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REPORT OF
ROYAL COMMISSION
INQUIRING INTO THE AFFAIRS OF

Abitibi Power & Paper Company, Limited

March, 1941

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REPORT

OF THE HONOURABLE CHARLES PATRICK McTAGUE, JUSTICE OF APPEAL OF THE SUPREME COURT OF ONTARIO; ALBERT EDWARD DYMENT, ESQUIRE; AND SIR JAMES DUNN, BARONET, UPON THE AFFAIRS OF ABITIBI POWER & PAPER COMPANY, LIMITED, PURSUANT TO ORDER-IN-COUNCIL DATED THE 1ST DAY OF NOVEMBER, 1940,

TO THE LIEUTENANT-GOVERNOR-IN-COUNCIL,

Toronto.

We have the honour to report that pursuant to the above-named Order-in-Council and the Commission issued in accordance therewith, we caused an Inquiry to be held and have heard all the evidence submitted for our consideration.

1. INTRODUCTION

We appointed Mr. Gershom W. Mason, K.C., as counsel and Mr. Robert M. Fowler as assistant counsel; Mr. Strachan Johnston, K.C., and Mr. J. S.D., Tory appeared for the Montreal Trust Company; Mr. E. G. McMillan, K .C. and Mr. N. T. Berry for the Liquidator; Mr. Glyn Osler, K.C., Mr. Bethune Smith, K.C., and Mr. D. G. Guest for the Bondholders' Protective Committee; Mr. A. G. Slaght, K.C., for the Preferred Shareholders' Protective Committee; Mr. W. Kaspar Fraser, K.C., and Mr. J. L. Stewart for the General Creditors' Committee and Mr. Roland O. Daly, K.C., for the Common Stock Holders' Protective Committee.

We held public hearings in the Legislative Chamber in the Parliament Buildings at Toronto on November 4th, 5th, 6th, 7th, 12th, 13th, 14th, 15th, on December 9th, 10th and 11th, 1940, and January 6th, 7th and 8th, 1941. The evidence taken is contained in fourteen volumes containing 1556 pages, which, together with 137 Exhibits filed and additional memoranda supplied by Mr. G. T. Clarkson, the Receiver, are submitted herewith. The Exhibits contained numerous communications and plans for reorganization, including proposals submitted by the Receiver and by the Liquidator.

2. TERMS OF REFERENCE

We were directed by the reference "to enquire into the affairs and financial and corporate structure of the Abitibi Power & Paper Company Limited with a view to recommending an equitable plan for solving the financial difficulties of the Company so that the Company may be in a position to meet conditions, regulations and restrictions which the Lieutenant-Governor-in-Council may consider necessary upon the grant or renewal of the hereinbefore recited leases, licenses, water power rights, flooding rights, licenses of occupation and other rights, powers or privileges; and generally to make such recommendations in the premises as appear to be in the best interests of all parties concerned, including the Province of Ontario."

3. CAPITAL STRUCTURE

The Abitibi Power & Paper Company Limited, hereinafter referred to as "Abitibi", was incorporated on February 9, 1914 by letters patent of the Dominion of Canada with power, interalia, to take over the undertaking and

assets of Abitibi Pulp & Paper Company Limited. By supplementary letters patent, dated January 18, 1928, the capital stock of Abitibi was increased to 10,000 seven per cent cumulative preferred shares of the par value of $100.00 each; 500,000 six per cent cumulative preferred shares of the par value of $100.00 each and 1,500,000 common shares without nominal or par value. This change from the capital structure set up by the original letters patent and intermediate supplementary letters patent was for the purpose of giving effect to a reorganization in 1928 in which Abitibi acquired five other Canadian Newsprint Companies and their subsidiaries.

Prior to 1928 Abitibi owned or controlled a newsprint mill at Iroquois Falls, a pulpwood mill at Smooth Rock Falls and certain power developments on the Abitibi River. The five Companies acquired were:—

1. The Spanish River Pulp & Paper Mills Limited, owning newsprint mills at Sault Ste. Marie, Espanola and Sturgeon Falls,

2. Manitoba Paper Company Limited, owning a newsprint mill at Pine Falls in Manitoba,

3. Fort William Power Company Limited, controlling a newsprint mill at Fort William and the Kaministiquia Power Company Limited,

4. Ste. Anne Paper Company Limited, owning a newsprint mill at Beaupre, Quebec,

5. Murray Bay Paper Company Limited, preparing for operation of a mill at Murray Bay in Quebec.

Later in 1928, General Power & Paper Company Limited, half of the stock of which was owned by Abitibi, agreed to buy the capital stock of Thunder Bay Paper Company Limited, which owned a newsprint mill in Port Arthur. Default was made in payment and in 1932 Abitibi agreed to purchase the whole of the capital stock of this Company and bound itself to pay $215,000.00 in cash and $2,875,000.00 in notes maturing monthly over a period of ten years.

In 1930 Abitibi acquired all the common stock of Provincial Paper Mills Limited in exchange for shares of the common stock of Abitibi.

Owing to heavy commitments arising out of these acquisitions, the depression which followed the economic crisis of 1929, and other causes, Abitibi defaulted in payment of its bond interest due June 1, 1932 and nothing has been paid to the bondholders since that date. Receivership followed on September 10, 1932, Mr. G. T. Clarkson being appointed Receiver.

At that date the outstanding securities issued by the Company were:—

First Mortgage Bonds secured by mortgage on all the assets of Abitibi..... (bonds to the extent of $1,733,000.00 of a total issue of $50,000,000 were redeemed after their issue in 1928)	$48,267,000.00
10,000 shares of 7% cumulative preferred stock.....	$1,000,000.00
348,818 shares of 6% cumulative preferred stock..... (260,000 shares had been sold at the par value of $100.00 and the balance, 88,818 shares, had been exchanged for preference shares of Spanish River Pulp & Paper Mills Limited.)	$34,818,000.00
1,088,117 common shares, no par value.	

The last mentioned shares were all issued in connection with the acquisition of properties or in exchange for stock of companies acquired, except as to 100,000 shares which were exchanged for the common stock of Provincial Paper Mills Limited.

