RAILROAD REORGANIZATION AGREEMENTS.

During the past four years of business depression no branch of the law has been brought more prominently before the public than that which governs corporate, and particularly railroad securities. The inability of the great railroad companies to meet the recurring interest on perhaps one-third of the total outstanding indebtedness, has resulted in their creditors asking for the assistance of the courts, and we have become very familiar with the spectacle of receivers appointed by the courts administering the affairs of many of the leading railroads. It is not my purpose, within the limits of this brief article, to discuss the manner of the appointment of receivers and to inquire whether their administration has been, to use an analogy from a related branch of the law; for the benefit or for the detriment of the corporate creditors. I desire simply to call attention to some of the striking features of the so-called reorganizations, by which alone it has been found possible to terminate the receivership and to restore the property to the control of its original owners, viz., the bondholders and stockholders.

It is fair to observe at the outset that a receivership, and particularly a railroad receivership, is in itself a direct invitation to some such agreement on the part of the company's creditors. The attitude of a court, upon assuming control of such a property, must necessarily be a willingness to preserve the assets from execution and sale for a reasonably short time only, and if, at the expiration of such reasonable time, it is evident that the company is unable to meet its current obligations, the court will then not only permit but urge the holders of the unpaid securities to insist upon their legal rights, usually by a foreclosure sale, unless all parties in interest can agree upon some plan by which the road can be placed upon a solvent, or at least an apparently solvent basis; in other words, unless a reorganization agreement can be framed and carried out. More than once during the pendency of the recent receivership of the Philadelphia & Reading Railroad Company (which lasted over four years) it was intimated by the court that the court would have itself to terminate the receivership, unless some speedy steps were taken by the interested parties.

As just indicated, there are ordinarily two alternatives for security holders during the receivership: either, first, the mortgage creditors, whose interest is unpaid, may stand upon their strict legal rights and press for a foreclosure and sale, thus practically cutting out the inferior mortgage creditors, if any, and the general creditors and stockholders; or, secondly, rather than lose the privileges conferred by a charter, which would be forfeited by such judicial sale, or for some other reason, the creditors may agree upon some plan of reorganization, which includes among other features (1) the raising of a fund to meet necessary expenses (including especially expenses incurred during the receivership) by assessments upon the various classes of security holders, the amounts increasing in proportion as the securities are less valuable, and (2) a scaling down, whether of principal of security or rate of interest thereon, or both, the object, of course, being so to reduce the fixed charges that they can be met by the prospective income. All this is familiar to layman as well as lawyer; the innovation, however, which has recently been introduced, is the combination of these two alternatives, by which the reorganizers practically say to the inferior creditors: "Either you will join in our plan, or we will obtain a decree of foreclosure, as a result of which you will lose your investment altogether." Some of the features of this position have seemed to the writer so important as to deserve special attention.

Here, again, however, before coming to the real question, a preliminary observation is needed in order to avoid any misconception. There is and there can be absolutely no legal objection to the first mortgage creditors taking precisely the position thus outlined. As they have a legal right to ask for a foreclosure, if the case presented were the simple one of their threatening to exercise this right, unless certain conditions, however unreasonable, are complied with, no one could object; the legal doubt that arises in practice is based upon the fact that owing to the complexity of the situation the reorganizers must to some extent rely upon the assistance of the court in order to accomplish their purpose. The grave doubt that arises is whether the court ought, either nominally or actually, to give assistance, and if so, upon what terms; and it is believed that the questions can be most clearly considered by hastily surveying them in the form which they took in the cases of *Platt* v. *Philadelphia & Reading Railroad Co.*, C. C. U. S., Eastern District of Pa., April Sessions, 1893, No. 1, in equity; *Pennsylvania Company for Insurances on Lives and Granting Annuities* v. *Philadelphia & Reading Railroad Company et al.*, C. C. U. S., Eastern District of Pa., April Sessions, 1895, No. 9, in equity, and *Kurtz* v. *Philadelphia & Reading Railroad Company et al.*, C. C. U. S., October Sessions, 1896, No. 3, in equity.

