

“YOU MIGHT LACK THE ABILITY UNLESS WE HELPED YOU”

John Henry Kirby's Financial Angel;
The Atchison, Topeka & Santa Fe Railway Company

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On February 3, 1908, John Henry Kirby seated himself in his room at the Hermitage Hotel in New York City and wrote a long letter to Edward Ripley, President of the Atchison, Topeka & Santa Fe Railroad. The two men had been corresponding for years, and at this time Kirby was the single largest shipper on the Santa Fe system. The letter was quite direct, and almost pleading in tone. It was written at the end of four years of bitter litigation which very nearly cost Kirby the control of his timber company. The pending settlement would leave Kirby confronting the task which had bedeviled him since the company was founded at the beginning of the decade – obtaining enough capital to finance his dream of owning and operating the largest timber company in Texas. Kirby knew that his best and perhaps only hope was to obtain that funding from the Santa Fe, because it profited so greatly from his timber traffic, so he chose his words carefully, underlining for emphasis. He asserted, perhaps primarily as a negotiating tactic, that he could obtain the funding from another unnamed source:

"I can do so but it is from sources which I know better than you do will embarrass your tonnage and I shall regret to have to do it. Only stern necessity can induce me to permit it. Now that the Kirby Lumber Co.'s status is fixed and our full and free control of that great tonnage is for all time assured, I thought perhaps Mr. Morawetz and the Committee might take a different view of the situation and desire to lend me some assistance in holding that tonnage for the Santa Fe...I would not take this up with you again but for the fact that I know it will not be in your interest for me to do what my necessities may compel me to do."¹

Ripley had been at odds with his board and General Counsel Victor Morawetz for years over just how to deal with Kirby. Kirby knew his target well, and with this letter he took dead aim at the bullseye. Ripley was determined that the Santa Fe should hold on to the East Texas timber traffic at all costs. And he did.

The first Anglo settlers in Texas found about 5000 square miles of long leaf pine at the eastern edge of the state, occurring in irregular stands in parts of Angelina, Hardin, Jasper, Nacogdoches, Newton, Orange, Polk, Trinity, Tyler, Sabine, and San Augustine counties. To the north of this area, which ran southwestward from the Louisiana border in a roughly wedge shape, the shortleaf pine was predominant, and to the south the loblolly pine dominated. Of these three types, the long leaf was the most easily logged because its combination of tall growth and a deep tap root enabled it to survive the wildfires that periodically swept the area. Many early visitors remarked that the stands longleaf pine seemed almost park-like in the sense that the area beneath the trees was entirely devoid of competitive growth, consisting primarily of a carpet of old pine needles shed from above over the years. Because of its ease of logging, these areas were preferentially targeted for the area's first significant railway construction. John Henry Kirby was

¹ Letter, John Henry Kirby to Edward P. Ripley, Feb. 3, 1908, Santa Fe Railway Co. Archives, Kansas State Historical Society, Topeka, Kansas (hereinafter "K.S.H.S.")

one of the most significant figures in the development of the area's forestry industry, so prominent that his principal biographer called him "The Prince of The Pines." But who crowned him prince?

The Gulf, Colorado & Santa Fe Railway Company (G.C.&S.F.) was incorporated on May 28, 1873, by a group of Galveston merchants and businessmen seeking a direct rail connection with interior parts of the state. At the time, Galveston had rail connections to the interior only via Houston, which was a competing trade point. Galveston suffered periodic traffic embargoes on this line as a result of yellow fever epidemics, for which the only known treatment was a quarantine of infected populations. The people of Galveston considered that Houston civic leaders suffered from an excessive propensity to embargo trade from Galveston without true evidence of an epidemic, and sought direct rail service in order to gain independence from control by a commercial rival.

Construction of the line commenced May 1, 1875. By 1881 the GC&SF had reached a northern terminus at Fort Worth and a western terminus at Lampasas, and its management began to consider other directions for expansion to bolster company income. Its corporate charter did not then allow construction beyond the boundaries of the state, and West Texas was still too sparsely settled to provide substantial carloads of freight traffic, so the company looked to the eastern part of the state. An 1882 report to the stockholders related construction in progress eastward from the main line at what would become the town of Somerville, named for one of the company directors, to yield what was projected as "an extensive lumber traffic from the pineries of eastern Texas."² Through acquisition of other lines and new construction, the eastern branch reached Conroe by September 1885, and the end of the line remained there for the next six years, tantalizingly short of the timber lands which were its objective.³ The company's managers in Galveston knew very well about the potential for timber traffic in East Texas, as did the leadership of the Atchison, Topeka & Santa Fe Railway Company (A.T.&S.F.) which purchased the GC&SF in 1886. At that time only one rail line penetrated the region, that of the Texas & New Orleans (a subsidiary of the Southern Pacific) which would ultimately run from Beaumont to Houston by connecting various short lines.⁴ In the summer of 1887 Santa Fe division engineer Fred Leach made a reconnaissance of the East Texas forest district and transmitted an exhaustive report on its timber holdings to General Manager Webster Snyder in Galveston. Leach recommended the construction of a line eastward 112 miles to Stark's Landing at the Sabine River, estimating a construction cost of \$2.1 million. Along this route, and for 20 miles on either side of it (being the distance he calculated economical for construction of tram roads, temporary tracks to bring logs to the main line), Leach calculated there was standing about 1.5 billion board feet of longleaf pine timber. He estimated that at 5000 board feet of lumber per car, 18 cars per train (a limitation imposed by the horsepower of steam locomotives of that era), this supply represented a traffic level of three trains a day for nearly 20 years.⁵

²Annual Report to Stockholders, G.C.&S.F.Railway Co., September 1882, K.S.H.S.