The book value placed upon these common shares was.... $18,964,935.43

As of September 10, 1932, the claims of unsecured creditors as filed with the Liquidator were..... $757,611.00

4. COURT PROCEEDINGS

Following the Receiving Order of September 10, 1932, an order was made on September 26, 1932, under the Winding Up Act, declaring Abitibi insolvent and ordering that it be wound up under the provisions of the Winding Up Act. On the same date Mr. F. C. Clarkson was appointed provisional liquidator and later he was appointed permanent liquidator. On December 7, 1932, leave was given to Montreal Trust Company to proceed with its mortgage action to enforce its security under the bond mortgage dated June 1, 1928. On March 27, 1935, an order was made authorizing Montreal Trust Company to call a meeting of bondholders to appoint a committee to represent them in the mortgage action. On September 13, 1935, the Bondholders' Protective Committee were made parties to the mortgage action and declared to represent all holders of first mortgage bonds. On December 20, 1935, an order was made permitting Mr. F. C. Clarkson to resign as Liquidator and appointing Mr. Roy S. McPherson in his place. On September 24, 1936, an order was made authorizing the Receiver to carry on negotiations with the Ontario Government regarding plans for the reallocation of timber limits and water power rights. On January 30, 1937, the Receiver was directed by the Court to procure further reports, valuations and statements bringing those previously made up to date. On February 25, 1937, the Liquidator was added as a party defendant to the mortgage action. On March 15, 1937, the Receiver was authorized to disclose the summary of reports prepared by Coverdale & Colpitts providing that a report from C. W. Brickenden procured by the Liquidator should be disclosed at the same time. On July 21, 1937, Montreal Trust Company was directed to summon a meeting of holders of first mortgage gold bonds for the purpose of considering, and if thought fit, approving a plan of sale of assets and reorganization which had been put forward by the Bondholder's Protective Committee. On November 3, 1937, it was declared at a trial of the mortgage action that the bondholders were entitled to a first charge and that the trusts of the bond mortgage should be executed. On January 17, 1938, upon a motion for approval by the Court of the plan put forward by the Bondholders' Protective Committee, an order was made dismissing the motion on the ground that where the Dominion Parliament had provided a valid code by which a compromise or arrangement with bondholders could be made in the case of companies falling within the definition of "statutory companies" in the Companies' Creditors Arrangement Act, no statute of the Provincial Legislature could be utilized, in the case of that class of companies, to bring about the same result; the field having been covered by valid dominion legislation, resort could not be had to provincial legislation purporting to cover the same field. An appeal was taken from this judgment to the Court of Appeal and was dismissed on June 13, 1938. On June 10, 1940, an order was made directing the sale of all the undertaking, property and assets of Abitibi,

such sale to be held on Wednesday, October 16, 1940, provision being made that bondholders might bid at the sale and become purchasers and that Mr. G. T. Clarkson should continue as Receiver and Manager until further order. On June 21, 1940, the Liquidator moved for leave to appeal from this order but the motion was refused. On October 10, 1940, an application for an order directing the Receiver to pay $7,000,000 towards bond interest and directing the postponement of the pending sale, was refused. On October 16, 1940 the undertaking, property and assets of Abitibi were offered by the Master of the Supreme Court of Ontario for sale by public auction pursuant to the said order of June 10, 1940. The Master certified that only one bid was made which could be considered, namely, a bid of $30,000,000 from Mr. H. J. Symington of Montreal. This bid was less than the amount of the reserve bid which had been fixed by the Master and the sale, therefore, proved abortive. Subsequently, and after this Commission had issued, application was made for an order that the property, assets and effects of Abitibi should be immediately sold without a reserve bid being fixed, but the motion was adjourned sine die with leave to any party to bring it on on one week's notice, at any time.

5. RE-ORGANIZATION PROCEDURE AND RECOMMENDATIONS

We have considered the proceedings taken and the existing legislation relevant to the reorganization of companies and are impressed with the inadequacy of existing legislation to meet the situations that arise when companies find themselves in financial difficulties. The amendment to the Judicature Act made in 1935, and now appearing in that Act as sub-paragraphs (i) and (ii) of subsection (1) of section 15 of chapter 100, Revised Statutes of Ontario 1937, has been held to trench upon the powers of the Dominion with respect to bankruptcy and insolvency. The Companies' Creditors Arrangement Act, Statutes of Canada, 23-24 George V, chapter 36, cannot be utilized unless a compromise or arrangement is agreed to by a majority in number representing three-fourths in value of the creditors or class of creditors present and voting either in person or by proxy at the meetings held pursuant to the Act. The Act provides that if a Court so determines the shareholders of the Company shall be summoned in such manner as the Court directs. Section 123 of the Dominion Companies Act, 24-25 George V, chapter 33, provides that where a compromise or arrangement is proposed between a company and its creditors or any class of them, or its shareholders or any class of them, affecting the rights of shareholders or any class of them, the Court having jurisdiction may order a meeting of the shareholders or class of shareholders to be summoned and that if the shareholders or class of shareholders present in person or by proxy at the meeting by three-fourths of the shares of each class represented and voting agree to the compromise or arrangement as proposed or as modified at the meeting and if the requisite majority of creditors or class of creditors also agree, a Court may sanction such compromise or arrangement. In practice compliance with the requirements of these acts is often difficult and sometimes impossible. It has been held that any disposition made by a court on such an application should be just and equitable, but there is no provision in our procedure for ascertaining what the property of the Company is worth or what its probable earnings may be or what equity is available for the various classes interested.

In the case of Abitibi, the Bondholders' Protective Committee, in 1937, brought down a plan of reorganization in which in principle it was admitted that there was some equity for junior security holders. In 1940 with the Company's financial situation considerably improved over 1937, the same Committee takes the position that there is no equity. In other words, the Committee simply chooses to ignore the provisions of the Companies' Creditors Arrangement Act because in its judgment there is no issue as to whether there is an equity or not. It seems to us that where there may be an issue involved in bondholders' action against companies as to whether there is an equity, the Court should be given the power to determine the issue and not let the bondholder be the sole judge. As the law is now, if bondholders for themselves conclude there is no equity, they simply proceed to foreclosure through the unwholesome fiction of a sale. It is a pure fiction because as pointed out in an elaborate Report of the Securities and Exchange Commission of the United States ordinarily no one but a committee of Bondholders could purchase the assets and, in the absence of competitive bids, the holders of the primary securities can buy the property for much less than its real value not only to the detriment of the junior security holders but also to the financial disadvantage of bondholders who have not elected, perhaps for very excellent reasons, to place their bonds under the control of the Committee.

Under the procedure in the United States as changed by the Chandler Act, a trustee makes a preliminary report and may be directed by the Court to obtain detailed reports and valuations. A plan of reorganization comes before the Court before it has necessarily reached final form, giving an opportunity for negotiations between classes of creditors. The Securities and Exchange Commission may intervene and make recommendations which may or may not be adopted by the Court. There is then a further hearing and the plan is approved for submission to the classes concerned, it being the duty of the Court to approve the plan as being fair and equitable and feasible. By this time the classes concerned have very full information and are able to make up their minds with adequate knowledge of the situation. The relevant sections of the Federal Bankruptcy Act are sections 169, 171, 176, 206, 212, 216 and 221. Section 216 states that a plan of reorganization must provide, for any class of creditors which is affected by and does not accept the plan by the two-thirds' majority required by the Statute, adequate protection for the realization of the value of their claims, and must also provide, for any class of stockholders which is affected by the plan and does not accept it by a majority of the stock required under the Act, adequate protection for the realization of the value of their equity, if any, in the property of the debtor.