The Philadelphia and Reading Railroad Company was, on February 20, 1893, insolvent; on that day a bill was filed by Thomas C. Platt, a holder of certain third preference income bonds, averring default in payment of interest due on these bonds, refusal of the trustee either to foreclose the mortgage securing them, or to take possession of and sell the mortgaged premises, and praying in the usual manner that receivers be appointed to preserve said property, pending foreclosure and sale. This bill possessed all the characteristics of a strictly foreclosure bill, but inasmuch as it contained a prayer for the appointment of receivers of *all* the assets of the company, receivers were appointed by the court for *all* the assets—a point of some importance, as will hereafter appear—and the receivers did enter upon and take possession of all the assets of the company, including a considerable amount of property which was not covered by the mortgage which secured the third preference income bonds. Two years later, on March 2, 1895, a bill in equity was filed by the Pennsylvania Company for Insurances on Lives and Granting Annuities in the same court (as of April Sessions, 1895, No. 9, in equity), as trustee of the general mortgage and the first, second and third preference income mortgages, averring default in payment of interest on all these securities, and praying for a foreclosure and sale.

This bill has been expressly decided to be a foreclosure bill: 69 Fed. Rep. 482.

During this interval of two years several plans of reorganization had been proposed and discussed, but none had been adopted by the security holders, although one had arrived at such a point that the receivers took cognizance thereof to the extent of asking the leave of court to make certain payments therein provided for. On December 14, 1895, however, a "plan and agreement" was proposed, which was finally adopted and became operative by receiving the assent of the requisite number of security holders. It was proposed by the so-called Olcott Committee, which had originally been formed for the purpose of representing the general mortgage bondholders, but which now offered to give other security holders an interest in the proposed new company in consideration of the payment of the usual assessments. Admitting the theoretical right of the parties secured by the first mortgage to share their advantages with others—and, in so doing, to make their own terms—I desire to call attention to several incidents which seem to differentiate this case from the ordinary one, and to throw some doubt, at least, upon the validity of this reorganization.

In the first place, although the third preference income mortgage covered only a part of the property of the company, receivers had been appointed, upon application of a holder of third preference bonds, for the whole property. This was apparently beyond the jurisdiction of the court. In *Scott, Intervener*, v. *Farmers' Loan and Trust Co.*, 69 Fed. Rep. 17, a judgment creditor of the Northern Pacific Railroad Company applied to the court for leave to sell land of the company, which, though subject to the lien of his judgment and not subject to the lien of any mortgage, had, nevertheless, been taken possession of by the receivers, who refused to give him any satisfaction. The court was clear in its statement of his rights: "The jurisdiction possessed by a court of chancery to foreclose a mortgage and appoint a receiver for the mortgaged property pending the foreclosure, gives it no jurisdiction or power to seize or take into its custody or control, through a receiver or otherwise, property of the debtor which is not covered by the mortgage." And the court granted Scott immediate relief. This decision is in accordance with the statement of the law contained in Gluck & Becker on Receivers, § 66: "The right of the mortgagees cannot extend beyond the property mortgaged, and the right of the receiver must necessarily have the same limitation." Nor is this distinction between mortgaged and unmortgaged assets in the hands of a receiver an unimportant one. In the Northern Pacific case the vast land grants to the company were unmortgaged, and in the Philadelphia and Reading case we may judge of the value of unmortgaged property by the following description of assets which are to be covered by the new general mortgage, though not included under the old one, and *a fortiori* under the preference income mortgage: "The new general mortgage will have a first lien upon a majority or more of the capital stock of various companies in the system owning 448 miles of railroad . . . These 448 miles embrace properties which are essential to the system, no part of which is covered by the present general mortgage. The securities thus to be pledged earned last year an income of $585,000, of which $448,000 was actually received by the Philadelphia and Reading Railroad Company in the way of dividends, the remainder being retained for betterments and working capital. The new mortgage will thus have the security of a vast amount of valuable property in addition to that afforded by the present general mortgage." It is, therefore, submitted, first, if the Platt bill was a foreclosure bill—as it appears to be in substance and in form, in spite of a very general prayer—the receivers appointed under it should have no right to possess the property not covered by the third preference income mortgage; and, secondly, if it can fairly be regarded as a general creditors' bill, the fact should not be lost sight of that, so far as unmortgaged assets are concerned, the receiver holds principal and income thereof for the equal benefit of mortgage and general creditors alike. Whether we rely on those cases which declare that the property of an insolvent corporation is a trust fund for the benefit of its creditors (*Graham* v. *R. R. Co.*, 102 U. S. 148; *R. R. Co.* v. *Ham*, 114 U. S. 587), or on those holding that the claim of unsecured creditors amounts to an equitable lien (*Farmers' Loan & Trust Co.*, 45 Fed. Rep. 518), or no, it is perfectly clear that the court should, through its receivers, give no preference as to unmortgaged property to any class of creditors.

