junior group would reject the plan could completely stall the reorganization. To prevent such an impasse the ICC might reasonably be tempted to adjust the valuation in such a way as to eliminate completely marginal classes which otherwise would be admitted to partial participation. If this

[29] Reorganizations have averaged eight to ten years in duration. Of the larger roads, the Western Pacific reorganization was consummated in eight years and the Northwestern in ten; the Missouri Pacific and the Rock Island, begun in 1933, and the Milwaukee, begun in 1935, are still in the courts. More progress has been made with the smaller systems, but the quickest reorganization, that of the Erie, lasted three years. The data are collected in Swaine, op. cit. supra note 13.

[30] RFC v. Denver & Rio Grande Western R. Co., 66 S. Ct. 1384 (1946).

course were taken, the total capitalization would always have to be equivalent to the sum of the claims of the classes which were to be fully included. On the other hand, if the ICC felt that such an adjustment of the valuation was not feasible in a given case, it might be necessary for the ICC to provide for an issue of a class of securities inferior to the common stock, such as warrants or optional participation rights, in order to add to the compensation of a class which could not otherwise be satisfied. This latter solution was favorably considered in Congress and its use, in the discretion of the ICC, authorized by Section 77 as a means of conserving as much as possible the former junior interests.[31] But the issuance of such "immediately valueless paper"[32] may at least be questioned both on the ground that it adds to the complexity of capital structures which should be simplified, and on the ground that the issuance of these interests tends to place on the market securities which do not meet a reasonable investment standard. Furthermore, the existence of warrants or participation rights decreases the value of the common stock given to participants with more senior claims to the extent that while the new common stockholders must bear the first impact of future losses, they will not get the full benefit of future gains.

As mentioned in the discussion of the majority opinion, certain statements made in Congress indicate that at least some legislators did not expect that a large dissent by a class would be disregarded. In the act itself, however, Congress did not clearly specify the effect of a dissenting class vote, and it can be forcibly argued that the provisions should be interpreted so as to facilitate reorganization rather than permit further obstructions and delays. As Mr. Justice Douglas wrote prior to his appointment to the Court, with respect to the provisions of Section 77B of the Bankruptcy Act, "The problem raised by these provisions relating to the dissenter is the problem of the 'fair' plan—i.e., how much, if any, participation is to be given to each class."[33]

Corporations—Voting by Shareholders—Duty of Creditor Holding Voting Control—[Federal].—To assist the Maryland Casualty Company when it faced financial distress in the early 1930's, the Reconstruction Finance Corporation loaned to the Maryland system $7,500,000 in 1933 and an additional $10,000,000 in 1934. The loans were made to wholly owned Maryland subsidiaries which pledged with the RFC convertible preferred stock of Maryland that had been purchased from the parent with the proceeds of the loan. In 1937, the two issues of preferred which secured the separate loans were reclassified into one issue of 174,487 preferred shares. Each share carried 100 votes and was convertible by the holder to 50 shares of common stock, the only other outstanding

[31] 49 Stat. 913 (1935), 11 U.S.C.A. § 209(b)(3) (1946). See 79 Cong. Rec. 13,769, 13,771, 14,231 (1935).

[32] Ecker v. Western Pacific R. Corp., 318 U.S. 448, 476 (1943).

[33] SEC, Report on the Study and Investigation of the Work, Activities, Personnel and Functions of Protective and Reorganization Committees, Part VIII, 142 (1940).