In making these observations we are of course aware that any remedy for the situation must be provided through Federal and not Provincial jurisdiction. However, we make bold to present our views in the hope that sufficient public interest may be aroused to bring about changes in the present law. As to whether it should be accomplished by repealing the Companies' Creditors Arrangement Act and incorporating a new part in the Bankruptcy Act or by suitable provisions within the Companies' Creditors Arrangement Act itself, we refrain from expressing an opinion. Whatever method is adopted regard should be had as well to the present sections in The Dominion Companies Act as to meetings of shareholders for such purposes. If appropriate machinery is worked out in the Federal Acts it may involve amendments to the Ontario Companies Act, as to Ontario Companies, at the proper time.

At any rate the old mortgage procedure of foreclosure through the fiction of a sale seems to us to have no place in corporate reorganizations today. Putting a duty upon the Court (possibly the Bankruptcy Court) in these cases to ascertain real values and so appraise out nuisance claims which have no real equitable interest, and, at the same time reasonably protect the junior security holder who has a real interest, seems to us the proper principle upon which to approach this present difficult problem. As a basis we recommend a study of the United States legislation in this regard—but only as a basis. We think it can be improved on.

6. DEPOSIT AGREEMENT AND RECOMMENDATIONS

THERE is a wide difference between the practice in Ontario and in the United States with respect to deposit agreements. One of the exhibits before the Commission is an agreement, dated June 10, 1932, between the then members of the Bondholders' Protective Committee and such holders of first mortgage bonds as might become parties to the agreement. The "eighth" paragraph of this agreement gives the Committee power, either before or after a sale of the property, to adopt a plan for reorganization or other rearrangement of the affairs of the Corporation or to adopt or reject any plan or arrangement, although not prepared by the Committee. It also provides that any depositor may within a thirty-day period, commencing with the publication of notice of the fact of the approval of a plan or arrangement, withdraw from the agreement without payment of any sum on account of the expense of the Committee, but that depositors who do not withdraw shall be deemed to have irrevocably waived the right of withdrawal and to have assented to the plan, whether they receive actual notice or not. Statements of any modification of a plan or arrangement which does not in the judgment of the Committee materially affect the rights of depositors adversely shall become effective as to all depositors. If the modification in the judgment of the Committee adversely affects the rights of depositors the Committee may give notice of the adoption and filing of such modification by advertisement in certain newspapers and the mailing thereof to holders of certificates of deposit. Thereafter the depositors may within thirty days commencing on the day of the first publication of the notice withdraw from the agreement and depositors who do not withdraw are deemed for all purposes irrevocably bound and concluded by the modification, whether they have actual notice or not. The "tenth" paragraph of the agreement provides that no depositor shall have the right to withdraw except on the terms and conditions expressly provided in the agreement. The "eleventh" paragraph gives the Committee power in its judgment to amend the agreement. If they deem it to be a material amendment adversely affecting the interest of the depositor they may give notice by publication and mailing as above mentioned and there is a thirty-day period within which the depositor may withdraw, otherwise he is irrevocably bound.

The deposit agreement of June 10, 1932, in relation to Abitibi, has now been in effect for over eight years and whatever the attitude of depositing bondholders may be to any scheme or compromise with unsecured creditors or holders of junior securities they are in the hands of the Committee by reason of the terms of the agreement. Deposit agreements of this character have been dealt with by legislation in the United States. Section 212 of the

Federal Bankruptcy Act, already mentioned, provides that the Court may examine and disregard any provision of a deposit agreement, under the terms of which any Committee purports to represent any creditors or stockholders. In the report of the Securities and Exchange Commission previously mentioned, the Commission recommended that the use of deposit agreements should be greatly restricted and permitted only on a showing of conditions which make their use desirable or necessary in the interests of investors. In their view the use of such agreements should be the exception rather than the rule and the agreements when used should be drastically limited so that the powers of committees will be vastly curtailed and great freedom of withdrawal by depositors permitted. In the view of the present Commission, the Court should have the right, regardless of any terms contained in deposit agreements, to order a full and independent vote by all members of any class. We, therefore, recommend that if any changes are brought about in the law dealing with reorganization of companies as previously suggested, regard should be had to the effect of deposit agreements, and the proper Court be given the power to disregard any provisions which might otherwise operate against the independent views and judgments of bondholders in their own rights. In this regard we suggest consideration of the Reports of the Securities and Exchange Commission, particularly the most recent one of 1940.

7. RIGHTS, LEASES AND LICENSES FROM THE CROWN

(a) General.

Abitibi is dependent for its supply of pulpwood upon the Crown lands of the Province of Ontario. It also requires large quantities of power in respect of which it is dependent upon leases from the Province. The timber concessions granted by the Province to the predecessors of Abitibi were given with a view to the settlement and development of those areas of the Province in which the concessions are situated. The provisions in an agreement dated August 20, 1912, between the Government and Shirley Ogilvie and Frank H. Anson are typical of the form of agreement used in the concessions granted to Abitibi's predecessors in title. This concession comprised an area situated on the Abitibi Lakes and River, tributary to the Grand Trunk Pacific Railway and The Temiskaming and Northern Ontario Railway. In this agreement the grantee agreed to build and equip a pulp mill at or near Iroquois Falls with an output of not less than one hundred tons daily and to employ at least 250 hands on an average for at least ten months in each year, and also agreed to expend such sums as might be required by the Minister of Lands, Forests and Mines up to a total of $50,000 in clearing, erecting buildings, and preparing, for settlement, lands in the neighbourhood of Iroquois Falls, these lands to remain the property of the Crown and to be disposed of at such prices and on such terms as the Minister might determine. The grantees further agreed to assist and co-operate with the Government in promoting settlement by buying the wood and agricultural products of, and giving preference as to employment to, bona fide settlers. The rights were granted for a period of 21 years. The grantees bound themselves to pay certain sums per cord for the wood they were permitted to cut and to maintain a force of fire rangers, half of the cost of fire ranging to be paid by the Government and half by the grantees. No part of the soil, or any interest therein, except insofar as necessary to cut and remove the wood, was sold to the grantees. The Government retained the