In the second place, let us look at the financial administration of the receivers. Their reports to the stockholders of their conduct of the road show that the average annual earnings of the company during the four years, 1892–5, were (about) $10,700,000, while the average fixed charges for the same period, including interest on receivers' certificates and car trusts, were (about) $10,000,000—in other words, that the road was in a solvent condition. Why, then, was the interest on the general mortgage not paid? Because, during the receivership, $3,600,000 was spent for betterments and equipment, with respect to which three circumstances should be noted: (1) That this sum was in considerable part made up of income from unmortgaged assets; (2) That, while not paid in the form of interest to the mortgagees, it nevertheless redounded to their benefit by increasing their security for the repayment of their principal; and (3) That the non-payment of interest was in accordance with the wishes or, at least, not against the wishes of the committee, which, all the while, was representing the interests of the general mortgage bondholders. It is not intended to intimate by this assertion that the committee was acting in anywise improperly or beyond its legal rights; on the contrary, it is believed that it was perfectly justified, both legally and morally, in awaiting its own time to foreclose, and in using the threat of foreclosure as a lash to bring junior security holders into its plan. The fact, however, is important, and the committee's appreciation of the situation is proved by the following quotation from its circular of September 19, 1894: "It is thus apparent that the Philadelphia and Reading Railroad Company has, during the past three years, earned the interest upon the general mortgage bonds, but the large car trust payments have made it impossible to pay the general mortgage interest during the receivership." We quote also from the plan of reorganization of December 14, 1895: "The security for the present general mortgage bonds is ample, but a reorganization has become necessary through the creation of debts, which have proved a drain upon the resources of the company and have necessitated a diversion of its income." Nor can the committee be justly charged with any effected concealment of its control of the situation, or of the means by which it proposed to carry its purpose into effect; its plan of reorganization begins with the statement that "a decree for the foreclosure of the general mortgage is expected shortly to be entered."

The rest of the "history of the case" need not detain us long. The decree for foreclosure, rendered necessary by the fact that all of the creditors were not parties to the plan of reorganization, was duly entered on the first day of May, A. D. 1896, which provided, in substance, that in default of certain payments therein specified on or before certain dates therein mentioned, the entire assets of the company should be sold in the manner therein provided for.