³St. Clair G. Reed, A History of the Texas Railroads and of Transportation Conditions Under Spain and Mexico and the Republic and the State, St. Clair Publishing Co., Houston, 1941, p. 288

⁴Robert S. Maxwell and Robert D. Baker, Sawdust Empire, the Texas Lumber Industry, 1830-1940, Texas A & M University Press, College Station, 1983, p. 38.

⁵Letter Report, August 16, 1887. K.S.H.S.

The company let the construction prospect drift without resolution until the fall of 1890, when locating engineer R. L. Van Sant was instructed to make another examination of the country with more of an eye toward identifying the parties who controlled the timber. In so doing he endeavored to make a closer estimate of the size of the timber reserves. He took a conservative approach, assuming a 10 mile tram haul reach on either side of the road, and calculated there were 1.8 billion board feet of long leaf pine and 900 million board feet of other sorts of commercially salable lumber available along the route he recommended. He stated in his report that he had been so conservative in his approach that he supposed it likely that the actual amount of long leaf pine might be twice as high, remarking that some of the existing mills were reporting yields of 11,500 board feet per acre. Relying on the lower estimate, however, he calculated that at 6000 board feet per car, the area would yield 100 cars a day for 300 days a year, taking 15 years to haul out all of the available material. Van Sant's report identified the ten most prominent landholders controlling this timber, eight companies and two individuals. All of the companies were based in Beaumont or Orange except for one, the Texas & Louisiana Land Company of Boston, which just happened to have a directorate somewhat in common with the A.T.&S.F. But he did not know, or if so did not speak, of that fact which would have much sway over the railroad's actions in the coming years. The individuals he identified were John P. Irvin of Houston and the Kountze brothers of New York. Van Sant concluded rather glumly: "It would seem that the construction of this line has already been delayed too long; the timber having nearly all passed into the hands of manufacturers whose interests are largely with the rival line."⁶ He was speaking of the Southern Pacific Railroad, which had already built from Houston to Beaumont and Orange, and would shortly purchase the Houston, East & West Texas Railway which ran from Houston to Shreveport via Cleveland, Livingston and Lufkin. And he was wrong.

The 1890s were a difficult decade for the A.T.&S.F. A national financial panic in 1893 severely limited the availability of investment capital, and the company was forced into receivership that year, a victim of exuberant expansion across the western U.S. into areas that did not yield traffic revenues sufficient to service construction debts. Upon reorganization in 1895, new management in New York and Chicago cast about for methods to boost traffic. The old reports on east Texas timber reserves were taken from their files and reexamined with a fresh eye, particularly prompted by the interests of certain directors. Nearly fifteen years after the first recommendation by the Galveston directorate for construction into "the pineries," a decision was finally made to build the line and compete (at a judicious distance, keeping in mind the length limitations on tram railroads) with the Southern Pacific. The company acted first by purchase of a bankrupt 30 mile line running east from Conroe to the Trinity river for the sum of \$150,000. This represented a considerable bargain, in view of the fact that Leach had estimated an average construction cost of \$19,000 a mile when considering the matter ten years earlier.

Before bridging the Trinity, the company paused for a final decision on how best to enter the prime long leaf pine territory. The Santa Fe of this era was heavily funded by Boston capital, and one of its directors was Nathaniel D. Silsbee of that city. Silsbee, having access to inside corporate information regarding East Texas timber reserve estimates and the company's desire to

⁶Letter Report, December 9, 1890. K.S.H.S.

reach them, had made a small investment of his own in the middle 1880s, purchasing some timber land in Tyler County. He soon had need of local counsel for assistance in clearing title to one of the tracts he had purchased, and for this he turned to a young lawyer at the county seat of Woodville, named John Henry Kirby.⁷ Their relationship blossomed, and would prove to be one of the foundation stones for the Kirby business empire to come. At the time, Kirby was not yet 30 years old, but the strength of his vision for the future value of the area's timber, together with their knowledge of the Santa Fe's plans for the future, soon led Silsbee and a group of Boston partners to entrust him with a substantial additional sum for the purchase of timber lands. As a part of this effort Silsbee formed and became president of the Texas and Louisiana Land and Lumber Company, with an authorized capital of \$400,000.00. The original subscribers to the corporation were wealthy Bostonians, including Edward Ellington Pratt, S. Endicott Peabody and his son Francis, Henry Saltonstall, Francis A. Whitney, Thomas Upham, Daniel Saunders and Horatio Fletcher. The company purchased timber lands in East Texas and appointed John Henry Kirby as its Texas representative. In 1889 a second company, the Texas Pine Land Association, was formed as a Massachusetts trust for the same purpose. Francis Peabody was the Chairman of the Board, and Kirby its Texas representative. It was envisioned that the company would construct a railroad from Beaumont to Marshall to develop the timber acreage it was acquiring.⁸ In June 1893, acting for this group which financed the project, Kirby broke ground for construction of the Gulf, Beaumont & Kansas City Railroad, which was projected to run from Beaumont northward through the pine country to lands they controlled.⁹