right to deal with any lands included in the territory on the same terms and conditions for settlement, mining or other purposes as ordinary Crown lands situated elsewhere and the agreement was not to impede or retard settlement or mining operations. The cutting rights did not extend to the cutting or removal of white or red pine timber, the right to sell which to other persons was reserved by the Government. The agreement was to become null and void if the grantees did not erect the pulp mill and other necessary buildings within three years at an expense of not less than $500,000. The agreement further provided that the grantees should be entitled to a lease of the water power of Iroquois and Couchiching Falls with a right to hold and control the water of the Abitibi Lakes for power purposes, as the Minister might deem expedient. Power was to be developed according to plans and specifications approved by the Hydro Electric Power Commission; and the Temiskaming and Northern Ontario Railway Commission was given a first claim to the extent of 10,000 horse power upon all power developed over and above the amount required for the mills on bases and terms fixed by the Hydro Electric Power Commission. The lease was subject to the right of the Crown to hold the water in the Abitibi Lakes at such height and in such condition as might be found necessary for the development of the water power and privileges in the area.

Most of the agreements respecting timber were for a period of 21 years. The Lake Superior concession, necessary for the mill at Sault Ste. Marie and the Sturgeon concession, necessary for the mill at Sturgeon Falls when in operation, expired in 1932. The Spanish River concession, necessary for the mill at Espanola, expired in 1930. The Abitibi concession above referred to and required for the mill at Iroquois Falls, expired in 1933 and the Mattagami concession, required for the mill at Smooth Rock Falls, expired in 1936. Other concessions, namely; The Spanish River Reserve concession, the Abitibi Extension concession, the Thunder Bay Nipigon concession and the Fort William Nipigon concession expire on various dates in the years 1944 and 1947. No renewals of the expired leases have been granted but the Company has been given the right to cut by annual orders-in-council.

The water power used by Abitibi is subject to Crown leases and licenses of occupation from the Crown. The Crown lease of Iroquois Falls expired in 1932 and was not renewed, although water rentals have been regularly paid to and accepted by the Province since the date of expiry. The Hydro Electric Power Commission, hereinafter called the Hydro, has the right to expropriate or lease the entire development. There is an annual rental at a price per horse power varying through different periods with a certain minimum rental in each year. The Government has the right to cancel the lease for failure to use the development for the space of one year or for failure to pay rent within 90 days of the date when due. There is also provision that at the termination of the lease the lands and water power revert to the Crown, together with all buildings, races, flumes, etc. The power at Twin Falls was subject to certain leases and licenses of occupation which expired in 1932. No renewal has been made but water rentals have been regularly paid to and accepted by the Province. The lease of the Island Falls power does not expire until 1945.

The power at Smooth Rock Falls was the subject of an agreement expiring in 1936. An application was made for a renewal for the first renewal term of 16 years mentioned in the lease but no lease has been made. The same lease covers water power at Island Falls and Yellow Falls. No works have been

constructed at either Island Falls or Yellow Falls, although the time limits within which the stipulated amounts were to be expended expired on November 1, 1918 and November 1, 1919 respectively. The lease provides that it may be cancelled for non-payment of rent within 90 days, for failure to comply with conditions as to construction of works and the development or supply of power and for failure to comply with any of the conditions of the lease. The Hydro has the right to expropriate the whole development. At Espanola the Crown lease does not expire until 1944. The lease includes rights of renewal upon such terms as may be agreed upon.

(b) Agreement, June 24, 1937.

Negotiations took place in and prior to the year 1937 leading up to an agreement dated June 24, 1937, between the Government, the Hydro, Montreal Trust Company, trustees under the bond mortgage, the Receiver, Mr. Clarkson, and Abitibi acting by its Liquidator, R. S. McPherson. Under paragraph 1 of the agreement the parties of the third part, being all the parties to the agreement other than the Government and the Hydro, agreed to convey to the Hydro the power development at Crystal Falls subject to the approval of the Supreme Court of Ontario. By paragraph 2 of the agreement the Government and the Hydro agreed to execute a release in settlement of all claims against Abitibi and its subsidiaries and the parties of the third part except the claims reserved under schedule "A" to the agreement, as to which claims the provisions of schedule "A" should govern. Under paragraph 3 the Government agreed that if within one year from the date of the agreement or within such further time as the Government might consent the Company should have been reorganized or re-arranged, or should its undertaking and assets have been sold to a new company on a basis sanctioned by the Supreme Court of Ontario, and, in any case, on a basis satisfactory to the Government, the Government and the Hydro would enter into a new agreement with the newly reorganized or re-arranged company to carry into effect the provisions of schedule "A" to the agreement. By paragraph 4 the Receiver and the Liquidator were authorized to proceed to enter into agreements with the Government and the Hydro carrying out the arrangements set out in schedule "A" as the parties might agree from time to time.

This agreement was authorized by the Abitibi Power & Paper Company Limited Act (Ontario), 1 George VI 1937, chapter 4. It is apparent that there is some difference of opinion between the Government and the Receiver as to whether or not this agreement is in force. The Receiver contends that the Government has consented to the further time provided for in paragraph number 3 of the agreement and that the provision therein as to the reorganization, rearrangement or sale on a basis satisfactory to the Government was made by subsequent order-in-council of the Government which provided that a sale satisfactory to the Court would be regarded as satisfactory to the Government. The order-in-council relied upon by the Receiver is dated March 9, 1939. It provides that if and when a re-organization or re-arrangement of the Company is duly completed or if and when a sale of the entire undertaking and assets of Abitibi is duly approved or directed by the Supreme Court of Ontario and the sale duly completed, then the provisions of schedule "A" to the agreement of June 24, 1937, except those mentioned in clause 2 thereof, shall be carried into effect with the re-organized or re-arranged company, or the purchaser, or the assignee of the purchaser, and that such re-

organization, rearrangement or sale shall be deemed a basis satisfactory to the Government as required in clause 3 of the agreement. It is further provided that if there has been no re-organization, rearrangement or sale by April 1, 1940, the provisions of any order-in-council passed *in pursuance of* the order of March 9, 1939, may be rescinded upon six months' notice in writing to the parties of the third part. This order of March 9, 1939, was rescinded by order-in-council dated October 24, 1940. The only other order-in-council passed subsequent to that of March 9, 1939, relating to Abitibi, is one of August 16, 1940, which provides for the right to cut during the season of 1940-41 only and states that any permission granted to cut or operations conducted under and by virtue of such arrangement shall not be prejudicial to the right of the Crown or construed as operating as a renewal of the expired agreements. It would, therefore, appear that the only order-in-council to which the six months' notice could possibly apply would be that of August 16, 1940 and if it did apply only the right to cut during the season of 1940-41 would be affected.