The real character of such foreclosure sales is generally known, and, indeed, has been judicially described by the court of highest authority in our own country. In *Canada Rwy. Co.* v. *Gebhard*, 109 U. S. 527, Chief Justice Waite said: "It rarely happens in the United States that foreclosures of railway mortgages are anything less than the machinery by which the arrangements between the creditors and other parties in interest are carried into effect and a reorganization of the affairs of the corporation under a new name brought about." The reason for this was thus explained by Strong, J., in *Sage* v. *Railroad Co.*, 99 U. S. 334–340: "In such a case as the present the first mortgage bondholders are the only persons who can become parties, and they only because they need not pay their bid in cash." It is not denied, again, that the first mortgage bondholders have a perfect legal right to hold foreclosure proceedings as a whip over the junior security holders; but it is submitted that the court; conscious as it must be of the fact that its decree may be used simply as the machinery for forcing through, against dissenting security holders, some plan of reorganization, should be very careful to see, first, that the parties praying for the decree are equitably as well as legally entitled to it, and, secondly, that the decree itself be so framed as to protect and further the rights of all parties in interest. The considerations have already been mentioned which bear upon the equitable rights of the first mortgage bondholders in this case. With respect to the decree itself it may be observed (1) that, although entered in proceedings instituted by mortgage bondholders, it ordered the sale as well of the unmortgaged assets of the company; and (2) that, as is the almost invariable practice in such cases, the parcels in which the property was to be sold were so grouped and arranged that it was almost impossible for any other independent bidder to estimate their value, so as to frame a bid—a circumstance which redounded to the advantage of the first mortgage bondholders (represented by the managers of the plan, who were authorized to pay for their bid by the deposit of bonds in their possession).

The sale thus ordered was not permitted to take place without an effort to forestall it on the part of those creditors who were not parties to the reorganization agreement. A bill in equity (to C. C. U. S., Oct. Sess. 1896, No. 3, in equity) was promptly filed by W. W. Kurtz, the holder of certain delinquent bonds of the Philadelphia, Reading and New England Railroad Company, payment of principal and interest of which had been guaranteed by the Philadelphia and Reading Railroad Company; an injunction against the sale was prayed for, and an elaborate argument had in which the validity of the reorganization was attacked and defended on very broad grounds. A decision on the merits would have been a very valuable addition to the legal literature on the subject, but unfortunately (from this view) the refusal of the injunction was based upon an agreement (not mentioned heretofore because of no general importance) which the court construed as a promise on the part of this class of creditors not to delay the sale.

The argument upon which the validity of the reorganization was chiefly attacked, was the broad proposition that a court of equity, whose maxim is "Equality is equity," cannot and will not look favorably on a plan which gives certain of the creditors an opportunity to share in the new company (or, in other words, in the assets of the old company which have been bought in by the new, or transferred to it), while refusing the same privilege to other creditors of equal equity. The first answer to this was, the trustee's right to foreclosure could not be affected by a provision in the reorganization agreement made a year after suit begun, and to which it was not a party, or by any policy indicated in that agreement or carried out in pursuance thereto; but as if fearing that the facts above recited, together with the fact that the trustee and the "managers" had been represented throughout by the same able counsel who had prescribed one harmonious course of action, might be construed an agreement in fact, though not in name, on the part of the trustee, it was further contended that the reorganization agreement was perfectly lawful, and that, therefore, an actual joinder in it by the trustee would not have constituted any objection to the decree.