No doubt guided heavily by the suggestions of certain board members representing the Silsbee interests, but also furthering a plan conceived by its subsidiary company's Galveston management nearly twenty years earlier, in the summer of 1900 the Santa Fe purchased the Gulf, Beaumont & Kansas City Railway Company, which by then operated a line running about 62 miles north from Beaumont to Roganville. It was necessary to build a new line to make connection with the Santa Fe line to the west, which waited on the west bank of the Trinity river. The route was selected via Fuqua, Votaw and Kountze, having a junction with the newly purchased line at a point which the company named, naturally, after Silsbee. This construction, completed in 1902, finally furnished the Santa Fe a single line haul of timber traffic from the heart of the pine country. Ten years had passed since company locating engineer Van Sant's conclusion that this construction had already been delayed too long. Silsbee and friends knew he was wrong, and they had bided their time accordingly.

With its purchase of G.B.&K.C. rail line in 1900, the Santa Fe embarked on a symbiotic relationship with Kirby which would endure until his bankruptcy 33 years later. Kirby's champion within the railroad company was its president, Edward P. Ripley, who defended him for years against criticism by others on the board of directors. The board had a decidedly puritan approach to business, and for many years did not quite know what to make of Kirby, who seemed to be fueled principally by charm. Many in Texas who knew Kirby commented on his personal magnetism and charisma. Ripley, based at the company's operating headquarters in Chicago,

⁷John O. King, *The Early History of the Houston Oil Company of Texas 1901-1908*, Texas Gulf Coast Historical Association Publications, Vol. 3, No. 1, April 1959, page 6.

⁸Mary Lasswell, *John Henry Kirby, Prince of the Pines*, Encino Press, Austin, 1967, p. 45-47.

⁹Lasswell, *Ibid.*, p. 63

looked at the business world from a different and more tolerant regional perspective, which he frequently sought to explain to his east coast directors. In a 1901 letter to company general counsel Victor Morawetz in New York, Ripley commented about Kirby: "Like most southerners he is not very exact in his business methods, but he impresses me as being honest and he is certainly a hustler. My idea would be that he might be likely to undertake too much and get beyond his depth unless held down. He is a marked exception to the generality of the businessmen in the south in his activity and persistence." In this same letter, Ripley remarked that the Santa Fe for its own needs was consuming nearly 70 million board feet a year of timber, primarily for ties but also for bridges and buildings.¹⁰

After purchase of the line which enabled it to reach his territory, the Santa Fe contracted with Kirby for his company to supply its needs for railroad ties and bridge timbers across all of its midwestern territories. There are about 3200 ties per mile of track, and at this time the company operated about 10,000 miles of mainline track plus many more miles of side and industrial spur trackage. In an era before tracks were ballasted extensively to improve drainage, and before ties were pressure treated with creosote to enhance their service life, labor was cheap and ties were replaced often. The company needed several million ties a year for purposes of replacement and new construction, and the requirements for Texas and the midwestern states would be met by the Kirby contract.¹¹ Kirby agreed in June 1900 to furnish the Santa Fe two million ties a year at 20 cents each for several years, and a pattern of dealing became immediately apparent to the company. It would be held to strict performance with any agreement, but Kirby would ask time and again to be excused when pinched, and seek renegotiation on more favorable terms whenever conditions changed. Company management quickly realized this would be a hallmark of the relationship. In a 1901 letter to Counsel Morawetz, President Ripley reported that "Mr. Kirby, in his usual slap-dash fashion, did agree to supply us with ties at 20 cents each" but now requested release from the contract on the grounds that performance would cause him a significant loss. The company judged his goodwill important and renegotiated the contract to allow him a gradually escalating price starting at 24 cents per tie.

Victor Morawetz was a far-sighted businessman, and at this juncture he made a critically important suggestion to Ripley, that it was not enough to control the rail line through Kirby's territory but that there should also be some degree of control over the timber itself. The problem was that if his relationship with the A.T.&S.F. were terminated, Kirby could simply route his commercial lumber traffic along the Santa Fe to the nearest junction point with another rail company, and then along the lines of that company to its destination for sale to another purchaser. In October of 1901 Morawetz suggested that as insurance against the loss of the Kirby relationship, the Railway company should purchase a large tract of standing timber close to

¹⁰Letter, Ripley to Morawetz, 10-02-01 K.S.H.S.