(c) Abitibi's Requirements From The Crown

The dependence of Abitibi upon the Government in respect of timber and power is shown in the evidence given by the Receiver when dealing with the necessities of the Company. He enumerates the requirements of the Company as follows:—

1. The right to increase the head at Iroquois Falls to 44 feet, the head mentioned in the lease being 35 feet;
2. A release by the Temiskaming and Northern Ontario Railway of the right to receive power from Iroquois Falls if such right has not already been released;
3. A release from the Hydro of its right to expropriate the Iroquois Falls power plant.
4. A settlement of the rentals to be paid in respect of the power;
5. At Island Falls, a release of the right of the Crown to take over the power plant prior to 1975;
6. A right to raise the water in the Forebay to 715 feet.
7. A fixing of the rental at Island Falls at $1.00 per horse power for the first renewal term with a minimum of $2,000 a year;
8. A fixing of the rental at the Long Sault for the first term at $1.00 per year per horse power with a minimum of $2,000;
9. An agreement with regard to regulation of water of the Abitibi River to the common advantage of Abitibi and the Hydro;
10. As to Smooth Rock Falls, a renewal of the water lease and license of occupation;
11. A release from any claim for increased water rentals between May 5, 1934 and May 5, 1936;
12. A release from any obligation to construct water developments at Island Falls and Yellow Falls and an agreement from the Government that these Falls will not be leased to anyone else as that would interfere with water flowing down to the Smooth Rock Falls Development.
13. A release from the Hydro of its right to expropriate before 1968;
14. At Sturgeon Falls, a conveyance of the bed of the Sturgeon River;
15. A renewal of the Abitibi concession;

16. The elimination of Crown bonuses in connection with the wood in the Abitibi concession;

17. The waiver of the Crown's right to have guarantee company bonds and its acceptance of a bond from Abitibi in lieu thereof;

18. A license of occupation for the railway constructed by Abitibi;

19. The renewal of the concession at Smooth Rock Falls and the acquiring of additional wood for the future support of the mill;

20. Protection against any interference with the right of Abitibi to take timber from the lands to be transferred to the Government by the Algoma Central Railway Company;

21. A cancellation of the agreement requiring Abitibi to take wood from Hawkins Township and Simpson Township;

22. A renewal of the timber concession required for the operation of Sault Ste. Marie Mill;

23. Licenses of occupation for dams erected in this area;

24. The right by the Company to surrender cut over lands or lands of no value in the concession areas, the area of each of the parcels so surrendered not to be less than 36 square miles;

25. Control by the Government of the driving capacity of the Nipigon River which will enable the Company to drive its wood;

26. Reduction of the bonuses with respect to Fort William and Port Arthur timber areas.

27. The supply of additional wood to the company to make up the loss of pulpwood reserves occasioned by designation of saw logs as wood 11 inches or more at the butt;

28. The cancellation of the rights granted to Great Lakes Lumber Company on September 18, 1940;

29. The setting aside of further areas;

30. Common action on the part of the Hydro, the Temiskaming and Northern Railway Company and Abitibi to close up a diversion of water at Dasserat Lake which reduces the amount of water going into Abitibi Lake;

31. An extension of water rights and flooding rights leases at Espanola;

32. Action by the Government limiting the cutting of wood on Lake Nipigon;

33. Generally speaking, a renewal of all operating rights as to timber concessions and power, except those which would be no longer of value owing to the non-operation of the mills at Espanola and Sturgeon Falls;

34. Generally speaking also, the carrying through of the terms of the agreement of June 24, 1937;

35. Waiver of the provisions in it under which the Abitibi is required to spend $1,000,000 on each of the Fort William and Thunder Bay mills;

36. The grant to Abitibi of concessions on Lake Superior to provide timber in case of low water conditions on Lake Nipigon;

37. The obtaining of a clearance for Abitibi from the Government's right to recapture limits under The Forest Resources Regulations Act;

Mr. Clarkson expressed the view that even if the Government were unwilling to renew the concessions it would continue to allow the mills to operate on wood from the concessions but that what the Company would have to pay to the Government by way of bonuses and other charges would make a substantial difference in its income. He said that there is a real menace to the Company unless conditions with respect to the shallow waters in Lake Nipigon and the limited drive in Nipigon River are altered. In his opinion it makes all the difference in the world to Abitibi whether the Government is or is not in a friendly attitude, and the carrying through of the agreement of June 24, 1937, would relieve Abitibi of very substantial charges which it has to pay on the basis of existing agreements.

(d) Defaults Under Agreements.

The evidence also discloses the existence of certain defaults on the part of Abitibi under its contracts with the Government. Paragraph 3 of the agreement of January 30, 1926, respecting Thunder Bay Nipigon concession provided that the Company would expend by December 31, 1931 in additions, enlargements and betterments the sum of $10,000,000 or such other sum as was required to complete the plant to the required capacity. Mr. Clarkson states that the amount expended would seem to be about $2,000,000. It is said that the provision in this agreement as to employment has not been met since 1930 and that the Minister has not by written order relieved the Company from its liability with respect to this agreement, and that the guarantee bond of $200,000 required by this contract has not been furnished by Abitibi.

The agreement of September 21, 1926, respecting Fort William Nipigon concession, provides for the increase in capacity of the plant by 1928 to certain specified tonnage. This provision has not been met. It also calls for certain expenditures in extensions and additions estimated at a total cost of $4,000,000. This expenditure has not been made. An employment provision contained therein has not been met and a guarantee bond for $200,000 has not been furnished as agreed.

The agreement of February 27, 1926, relating to Lake Superior and Nipigon concessions obliged Abitibi to expend at least $1,000,000 in a soda pulp mill or other book paper plant and to utilize the product in the manufacture of book paper but this has not been done.

(e) Recommendations.

From this recital of the contractual relations between Abitibi and the Government, and of the necessities of Abitibi which can be supplied only by the Government, it is obvious that the assistance of the Government must be a largely contributing factor in the success of the enterprise and that the Government would be justified in trying to secure the carrying out of the purposes which led to the making of the various agreements and to protect the legitimate interests of persons who have contributed to or are bound up with the conduct of the enterprise.