It must be conceded that, admitting the undoubted right of the bondholders to foreclosure, the sale *might*, nevertheless, be rendered invalid by reason of a previous agreement for its purchase, provided that agreement was illegal. In *Railroad Co.* v. *Howard*, 7 Wall. 392 (1868), which is the first important case on the subject, a sale under a mortgage was held invalidated by a previous agreement between the mortgagees and the stockholders, under which the stockholders were entitled to a share of the proceeds of the sale—and this although the road was mortgaged so far above its real value that on a sale in open market it did not bring nearly enough to pay the mortgage debt. The proceeding was a bill in equity filed by the general creditors of the company who obtained a decree that that part of the proceeds of the sale which would have been received by the stockholders, should be paid to complainants. It was strenuously argued for appellants, that the agreement was simply a gift of the mortgagees to the stockholders, of which no one could complain; but the decree was affirmed by the Supreme Court, per Clifford, J., whose opinion was based upon the consideration that the capital stock of a corporation is a trust fund for the benefit of its creditors, and that the stockholders can by no contrivance appropriate any part of it to their own use until creditors are paid. Whether regarded as an illustration of the trust fund doctrine, or simply as a case of fraud, the case was doubtless properly decided, and has been generally followed as an authority. It having been thus determined that a distribution of the proceeds of a sale to stockholders was illegal and the need still existing of a reorganization agreement which would confer some rights on the owners of the property, the plan now generally adopted was devised, to wit: of framing an agreement under which the assets of the old company should be bought in by a new company, in which new company all stock and bondholders of the old company should be allotted certain stocks or bonds, the amount depending on the relative value of the old securities and the amount of assessments paid by the owners thereof. This plan is well illustrated in *Pennsylvania Transportation Co.'s Appeal*, 101 Pa. 576 (1882). The Oil Creek and Allegheny River Railroad Company having defaulted in the payment of interest on its mortgage, its property was sold under a decree of foreclosure. The bondholders, stockholders and nearly all of the unsecured creditors had entered into an agreement which expressed their purpose to unite for the purpose of protecting their common interests, to buy in the property at the sale under the pending proceedings, and organize a new corporation in which all should have an interest. This plan was carried out, the property was sold, bought in by a committee, and the Pittsburgh, Titusville & Buffalo Railroad Company became the legal owner of the road. A bill in equity was filed by Pennsylvania Transportation Company (one of the few general creditors who did not participate in the reorganization, apparently because its claim was considered unjust by the old company) against the Pittsburgh, Titusville & Buffalo Railroad Company, praying that this sale be decreed fraudulent as to complainant and that the new company be ordered to pay the amount for complainant's judgment. Exceptions to the master's report recommending a decree granting the prayer of the bill were sustained, the bill was dismissed and the decree dismissing the bill was affirmed by the Supreme Court, per Mercur, J. Two extracts from the opinion are quoted: "On the hearing in the present case before the master, it was urged that the default in the payment of interest on May 1, 1874 was not *bona fide*, but fraudulent, and that the default and sale were brought about with intent to defraud the appellant. The master found that these facts are nowhere charged in the bill, and are not sufficiently shown by the testimony." Again: "The argument is that a certain written agreement, entered into between the purchasers before the sale, changed the effect thereof,—in substance that it operated as a fraud on the appellant." After setting out the terms of the agreement: "What then was there illegal or invalid in so agreeing? It was not to depress the property or cause it to be sold for a sum less than its value, but to enhance it. It has been held that bondholders may unite for the purchase of the property: *Ketchum* v. *Duncan*, 6 Otto, 659; *Sage* v. *R. R. Co.*, 9 Id. 342. It is a fair and wise course for them to pursue to prevent a sacrifice of their property. If they may so unite, we see no valid reason why stockholders may not unite with them in a purchase at a sale made in good faith. They, as well as bondholders, are interested in protecting their property from sacrifice, and may resort to like lawful means to protect it." Another illustration of modern methods is *Smith* v. *Chicago & Northwestern Railway Co.*, 18 Wis. 17 (1864). An extract from the opinion of Paine, J., shows the ground of the decision. "The complainant avers that there being an outstanding mortgage to the trustees to secure the bondholders, an agreement was made between the company and the holders of the bonds secured by said mortgage, and said trustees, that a sale should take place on the mortgage 'for the benefit of said company, its stockholders and creditors;' that there should be a reorganization of said company under another name, and that the stockholders of said mortgagor company and unsecured creditors should become stockholders of said reorganized company, etc. It also avers that the sale did take place in pursuance of such agreement, and that the purchasers reorganized 'said corporation under the name of the Chicago & Northwestern Railroad Company,' which is this defendant. The theory of the plaintiff is, that these allegations show that the present company is nothing but the old company under another name, and is, therefore, liable for the old debts. But we have come to the conclusion, that although the complaint says the agreement was that the old company should be reorganized, and that it was reorganized, yet it shows that a new company was to be and was organized."