¹¹Ties for New Mexico and points west would be provided by another supplier, the Santa Barbara Pole & Tie Company. This wholly owned Santa Fe subsidiary corporation logged pine timber from what is now the Carson National Forest, Taos County, New Mexico, beginning in 1907. Ties were sawn in the high mountains near Tres Ritos and flumed down to the Rio Pueblo, ultimately reaching a point near Albuquerque. Glenn D. Bradley, *The Story of the Santa Fe*, Omni Publications, Palmdale, Calif., 1995 (reprint of 1920 edition) p. 359; See "Santa Barbara Tie and Pole in the Sangre de Cristos," Report to Ms. Patricia Corral, District Archeologist, Camino Real Ranger District, Carson National Forest, March 1998, (unpublished manuscript), George E. Graham, Western Oklahoma State College.

its lines.¹² Seventy three years later, a brief two paragraph article in the Wall Street Journal would report that the Santa Fe had finally acquired complete control of Kirby Lumber Company. Very few businessmen are sufficiently astute to make a decision which will protect the interests of their stockholders seven decades later, but Morawetz was a brilliant man. Ripley knew it, and he moved on the suggestion within months. He and Morawetz exchanged their thoughts and carefully made plans for the future. A few days after first proposing the idea, Morawetz commented further to Ripley:

"It is, of course, exceedingly important to us that we should tie the lumber business of the Kirby Lumber Company to our road as much as possible. If this business should prove very profitable there is danger that other roads may seek to share in it. Besides, there is the risk that if the Southern Pacific people should be willing to furnish money for the establishment of saw-mills provided they be established on the Southern Pacific line, Mr. Kirby might find it necessary to accept the money on these terms."¹³

For the next thirty years the Santa Fe went to great lengths to fund Kirby's business operations, to a degree far exceeding that for any other shipper on the system, which by the early 20th Century comprised some 10,000 miles of track in 12 states. It took this action because Kirby Lumber Company rapidly became its largest revenue generating customer, and also supplied at a discounted rate the railroad ties needed for expansion and maintenance of the Santa Fe's lines between Texas, Kansas and Chicago. The railroad's directorate thought carefully about its side of the relationship, and the fact that it was like none other among company customers. There were debates back and forth between the New York and Chicago office whenever Kirby asked for more money to construct new sawmills or to capitalize his operations, as well as many consultations with timber experts about the remaining life of the timber reserves and their increasing value.

Kirby did not long remain satisfied with the relatively small scope of the timber operations funded by the Boston investor group. Within months after the closing of the sale of their rail line to the Santa Fe, he would embark on a much more expansive scheme. In April of 1901 he was introduced to New York attorney Patrick Calhoun, a somewhat controversial man of wealth, having southern roots and entranced with visions of fortune in the Texas oilfields. The Spindletop gusher had come in near Beaumont in January of that year and the nation's eyes were suddenly focused on the area's oil production prospects. Kirby proposed to Calhoun the formation of an oil company to acquire lands in East Texas, north of Beaumont, and a timber company to log the land. The two men crafted a plan that, acting as promoters, they would seek buyers for corporate stock to capitalize the oil company (Houston Oil Company of Texas) with \$30 million and the lumber company (Kirby Lumber Company) with \$10 million. They signed a "Promoters' Agreement" on April 20th which was somewhat vague, and shortly would lead to bitter litigation.

The promotion agreement required Kirby to do three things:

¹²Letter, Morawetz to Ripley, October 26, 1901, K.S.H.S.

¹³Letter, Morawetz to Ripley, 11-01-01, K.S.H.S.

- (1) furnish \$2.5 million in cash for operating capital for the lumber company by purchasing that amount of its stock;
- (2) have the lumber company contract to purchase timber from the oil company lands for an amount aggregating \$38.5 million over twenty years; and
- (3) convey to the oil company certain timber land and land purchase options he had secured, including fee holdings of 438,856 acres (subject to mortgage payments outstanding) and options on an additional 620,134 acres.¹⁴

The companies were created legally as Texas corporations in the summer of 1901 according to the plan. But it would soon become clear that that Kirby could not fully perform any of the commitments he made in the promotion agreement. The scheme was yet another example of his "usual slap dash fashion" of organization. It became immediately apparent that he did not have \$2.5 million in cash. In truth, he had practically no cash, a small troublesome detail. Further, as would emerge later, the timber payment rate he agreed to was above market for the time, and the quantity to be cut was far above milling capacity for the area. Kirby knew, of course, that he did not have the requisite \$2.5 million, and there was only one entity that might lend an individual in his position such a sum - the Santa Fe railroad. He approached the company in the summer of 1901 about a \$2 million loan for the purpose of purchasing stock in the lumber company. Some of the directors favored the idea for the purpose of building the timber traffic, and others opposed it on general principles that the company was not ordinarily in the business of lending money to outsiders. By October, the board made a decision that the company would not lend Kirby the funds he sought, and various of its members whom he contacted individually made the same decision.¹⁵

Kirby and Calhoun commenced operation using funds and timber land contributions from stock sold to other less discriminating investors, including the Silsbee group in Boston, which subscribed for just over \$1 million in stock.¹⁶ A portion of the cash raised by these sales was used to purchase 14 sawmills for the lumber company. These plants needed costly improvements to handle the required footage of timber, including such features as electric lighting to enable working a double shift and the installation of newer more sophisticated sawblade equipment. For this cash, Kirby resolved to again press his friends at the Santa Fe once again. The A.T.&S.F. assented to this new request in November of 1901, making its first loan to the lumber company in the amount of \$500,000 to fund the improvement and construction of sawmills along the lender's newly purchased and built lines through the area.¹⁷ Kirby clearly lacked the capital to improve the mills, and the railroad wanted the transportation revenue which would result. The loan agreement provided that the output of the mills would travel preferentially along the Santa Fe line insofar as possible in reaching its ultimate destination, but that the carrier would charge no higher tariff than would be charged by any competitor. The A.T.&S.F. actually had little latitude in this regard as tariffs were then heavily regulated according to distance and commodity by the

¹⁴ King, *Ibid.*, pp. 19-21.