It must be fairly obvious that the Government and the public have a huge stake in the pulp and paper industry. The Government is perhaps the senior partner and as such through the course of years has imposed upon itself contractual obligations looking towards the development of important areas in the Province. Nevertheless it is also a trustee of the public domain. Neither can it be overlooked that the contractual relation created carries with it

equitable obligations to the investing public, not only bondholders but shareholders as well, which provided this money for the desired development on the strength of the Government's given word. In other words, there has been built up over a period of years a vested interest based on the sanctity of contractual relationship and at least substantial performance of the obligations resulting from the relationship. In our view with the industry in its present position, which will be enlarged upon under the caption of *Proration*, the day of dispensing favours in the form of timber concessions to new political friends has long gone by and for some considerable time to come the problem will be one largely of judicial administration of the raw material requirements of the industry as presently constituted. A general feeling of insecurity can be detected which can be rectified only by the removal of any suspicion that political considerations and not plain ordinary justice prevails in the relationship between the Government and the industry. Our observations are not directed against any acts of the administration in power but are rather based upon our general view of the present requirements of the industry itself.

As to Abitibi particularly, we think its present difficulties should be dealt with in the spirit we have indicated. Certainly this should be the case if its security holders are able to agree on a plan to take it out of receivership. If agreement cannot be arrived at the question is one of policy for the Government and we offer no suggestions.

8. PRO-RATION

From the evidence adduced it is clear that Abitibi cannot hope to improve its financial position should the policy of proration not be continued. The capacity of Canadian newsprint mills is far in excess of the demand for newsprint. The annual Canadian capacity has increased from 3,389,000 tons in 1929 to 4,307,000 tons in 1940. The idle capacity during this period was greatest during the period from 1930 to 1933 and since that time except in 1936 and 1937 has approximated 30 per cent of the entire Canadian capacity. The productive capacity of the Abitibi mills was 704,000 tons in 1929 but with the closing of the mills at Espanola and Sturgeon Falls this amount was decreased to 558,000 tons which was increased to 599,000 tons in 1940. The existence of this spread between the capacity of the Canadian mills and the shipments means that in the competition for business the mills are likely to slash their prices below the level at which operation can be profitable unless a policy of proration is pursued. Prior to the adoption of proration the effect of the depression and of unrestrained competition among the Canadian mills resulted in the price of newsprint being lowered to $40.00 and $41.00 per ton. The proration policy of Ontario and Quebec became effective in 1936. The price rose to $42.50 in 1937, and to $50.00 in 1938. It was stated before the Commission that the proration of tonnage is a difficult position to maintain and that other mills which had direct contracts with customers protested vigorously when they were compelled to hand over to other companies a portion of their tonnage; but it was admitted that without such a system of proration Abitibi would have been in a very much worse position. It was suggested in evidence that there are very few industries in Canada operating at 75 per cent of capacity and that where an industry operates at 75 per cent or more of capacity there is but slight incentive to cut prices. The figures placed before the Commission, however, disclose that for a number of years the pro-

duction has been less than 70 per cent of capacity and the Commission agrees with the view expressed by Mr. Clarkson that if proration is not maintained to an adequate extent the industry will go back to the condition existing in 1932 and 1933 and that the value of the Abitibi undertaking depends very largely upon whether proration is enforced or not. This subject of proration is, of course, a delicate one. It is a little difficult to suggest imposing a policing duty upon the Provincial Governments. From a long range viewpoint one would think the industry itself would appreciate its value and govern its affairs accordingly. Extra good salesmanship on a cut rate basis conceivably might benefit some particular company. But in the long run the benefit would probably be only temporary. From the point of view of the national interest in acquiring valuable United States exchange and from the point of view of labour, proration would seem to be highly desirable and we think that the Government should do all it legitimately can do to keep it in force.

9. OPPOSING VIEWS AS TO PROSPECTS OF ABITIBI

Varying views have been expressed before the Commission as to what the future may hold for Abitibi. On the one hand it has been said:—

(a) That the earnings of Abitibi during the years since 1930 are not a true indication of the potentialities of the Company because the years were years of depression. The price of newsprint reached the low point of $40.00 per ton and there was a disastrous decline in the sales of newsprint in relation to the productive capacity of Canadian Mills;

(b) That since 1932, notwithstanding the efficiency of the Receiver, which is recognized by all, certain disabilities attach to operation through receivership;

(c) That the earnings for the first 9 months of 1940 and estimated earnings for the remainder of the year leave a substantial balance after allowance for depreciation and income on the first mortgage bonds;

(d) That substantial amounts might be realized from the sale of the common stock of Provincial Paper Company Limited and of the Company's assets at Espanola and Sturgeon Falls;

(e) That the position as to working capital has greatly improved during the period of receivership after making allowance for the unpaid bond interest which has accumulated during the same period;

(f) That the plan put forward by the Bondholders' Protective Committee in 1937 recognized a substantial equity in the shareholders and that the financial position has improved since that time;

(g) That Kaministiquia power might be sold for a very substantial price, further improving the working capital position or making available moneys for payment to the bondholders;

(h) That there need be no repetition of the drain upon the assets of the Company similar to that which arose from commitments made in connection with the purchase of shares of Thunder Bay Paper Company Limited and the financing of the Ontario Power Service Corporation;

(i) That the proceeds from the production of sulphite are likely to be large for the duration of the war as the principal reason for the present

high prices is the shutting down of foreign sulphite and sulphate production;

(j) That the price of $50.00 a ton delivered in New York is likely to continue or to get a little higher during a five year period;

(k) That the Canadian production is likely to increase during the war up to about 83 per cent of capacity;

(l) That general business conditions are improving and there should be a steady increase in the consumption of newsprint;

(m) That foreign competition, particularly from the Scandinavian mills, has fallen off greatly owing to the war;

(n) That Southern Pine newsprint is not likely to come into competition with Canadian newsprint so long as the present price level remains;

(o) That the over-production and forced selling, characteristic of the newsprint industry for a period after 1928, is not likely to be repeated.

On the other hand it has been said:—

(1) That the market values of all Abitibi securities had fallen to about $42,000,000 on January 1, 1939, and to about $36,000,000 in March 1939 and that over a six year period from 1933 to 1938 the net earnings before depreciation and before bond interest were only about $2,124,000 per year;

(2) That it is difficult to maintain proration and the ending of proration would be disastrous for Abitibi:

(3) That the effect of radio has been to deprive American newspapers of over $200,000,000 a year and that the development of picture magazines and news magazines has deprived them of a further $70,000,000 annually with the result that newspapers cannot pay high prices for newsprint or be lavish in its use and that newspapers have adopted various means to restrict the use of newsprint;

(4) That the disagreements with American publishers because of the raising of newsprint to its present price will result in the American publishers buying the full product of American mills and getting only their excess requirements from abroad;

(5) That the use of Southern Pine for newsprint is likely to develop considerably and that this business will become competitive with the Canadian mills if the price should go beyond the present level;

(6) That 1940 is an abnormal year and it would not be reasonable to fix the value of the undertaking upon abnormal earnings in abnormal times;

It is apparent from a consideration of these arguments that there is room for wide differences of opinion as to the future of the newsprint industry in general and of Abitibi in particular, but the evidence leaves no room for doubting the existence of the following facts:—

(1) That, whatever the potential value of the undertaking and assets of Abitibi may be, no price could be obtained for the undertaking and assets, under present conditions, which would begin to approach the amount of the outstanding bonds with interest thereon.