The authorities cited sustain the following propositions: First, that a reorganization agreement, otherwise valid, cannot be defeated because it results in a sale of all the assets of the old company to a new company, and that the new company is not liable for the debts of the old: *Smith* v. *Chicago & Northwestern Railway Co., supra.* Not only so, but such a consummation is so necessary to the maintenance of railroad enterprises that statutes have been passed in many states expressly conferring upon purchasers at foreclosure sale the right to form a corporation which shall have the franchises of the old company: N. Y. Laws of 1850, Ch. 140, § 5, amended by Laws of 1854, Ch. 282, and N. Y. Laws of 1873, Ch. 710; also N. Y. Laws of 1874, Ch. 430; Beach on Railroads, §§ 766-7. Second, that the sale under the reorganization agreement may be disregarded by non-assenting creditors, provided the agreement is in the eyes of the law illegal: *Railroad Co.* v. *Howard, supra.* The difficulty that remains, however, and it is one which is not much cleared up by the decisions, is to determine when such an agreement is in the eyes of the law illegal. Some points are of course established; as, that the stockholders shall not be allowed to receive part of the proceeds of the sale to the detriment of any creditors (*Railroad Co.* v. *Howard, supra*), or, that an agreement by which the price obtainable at the sale should be cut down, is voidable by the creditors injured (*Pennsylvania Transportation Co.'s Appeal, supra*). These decisions can readily be complied with (1) by giving the stockholders only stock in the new company instead of cash, and (2) by bidding a large nominal sum which, though formidable in name, is easily accomplished in fact by paying in first mortgage bonds, and it need hardly be said that no reorganization agreement could succeed unless it were agreed to by substantially all of the holders of such bonds. Two vital and unavoidable questions remain, however, and they formed the foundation of the argument in the Kurtz case; is the agreement illegal if (1) the sale was one that could have been avoided by the first mortgage bondholders had they adhered to their legal right to have the income paid to them and not expended upon new rolling stock (or otherwise), however needed? and if (2) an opportunity is not given to all the creditors to take part in the reorganized company?

With regard to the first point, perhaps it will be conceded that a needless sale is an illegal sale; the almost insuperable difficulty is to prove that it was needless in the face of abundant *bona fide* testimony as to the need of the diverting expenditures, the fact that these expenditures are made by receivers, possibly with the direct approval of the court, etc. It is submitted, however, (1) that a court should hesitate long before authorizing the diversion of funds from the payment of mortgage interest, remembering that practically such diversion simply adds to the security of the first mortgage bondholder, at the same time resulting in an increase of his claim, so that in case of foreclosure or reorganization the inferior or general creditors are handicapped to the extent of the sums diverted; and (2) that the court, though always favoring an equitable plan of reorganization, should carefully watch, lest its process be abused to aid in any plan which is inequitable—a thought which brings us naturally to the next point of invalidity, viz., is a scheme of reorganization illegal, because it denies a share to all of the creditors of the old company?

It is believed that this question has never been categorically answered by the courts, in spite of the fact that it is the all-important question in most reorganizations; at least an examination of the numerous recent authorities has not resulted in finding a single discussion. To be sure, in *Pennsylvania Transportation Co.'s Appeal*, *supra*, the agreement was sustained, though the plaintiff, at least, was not invited to participate, the court apparently being satisfied because "nearly all" of the general creditors were allowed to come in; but even here it must not be overlooked that the court refrained from directly upholding the position that is deducible from its decision, and also that the plaintiff's claim was there disputed by the old company, possibly on valid grounds, so that it did not come before the court in a favorable light. Apart from this decision, however, which may or may not be a precedent upon this question (especially in Pennsylvania courts), is it desirable that the courts should countenance any plan of reorganization which does not invite every creditor to participate? The courts have declared their belief that reorganization agreements, while usually necessary and often not only desirable but indispensable, are susceptible of abuse, and have proclaimed that where they are used for a fraudulent purpose they will be held incapable to accomplish it. What is to prevent them from saying to the first mortgage bondholders: "Your interest is not paid; you are legally and morally justified in asking for a decree of the court to aid you in the recovery of your money, and if you ask it for that purpose, you shall have it. But if you do not want the property actually sold, if you desire to retain your interest therein, and especially if you are willing and have agreed that so far as you are concerned the present owners may retain an interest therein, then we say to you that we will not, at your request, order a merely nominal sale unless you give a fair and reasonable opportunity to every creditor to retain his claim on the existing assets by conferring upon him an interest in the new company. We will not, either in fact or in name, permit a debtor so to transfer his property that he will retain the control thereof, while his creditors cannot lay hold of it."