¹⁵ Letters, Morawetz to Ripley, 9-30-01, Ripley to Morawetz, 10-02-01 and Morawetz to Ripley, 10-26-01 ("...some of the directors looked upon the transaction with disfavor.") K.S.H.S.

¹⁶ King, *Ibid.*, p. 39.

¹⁷ Coded telegram, Santa Fe Comptroller David Gallup to Ripley, Nov. 06, 1901, K.S.H.S.

various state regulatory agencies and the Interstate Commerce Commission. One might imagine that a national railroad corporation of the early 1900s would have greater bargaining power than any one individual, particularly one it was assisting financially, yet this would not prove the case.

The balance of power in the relationship would prove to be slightly in Kirby's favor, a pattern which developed early. The railroad's general purchasing agent complained shortly to its Comptroller that "Mr. Kirby has been very technical in his construction of the [tie supply] contract with us" and proposed to "push him to the fullest extent possible under our contract." Within the week, reply was had from Counsel Morawetz that Kirby was not to be pressed, commenting "it is very desirable that we should remain upon friendly terms with him, and I think it would be unwise to push him to such an extent as to create ill-will on his part...it may be that he is not yet able to do all that he undertook...to put pressure on him would only cause irritation."¹⁸ Kirby held some leverage because the Railroad Commission of Texas protected all Texas shippers, requiring common carriers to provide equal access and equal tariffs to all under the state regulatory statutes. He could choose to route his shipments to the north over routes other than the Santa Fe if he wanted to, but for the agreement otherwise between the two. Yet Kirby would have been reluctant to pull that lever, because a complaint to the Commission might have led to a public airing of the traffic arrangement. The Santa Fe was under a statutory duty to provide service on an equal basis to all shippers, and an investigation might have revealed that Kirby was given preferential treatment in car supply, with the reasons therefor. Neither Kirby nor the Santa Fe would have cared to see this arrangement made public at the time. Arguably, it was illegal for a railroad to discriminate between shippers in the supply of cars. Practically any business tends to favor its regular large customers, but most transportation businesses do not lend money to their customers. In addition to these dynamics, the railroad was mindful that its friends in Boston had more than \$1 million invested in Kirby's endeavor.

Kirby's first payment to the oil company under the timber contract was due January 10, 1902, in the amount of \$525,000. Logging operations had just commenced, however, and they could not generate the funds necessary to cover this payment. Kirby and Calhoun scrambled to borrow personally the funds necessary to make the payment, and only succeeded in doing so several weeks late.¹⁹ But the immediate future looked grim, because the mills which Kirby had purchased could cut only about half as much lumber as required under the timber contract in the year ending July 1902. Even with the loan from the Santa Fe Kirby lacked the funds necessary to double the capacity of the mills. The company was starved both for infrastructure and for operating capital.

Kirby and Calhoun had supposed as an element of their promotional scheme that the owners of options on the timber lands sought for the endeavor might accept corporate stock as payment for the lands, but this proved not to be the case - the sellers wanted cash. In the fall of 1901, the promoters came up with an alternative plan whereby the oil company would market timber certificates, being denominated in shares of \$1000 each and actually representing a

¹⁸Letter, W. E. Hodges to David Gallup, March 27, 1902, Reply, (to forwarded copy), Morawetz to Gallup, March 29, 1902. K.S.H.S. The town of Gallup, New Mexico, on the Santa Fe's main line west to California, is named for David Gallup.

¹⁹ King, *Ibid.*, p. 63.

beneficial interest in the logging contract payments by the lumber company. The Maryland Trust Company of Baltimore was enlisted to serve as trustee for the certificates, which were to be marketed by the Wall Street banking firm of Brown Brothers & Co. Santa Fe President Ripley, at Kirby's request, wrote a letter of endorsement to this firm, asserting that Kirby "will carry out honestly whatever he undertakes to do."²⁰ Brown Brothers sent their own timber expert to Texas to make a lumber reserve report. He agreed with prior experts that the 1.1 million acres of lands covered by Kirby's offer to the oil company contained over eight billion board feet of lumber, but added one important qualification. He found that the lands covered by the so-called "Kountze option" contained perhaps 20 per cent of the total. Because it seemed that Kirby might not be able to secure the purchase of that acreage, and thus lack sufficient standing timber to adequately collateralize the obligation, Brown Brothers was only willing to market six million dollars of the proposed ten million dollar issue desired by the promoters.²¹ By March 1902 that amount was sold as follows:²²