(2) That any profits that might otherwise be made by Abitibi would disappear in the absence of friendly co-operation with the Government of the Province of Ontario.

(3) That if the present rate of earnings maintains for some time to come, the shareholders may well have a substantial equity in the property.

10. PRINCIPLES UPON WHICH ANY PRESENT PLAN MUST BE SET UP

(a) Plan Cannot be Based on History of Earnings.

It is apparent that any sale of the Company's undertaking and assets under present conditions must of necessity be a sale to the bondholders represented by the Bondholders' Protective Committee. It would be impossible to interest British capital in such a purchase under the existing war conditions and it would be difficult to interest American capital in the enterprise, both on account of the conditions affecting finance in general and the condition of the newsprint industry in particular. The Company has been operating under more or less abnormal conditions since the close of the Great War. The Canadian productive capacity, which was comparatively small from the years 1919 to 1926 inclusive, increased in that period from 1,182,000 tons to 1,962,000 tons—the price ranging from $81.10 in 1919 to $72.90 in 1926, the peak price being $111.60 in 1921. During this period the annual earnings of Abitibi, after depreciation and interest, were very considerable. In the three years following, namely, from 1927 to 1929, the newsprint capacity increased to 3,389,000 tons, going up by leaps and bounds, while the price dropped from $72.90 in 1927 to $65.00 in 1928 and $62.00 in 1929. In these years Abitibi's net earnings, after depreciation and interest, were greatly reduced. In 1931 the newsprint capacity in Canada had increased to 3,841,000 tons but the shipments were only 2,221,000 tons and the price fell to $57.00. In that year Abitibi's earnings fell far short of covering depreciation and paying bond interest. In the year 1932 in which the receivership commenced, the price fell to $48.91 and the Company barely had a surplus without providing for depreciation or interest. In 1933 the price was $41.25; in the years 1934 and 1935, $40.00 to $41.00; in 1936 $41.00 and in 1937 $42.50; while the present price of $50.00 was first received in 1938. It will be seen that the earnings from 1919 to 1926 can form no criterion of the present earning power of the Company because the prices were abnormally high as compared with the existing price and the productive capacity of the industry was not so far beyond the shipments as it now is. The same may be said of the conditions existing from 1927 to 1929. On the other hand the conditions from 1932 to 1936 inclusive are not a satisfactory criterion as to the present earning power as, while the total productive capacity of Canadian mills did not change greatly during these years, the prices reached the lowest point in the history of the industry. The earnings in 1937, 1938 and 1939 showed a very marked improvement over those of the years since 1931, while the earnings in 1940 were the greatest since 1929. What the future holds for Abitibi is uncertain. If the war should prove to be a long war, should the price of newsprint stay at its present figure or increase slightly, and should the demand for newsprint increase as it has shown a disposition to do since the year 1933, it may well be that the large earnings of 1940 will be repeated or increased and that with the net earnings available and the proceeds from sales of various assets of the Company which can be realized without affecting the Company's production of newsprint or sulphite, a substantial reduction may be made in the amount owing to the bondholders.

On the other hand should the war be short and should foreign newsprint

producers cut prices to capture the United States market, post war conditions may not be conducive to the health of the industry.

(b) Uncertainty as to Earnings Make Immediate Sale Inadvisable but Rights of Bondholders to Recover Money From Property in Priority Must Be Preserved.

No one can foresee how the position of Abitibi will develop in the years immediately ahead but, in view of the possibilities, it does not seem to the Commission advisable that there should be a sale of the property in the present disrupted conditions when there can be no hope of any independent purchaser making any substantial offer and a sale must amount in fact to a foreclosure, or that the holders of securities junior to the bonds should be shut out from any equity that may exist or that may arise should the condition of the Company improve substantially. The Commission thinks, however, that any plan that may be worked out with respect to the Company should preserve the bondholders' right to have their claims satisfied fully in the future before anything is paid to any holders of junior securities.

(c) Any Plan Devised Must Obviate Danger of Another Receivership in the Near Future.

It must be apparent that if the Bondholders' Protective Committee are willing to accept a plan which, in effect, creates a moratorium upon their right to realize by foreclosure, it cannot remain in force indefinitely unless earnings continue on a level which keeps improving the bondholders' position. If the view of the junior security holders as to future earnings turns out to be erroneous, and, as a result, the bondholders' interest is again seriously jeopardized, then we think machinery must be provided by which the junior security holders acting through the Company must release all interest in the property to the trustee for bondholders. If such a condition arises then the bondholders should not be subjected to the delay and expense of new receivership proceedings.

It must be remembered that the present receivership has been in existence nearly nine years and during all that time the bondholders have received no interest.

(d) Any Plan Now Devised Must Have Regard To the Existing Taxation Structure.

In considering the future financial position of the Company consideration must be given to the question of taxation and particularly to the effect of the Excess Profits Tax Act 1940, 4 George VI Canada, chapter 32, which was assented to on August 7, 1940. "Excess Profits" is defined to mean that portion of the profits of a taxpayer in excess of standard profits. "Standard profits" is defined as the average yearly profits in the standard period of 1936 to 1939 inclusive or the standard profits determined by a board of referees under section 5 of the Act. The tax imposed by the Act is 12 per centum of the profits of a taxpayer before deduction therefrom of any tax paid therefrom under The Income War Tax Act, or 75 per cent of the excess profits, whichever is the greater. The amount of the tax in respect of Abitibi will depend, among other things, on the amount at which its assets are valued and the amount allowed for depreciation. It is advisable that any plan formulated should avoid the conversion of existing securities into any form of security that will

be subject to a tax which would not be imposed in respect of securities previously existing. It is not in the public interest, notwithstanding the exigencies of war, that taxation should deprive the Company of every prospect of emerging from its difficulties. Consequently the question of taxation is a factor which the Commission has taken into account in approving of the plan hereinafter proposed, although in doing so the Commission cannot possibly form an adequate opinion of what the taxation will in fact be. The Newsprint Association of Canada has prepared a printed brief, dated December 28, 1940, which has been filed with officers of the income tax department. The purpose of the brief is to show that on the basis of the income or profits derived from the industry during the standard period the newsprint industry is depressed and also that the newsprint industry is depressed when compared with other lines of business. The brief asks that the Minister of National Revenue should direct that the "standard profits" of companies engaged in the business should be ascertained by the board of referees in conformity with the relevant provisions of the Excess Profits Tax Act, that the Minister and the board of referees should make suitable provision for the present necessities and respective needs of the industry and claims that this can be done only by granting the manufacturers the maximum exemptions under the Act. It appears to the Commission that the interest of the holders of securities and of the Company will be best protected by issuing no new securities and by allowing the present bonds with interest to December 1, 1940, to remain outstanding upon certain conditions hereinafter mentioned.