It is to be observed that this is the practice in England. Prior to 1867 the affairs of a bankrupt railway were arranged by an Act of Parliament (*Cumberland Railway Co.'s Scheme*, L. R. Ch. 294), and it is believed that these acts uniformly recognize the principle about to be stated. By the Railway Companies Act, 1867, 30 and 31 Vict. c. 127, provision is made (*inter alia*) for "schemes of arrangements" between railway companies and their creditors. The scheme includes a filing of the plan in court and advertisement thereof. When the plan is assented to by the holders of three-fourths in value of each class of creditors, and by the shareholders at an extraordinary meeting called for the purpose, application is made to the court for confirmation of the plan. This is done if the court be satisfied that "no sufficient objection to the scheme has been established," and the scheme thereupon becomes binding upon all parties interested, whether assenting or not. The act accomplishes two very important purposes: (1) It recognizes the right of the majority to rule, and thereby does away with a person who is extremely difficult to deal with, viz., a small minority creditor or bondholder, (see *Hollister* v. *Stewart*, 111 N. Y. 644, 659; *Shaw* v. *Railroad Co.*, 100 U. S. 605; *Gates* v. *Boston R. R. Co.*, 53 Conn. 333); secondly, and more to our present purpose, it places in the discretion of the court the approval of all reorganization plans, and, needless to say, that discretion may be and is used to protect the interests of all classes of creditors. Of course, such legislation is entirely out of the question in our own country, where both the United States and State legislatures are forbidden by constitutions to impair the obligation of contracts, and where, therefore, the mortgage creditor could neither be compelled to join in a reorganization nor be deprived of his right to apply for a decree of foreclosure: See *Canada Southern R. R.* v. *Gebhard*, 109 U. S. 527. It is submitted, however, that the English practice is not without its value for the courts of our own country; if the rule laid down by them is fair and equitable, and if it cannot be accomplished by statutory legislation here, is there not so much the greater reason for the courts of equity to extend their protection to those who certainly need it by declaring that to be a fraud in law, which is a great injustice in fact? Or, to put the other side of the case, what inequity or hardship can there be in compelling those who ask the court's aid to do equity to others? I know it will be answered that the court cannot inquire into the motives of a party who is asking for a decree to which he is legally entitled; granted—but is that any reason why the court should not take the agreement by which that party has modified his legal rights, and declare that, as he now comes to carry out a plan not contemplated by law, he must satisfy the court that that plan is just and equitable? It would seem hard to find a more opportune occasion for the court of equity to have recourse to its old maxim.

(It is, perhaps, proper to add that some of the questions discussed may come before the court in *Kurtz* v. *Philadelphia & Reading Railroad et al.*, C. P. 2, Sept. Term, 1896, No. 408. This suit, which is the sequel of the Kurtz case above referred to, is a bill in equity directed mainly against the "reorganization managers," and praying that they account to complainant for the assets which came into their hands through the assessments which formed a part of the plan; in addition to the invalidity of the reorganization, and perhaps prior in importance to that, the argument is suggested that the reorganization managers become trustees of these funds for the relief of the stockholders, and that their duty as trustees will not be fulfilled unless all creditors are paid or allowed to participate, as otherwise the stockholders remain individually liable, by virtue of an amendment to its charter, for the debts of the Philadelphia & Reading Railroad Company. A demurrer has been filed to this bill, but no decision has been as yet rendered by the court.)

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