other season. For him to make cattle-feeding contracts, and attempt to run the distilleries another year would involve the estate in an expense that could hardly be justified. Within the authority of such cases as Crane v. Ford, Hopk. Ch. (3d Ed.) 130, Forsaith Mach. Co. v. Hope Mills Lumber Co., 109 N. C. 576, 13 S. E. 869, and Bank v. Shedd, 121 U. S. 74, 7 Sup. Ct. 807, I think it is competent for the receiver to sell any part of the estate, and hold the proceeds for the benefit of such claims as may be adjudged valid.

The objection that the property ought not to be sold to these petitioners proceeds, apparently, upon the ground that the corporation attempted to create a trust or monopoly in that kind of property, and that these petitioners, representing upwards of 347,000 of the shares of the stock of defendant, were responsible for the unlawful conduct of the corporation,—upon the surmise that these petitioners are themselves, now and by this proposed purchase, attempting to monopolize the distillery business. It seems to me that there is no validity in this objection. In making their offer for this property, these petitioners are simply shareholders. In that capacity they are interested in the property in question, and have the right to preserve the same by buying it from the receiver, if the latter can be induced and empowered to sell. The court cannot assume that any improper use will be made of this property by the purchasers, nor can the court undertake to control the use of the property after it has been sold and conveyed by the receiver.

I am disposed to make the order of sale, and to accept the bid made by this reorganization committee upon the terms proposed by them, but upon the further understanding that they take the care and management of the property in subordination to the possession of the receiver until the payments which they propose to make shall have been made. In order to preserve the liens which now exist, I am disposed to insist that the paramount possession of the receiver be maintained. The petitioners say that they have collected a fund of $1,400,000, and that they intend to give security conditioned that they shall make to the receiver, or his successor, the payments as proposed. I understand, from this, that they mean to give bond to secure these payments. If they are willing to do that, and to take the care and use of the property in subordination to the possession of the receiver, so that the court shall not lose the control of the property in this proceeding, I think the order for sale may be made.

AMES et al. v. UNION PAC. RY. CO. et al.

(Circuit Court, D. Nebraska. March 27, 1896.)

1. RAILROADS — INTERCHANGED BUSINESS — ADJUSTMENT OF EARNINGS UNDER RECEIVERSHIP.

The K. Ry. Co., which formed a part of the U. P. System, was operated under contracts with the U. P. Ry. Co. and the G. Ry. Co., which also formed part of that system, by which contracts a share of the income from joint business, sufficient to pay its operating expenses and fixed charges, was guarantied to the K. Co., the effect of such contracts being to charge a large annual deficit to the U. P. and G. companies. In a suit brought

by stockholders of the U. P. Co., receivers of all the roads were appointed, who renounced these contracts, and divided the earnings of the roads on a mileage basis, resulting in a deficit for the K. Co., which was apportioned, by an order made December 20, 1894, to be paid in certain proportions by the U. P. Co., the G. Co., and the R. Co., another road in the U. P. System, the receivers being authorized to make such modifications in the division of revenues from interchanged business between the several roads as should be just. Immediately after the entry of such order, the bondholders of the G. Co. protested against it, and notified the receivers not to pay the proportion of the K. Co.'s deficiency, charged against the G. Co. Shortly after, the trustees under mortgages of the G. Co. and U. P. Co. brought suits to foreclose such mortgages and impound the earnings of the roads, and the same receivers were appointed in these suits. A similar suit was afterwards brought to foreclose the mortgage on the R. Co. and the same receivers appointed. The bondholders of the K. Co. were fully notified of all these proceedings, and in May, 1895, instituted a suit for the foreclosure of the mortgage on the K. Co., in which, in August, the same receivers were appointed. In this suit, in October, 1895, they filed a petition for a readjustment of the earnings of the K. Co. from interchanged business, upon which, after notice to and on agreement of all parties, an order was made making a new adjustment of such earnings after October 1, 1895. On May 1, 1895, the receivers had petitioned for the suspension of the order of December 20, 1894, as inapplicable to the situation resulting from the commencement of the foreclosure suits, and in February, 1895, the bondholders of the K. Co. had filed a petition for an order requiring the receivers to pay certain delinquent taxes on the K. Co.'s property out of the earnings of the other roads, according to the order of December 20, 1894. Such petitions having been referred to a master, who reported favorably upon the former and adversely upon the latter, the K. bondholders excepted to his report. *Held*, that such bondholders, having been fully advised that the order of December 20, 1894, was objected to and resisted by the other roads, the earnings of such roads having been impounded by the foreclosures, and the bondholders of the K. Co. not having acted promptly in taking possession of their own road under their mortgage, the order of December 20, 1894, did not foreclose the court or the lienholders upon the other lines from working out a fair and just division of the earnings from interchanged business, after the making of that order, and up to the commencement of the new adjustment already ordered to be applied after October 1, 1895, and it appearing that the latter adjustment was fair and just, while that of December 20th was not, it would be applied to the earnings between December 20, 1894, and October 1, 1895.

2. SAME—IMPOUNDING REVENUES.

Held, further, that the revenues impounded in the foreclosure suits upon the lines of the G. and other companies were not the gross revenues, but the net revenues, after deducting operating expenses and preferential claims, including the just shares of connecting roads in the earnings of interchanged business, and therefore that such companies could not insist that no part of their earnings, after commencement of the foreclosure suits, should be applied to the deficit in the earnings of the K. Co.

On exceptions of the bondholders of the Kansas City & Omaha Railroad Company to the report of the master upon the petition of said bondholders for an order directing the receivers to pay taxes. Also on exceptions of the bondholders of the Kansas City & Omaha Railroad Company to the report of the master upon the petition of the receivers for an order suspending the provisions of the order of December 20, 1894.

Parrish & Pendleton, for bondholders' committee.
Morris, Beekman & Marple, for interveners.
W. R. Kelly, for Union Pac. R. Co.