PLAN

1. The trust deed covering the present issue of bonds should be amended so as to extend the maturity of the bonds to December 1, 1965, and eliminate its provisions as to sinking fund, and as to the application of moneys received from the sale of capital assets. Past due interest and interest on interest should be calculated to December 1, 1940 and from that date there should be no further accumulation of interest on the existing past due interest, otherwise there should be no alterations in the Company's obligations under the Trust Indenture, except such as may be necessary to give effect to the provisions of this Plan.

2. The present share capitalization should remain undisturbed except that the dividend rate on the 7 per cent preferred stock should be reduced to 3½ per cent and on the 6 per cent preferred stock to 3 per cent, and future dividends on both stocks should be non-cumulative.

3. We think that for a period of five years, or until the bonded indebtedness has been reduced to $35,000,000, whichever period is the shorter (unless the bondholders should become entitled to enforce their security in the meantime under the terms of this Plan), the affairs of the Company should be managed by seven directors, four of whom should be nominated by the Bonholders' Committee, and three of whom should be holders of preference stock holding no bonds. During such period vacancies should be filled by the directors remaining in office; any new director should have the same qualification as the director whose seat has become vacant. At the termination of such period the affairs of the Company should be managed in the normal way by the shareholders.

N.B.—The above may be worked out by constituting different classes of directors whose term of office varies in length. It may be that this proposal

or an approximation thereto can be put into effect by Supplementary Letters Patent under Section 88 of The Companies Act. Of course, if the whole Plan is validated by Special Act, Supplementary Letters Patent will be unnecessary. Directors will of course have to qualify under Section 86.

4. (a) Before payment of interest on the bonds the Company's working capital shall be kept at a level of $10,500,000 of which $500,000 shall be deemed a fund for the purpose of making improvements and additions to the Company's properties in each year.

(b) When on April 30 or October 31 in each year there is an excess of working capital over the sum of $10,500,000 it shall be applied towards payment of the next interest due on the bonds.

(c) If there still remains a surplus after payment of interest coupons it shall be applied to purchase bonds on the open market or at par with accumulated and accrued interest.

5. Upon the Plan becoming effective the Company shall deliver to the Montreal Trust Company as trustee for bondholders a Quit Claim and Release of all its properties and assets, in escrow, which shall become effective and may be registered in the proper Registry Offices at any time during a period of five years after December 1, 1940 upon the Company failing to pay current interest on the amount of the outstanding bonds and such failure continuing for a period of six months, or where as the result of such payment or otherwise its working capital becomes reduced below the sum of $10,500,000 as provided in 4 (a) above and remains so reduced for a period of six months. A certificate from the auditors of the Company to the Montreal Trust Company that the working capital has been so reduced and has continued to be reduced for a period of six months shall be sufficient authority to the Trust Company to register such Quit Claim and Release and enter into possession of the property. If at the end of five years from December 1, 1940 no such default has occurred the Montreal Trust Company shall cause the Quit Claim and Release to be returned to the Company. The provisions of this paragraph are to be applicable after the Company has made provision for depreciation of $1,785,000 per annum and has set up appropriate reserves for the payment of the amount of taxes for which it is liable.

6. Upon the Plan becoming effective:—

(a) The Receiver and Manager should resign with the approval of the Court upon payment of proper fees and disbursements, to be taxed if not agreed upon, and deliver the property in receivership back to the Company;

(b) The Liquidator should resign with the Court's approval upon payment of proper fees and disbursements, to be taxed if not agreed upon;

(c) The present bondholders' action should be discontinued upon payment of proper costs and disbursements, to be taxed.

(d) The costs of the Bondholders' Committee properly payable as ascertained by the Master of the Supreme Court of Ontario, if agreement cannot be reached, should be paid forthwith.

(e) The Company should pay one interest coupon with overdue interest thereon.

7. Fifty per cent of the ordinary creditors' claims should be paid in equal instalments over a four-year period providing there has been no default to bondholders in the meantime and if at the end of five years no default has occurred the remaining fifty per cent should be paid over a similar period.

There should be no provision for interest on these claims and stockholders should not be entitled to dividends until creditors are paid in full.

8. If the parties interested cannot agree to apply for special legislation to make the Plan effective the liquidator should make application to the Court under the Companies' Creditors' Arrangement Act for sanction of the Plan. The votes of ordinary creditors and shareholders should be taken first and if they approve then a vote of bondholders may be taken.

CONCLUSION

What we have suggested is obviously far from a definite and complete solution of Abitibi's troubles. To accomplish that would require some definite conclusions as to the trend of earnings and the evidence before us did not go beyond establishing that future earnings are quite unpredictable. In the present circumstances we feel that the best that can be done is to preserve a reasonable status quo while giving an opportunity for the financial situation to work itself out while at the same time preserving to the bondholders their priority position. If earnings justify it, some future reorganization among the shareholding interest may be involved. We think it unwise to define what should be done about that in the future. It is noteworthy that with the more recent changes in tax requirements no plan heretofore proposed is now practical. It is our hope that capital assets not required for the essential operations of the Company may be disposed of and the moneys realized therefrom made available for distribution under paragraph 4 of the Plan.

The important thing at the moment is co-operative action on the part of the Ontario Government so that the greatest good may be obtained for the greatest many. The whole newsprint industry is much in the same position. Confidence must be restored and this can best be assured by constructive and sympathetic government action which recognizes a vested interest in the investments of the public. It is our hope that the 1940 volume of earnings will be maintained and if that proves to be the case, the shareholders will eventually have a real interest. At the present time we do not think it equitable that they should be shut out from the opportunity.

Before parting with the matter may we express our appreciation to the various Counsel engaged for their co-operation as well as to the numerous persons who voluntarily came forward with interesting and constructive suggestions. Our thanks is particularly due to Mr. Clarkson and Mr. McPherson upon both of whom we imposed heavy burdens.

Respectfully submitted this 17th day of March, 1941.

"C. P. McTAGUE",
Chairman.

"JAMES DUNN",
Member.

"A. E. DYMENT",
Member.