Brown Brothers	\$2 million	(New York)
Simon Borg & Co.	\$1 million	(New York)
J. S. Bache & Co.	\$500,000	(Philadelphia)
Boston Investors	\$500,000	
St. Louis Investors	\$500,000	
F. S. Smithers & Co.	\$300,000	(London)
Others	Remainder	

The Boston investors were Silsbee et al., but the Santa Fe as a company did not participate in the transaction. The degree to which A.T.&S.F. directors may individually have invested in these certificates is unknown, but if any did so that fact may explain the company's lenient attitude with Kirby in the following years of tribulation. This leniency is also understandable in view of the fact that Nathaniel Silsbee was named to the board of directors of the oil company, in recognition of the timber lands which the Boston investor group contributed to the effort.²³

The company used the funds raised by the certificate sale to exercise options to purchase timber lands as scheduled, but their amount did not leave enough cash to purchase the Kountze lands, which were priced at about two million dollars). Kirby wrote Calhoun about that option: "I tell you now that it will be nothing less than a frightful calamity to you and me as owners of the Kirby Lumber Company to let that property get away from us...our enterprise will be almost a failure unless we carry it out as planned." You and I personally will be worth \$10,000,000 less with the Kountze tract lost to us rather than we are with the Kountze timber in our hands."²⁴ Future events would prove Kirby remarkably prescient in this projection, though it likely was

²⁰Letter, Ripley to John Crosby Brown, Sept. 18, 1901, King, *Ibid.*, p. 46,

²¹Prospectus for Sale of Certificates, Brown Brothers & Co., New York Jan. 2, 1902, K.S.H.S.

²²King, *Ibid.*, p. 49.

²³ King, *Ibid.*, p. 30.

²⁴Letter, Kirby to Patrick Calhoun, Dec. 3, 1901. King, *Ibid.*, p. 59.

deemed puffery by some at the time it was made.²⁵ The option, due for exercise in February of 1902, was extended to July 1902 by payment of \$130,000 in cash and \$500,000 in timber certificates to the Kountze interests.²⁶ However, in July the group was no more able to afford the purchase, and the option terminated.

In the meantime, the deadline for Kirby's repayment of the \$500,000 loan from the Santa Fe for sawmill improvements was fast approaching, and Kirby requested an extension. Morawetz advised Kirby that the request would not be well-received by the company's directorate (some of which had opposed the loan to begin with) and suggested that the better course of action would be to pay off the existing note and request a new one. Kirby accepted this advice and handled the transaction in such manner.²⁷ Through the spring of 1902 company officials mulled over Morawetz's suggestion that a large tract of timber be acquired in order to gain greater control over the future of the timber traffic in the area surrounding its new line, and also more firmly tie Kirby's interests to the company. By now it was apparent that Kirby lacked the capital to close the sale on the Kountze lands option he was holding. That option covered 189,000 acres located primarily in Angelina, Hardin, Jasper, San Augustine and Tyler counties, offered for sale by Augustus F. Kountze of New York at a price of \$2 million. The appraisal firm working for the Santa Fe estimated that the acreage contained about one billion board feet, and that the investment would be safe for that reason. Ripley reported to Morawetz that the appraisers had added orally the observation that these lands were "peculiarly necessary to the Kirby Lumber Company by reason of their location in the midst of the other holdings of that company and that [it] could under no circumstances afford to have them in other hands." In the same letter, Ripley spoke of the need to have a "very firm grip" on Kirby's company, and also stated concerns about Kirby's approach to the conduct of his business:

"He needs a strong man from the north as his general manager. At present there is too much nepotism. He has surrounded himself with relatives and friends, of fair general character and ability perhaps but not experts in the lumber business."²⁸

(Emphasis in the original). In the coming years Kirby would prove particularly intractable regarding personnel decisions recommended by his northern investors.

After Kirby's option ended, the Santa Fe's executive committee decided to proceed with purchase of the Kountze acreage, one member dissenting, and then to give Kirby a new five year option to purchase the lands. It conditioned this option on Kirby's punctual fulfillment of the tie supply contract, and to this Kirby objected within days. He wrote a long letter to Ripley expressing a fear of losing the option in the event of a "technical non-compliance" with the requirements of the tie contract and concluding that "it would be positively unfair to me to make

²⁵Standing timber worth \$2.00 per thousand board feet in 1902 would by 1916 be selling for \$10.00 per thousand board feet, an increase of 500 per cent in 14 years. 1 billion board feet worth \$2 million in 1902 would be worth \$10 million in 1916. The annualized rate of return for this period was about 35%, representing an astonishing increase.

²⁶John O. King, p. 60.

²⁷Telegram Kirby to Morawetz, April 29, 1902, K.S.H.S.

²⁸Appraisal report, J. D. Lacey & Co. to Ripley, July 5, 1902; Letter (transmitting same), Ripley to Morawetz, July 9, 1902. (emphasis original) K.S.H.S.

me dependent upon such a detail." Kirby realized that there were some within the A.T.&S.F. who did not favor its course of support for him, and he feared his fate if it were in their hands:

"I have confidence that as long as you live I can get absolutely fair treatment under this tie contract by appealing to you, but we have no guarantee that you will live and in the event of your death I don't believe I would be protected, and for that reason I urge you not to make this valuable right of mine to repurchase the Kountze lands hang by so slender a thread."²⁹

Ripley answered that the object of purchasing the Kountze lands was to help Kirby fulfill his tie contract and that the railroad had not dealt harshly with him in the past and did not expect to do so in the future so long as Kirby was willing to honor the spirit of the agreement. He commented that "some of us, including myself, have felt that you might perhaps lack the ability unless we helped you." Ripley noted that Kirby had not been able to supply as many sawed ties as committed for the year to date for lack of adequate mill capacity, and added that the Santa Fe was concerned that when Kirby did have his new mills built, he would be constantly tempted to use them for the manufacture of commercial lumber, which would be more profitable for him than sawing railroad ties at the agreed price. For this reason, Ripley commented that the company thought it best to link Kirby's option right to performance of the tie contract and asserted that "you cannot blame us for insisting upon it."³⁰ With this assurance, Kirby agreed to a linkage provision in the contract assigning to him a right to the A.T.&S.F. Kountze option. The contract also required that shipment of lumber produced from these lands be along the Santa Fe lines at competitive rates, and that Kirby's sawmill capacity be upgraded to 500,000 board feet per ten hour day by September 1, 1903.³¹ A new company, the Southwestern Lumber Company of New Jersey, was chartered to hold the timber assets for the railroad, and the local administration of these lands was entrusted to Galveston attorney J. W. Terry, whose firm represented the road's other Texas interests. The option given to Kirby on the Kountze lands was due on January 1, 1907. It required him to pay \$50,000 twice a year until that time, together with payments of \$250,000 at the beginning of 1904 and 1905, these reducing the balance due to \$1.55 million. During the intervening time, he was allowed to cut timber on the properties, paying the Santa Fe beginning at a rate of \$3.50 a thousand board feet in the first year and rising to a rate of \$5.00 per thousand board foot in the final year.

The fall of 1902 found Kirby approaching the due date for repayment of his \$500,000 loan from the A.T.&S.F., and in October he transmitted to Counsel Morawetz a lengthy report on the progress of construction and expansion of his mills. This effort had consumed his capital and motivated yet another request for extension of the loan. He proposed to pay half of the amount due and roll over the remainder for another six months. In support of this proposal, he reported on the construction of new mills at Buna in Jasper County, Bronson in Sabine County, and two unnamed points near Jasper; and on the expansion of his mills at Call, Roganville, Kirbyville,

²⁹Letter, Kirby to Ripley, July 10, 1902. K.S.H.S.

³⁰Letter, Ripley to Kirby, July 12, 1902. K.S.H.S.

³¹Option Agreement, July 18, 1902. Kirby was given the choice of constructing new wells or expanding the capacity of his mills at Call, Kirbyville and Rogansville. K.S.H.S.

Silsbee, Lillard and Menard. The railroad approved his request.³² Ripley commented to Morawetz at the time that he judged Kirby was "having a hard time so far as available cash goes." Kirby obliquely blamed the Santa Fe for his problems, asserting that it was not supplying him with adequate railroad cars to move his lumber. Ripley wondered in a letter to Kirby whether the latter simply could not sell the commercial timber as fast as he was manufacturing it. Kirby submitted a quite detailed reply providing statistics on loads offered for shipment but not pulled out of the yards, the suggested problem being not so much a shortage of railcars as locomotives to pull them. Only 1176 cars were shipped out in November, while Kirby asserted he could have shipped 2200 but for the lack of capacity. Morawetz concluded that Kirby had just grounds for complaint and urged that additional equipment be supplied to handle the traffic so as to enable Kirby's success. The records of the Railroad Commission of Texas for this decade are replete with complaints by shippers that the railroads serving them were unable to offer sufficient equipment when called on for service. The nation's economy of the country was expanding more rapidly than the railroads had anticipated, and the shortage of rail freight capacity was felt across the country, in the southwest particularly during times of cotton and grain harvests. The problem was referred to at the time as a "car famine," and Ripley reminded Kirby that it was a nationwide shortage being suffered by other prominent railroads. Internal company correspondence regarding the complaint indicates that the Santa Fe made special efforts to take care of Kirby's transportation needs above those of other customers because of the business relationship between them, and the fact that the traffic was so profitable. This is the sort of preferential treatment which the state regulatory commissions considered problematic, in an era when common carriers were required to offer nondiscriminatory service.

In December Kirby wrote to Ripley that he was "somewhat handicapped for cash" and had resolved to seek an operating loan of \$1.25 million. He said that Brown Brothers & Co. had suggested to him that he make inquiry of the Santa Fe and the Southern Pacific proposing that each company take \$250,000 of the loan, having in mind that this would motivate the companies to provide him with better rail service. In his letter he stated that his company had \$700,000 worth of cut lumber on hand which it was unable to move to market on account of the overcrowded conditions of the railroad. Ripley replied in a letter of great length, suggesting that Kirby could hardly expect to market the cut of a year in one or two months, and that with passage of the harvest season the car shortage would soon ease considerably. Regarding participation in the loan, he stated "We have never gone to the financial aid of any shipper on our line except yourself, and it is questionable how far we have a moral right to use our funds (raised for other purposes) in that direction."³³ Telegraphing Ripley about Kirby's car shortage complaint, Morawetz suggested that it was presented purely for the purpose of pressuring the company to extend additional financial support. Morawetz informed Kirby that the Santa Fe would not participate in the loan which Brown Brothers was seeking to syndicate. Ripley replied to Morawetz the following week:

"I am very glad that Brown Brothers have in a way taken Kirby's affairs into their own hands. His sudden elevation to a position of large responsibilities, and his dealing with large money figures, has rather turned his head. He has surrounded

³²Letter, Kirby to Morawetz, 10-14-02, Reply telegram Morawetz to Kirby, 10-24-02. K.S.H.S.

³³Letter, Kirby to Ripley, Dec. 15, 1902. Reply, Ripley to Kirby, Dec. 17, 1902. K.S.H.S.

himself with his relatives and dependents at high salaries - has spent his money lavishly - has had, and perhaps still has, political ambitions - and is altogether spreading to such an extent that he needed the pressure of a heavy hand. I hope Brown Brothers will hold him down. He is a man of ability and I think he means well, but he has not experience in big things and his rapid rise would turn a stronger head than his."³⁴

Kirby did not obtain a loan from Brown Brothers, finding its terms too harsh. Instead, in February of 1903 he raised \$2.65 million by selling 26.5 per cent of the corporate stock of Kirby Lumber Company (out of \$10 million in stock authorized) to the St. Louis & San Francisco Railroad, commonly known as "the Frisco."³⁵ This development was a source of concern to the Santa Fe, which feared that the Frisco was trying to horn in on its timber traffic. Other aspects of the transaction, kept private between the parties at the time, would later surface and greatly magnify the concern. The Santa Fe controlled 30 per cent of the Kirby Lumber Company stock, this stock having been pledged as collateral for the \$250,000 loan given earlier and for the Kountze lands option. Kirby declined to identify the holders of the remaining 40 per cent of his company's stock, and the Santa Fe realized that his individual control of the timber company was at risk. Ripley made investigation and found that the Rock Island Railroad had also considered the possibility of buying a stake in Kirby's company in an effort to secure the timber traffic; however, in consultation with lumberman Fred Weyerhauser of St. Paul, it had been discouraged from proceeding. Weyerhauser's analysis of the situation was that an investment would be premature, that Kirby was bound to fail in his efforts because he had agreed to pay royalties on standing timber ("stumpage fees") to the owners for the privilege of cutting timber which were too high, for instance at a rate of \$3.50 per thousand board feet to the Santa Fe for timber cut off of the Kountze lands in this year. Ripley believed that Weyerhauser was right, but suggested there was no cause for uneasiness, since the railroad controlled the Kountze lands and the rail lines leading to all of Kirby's mills, such that whomever succeeded him would have to deal with it.³⁶ Morawetz conferred with Frisco President B. F. Yoakum, who said frankly that his company was determined to have some control over important sources of traffic and had purchased 300,000 acres of timberland in Louisiana in addition to an interest in the Kirby Lumber Company. The Santa Fe would shortly respond by construction of a new branch line east from Kirbyville in Louisiana. Morawetz, in a letter to Ripley, judged it likely that the Kirby Lumber Company would suffer bankruptcy and reorganization within two to three years.³⁷

In April Kirby conveyed to the lumber company for the sum of \$625,000 his personal rights in the Kountze lands option from the Santa Fe. In the same month, he requested a six month extension of his \$250,000 loan from the railroad, stating his thought that "my loyalty to your interest and the degree of success (in) my efforts to build up your traffic...entitle me to look to you for support."³⁸ Kirby's loyalty was by now somewhat divided, yet he could not very well be criticized for that since he had approached the Santa Fe for participation in a loan syndicate to

³⁴Letter, Ripley to Morawetz, Dec. 23, 1902. K.S.H.S.

³⁵Letters, Gallup to W. B. Jansen, Feb. 11, 1903 and Feb. 28, 1903. K.S.H.S.

³⁶Letter, Ripley to Morawetz, 2-12-03 K.S.H.S.

³⁷Letter, Morawetz to Ripley, Feb. 16, 1903. K.S.H.S.

³⁸Letters, Kirby to Gallup, April 16, 1903, Kirby to Morawetz, April 25, 1903. K.S.H.S.

give him the operating capital he needed, and had been rebuffed. At this point, Morawetz requested Ripley to make an investigation as to just how profitable the east Texas lumber business was to the A.T.&S.F.. Ripley ordered his staff to give him a report, which indicated that Kirby was tendering about 1000 cars a month of commercial traffic (*i.e.*, traffic to outside markets, not including ties being supplied to the railroad itself) about 60 per cent of which was destined to points in Oklahoma, the Indian Territory and Kansas. The average profit on the commercial lumber traffic was about \$80/car, yielding a total of about \$80,000 a month on this traffic at its then current levels.³⁹ Morawetz replied that he had been contacted again by a representative of the Frisco line, which was "looking with longing eyes on this business and expect to get a share of it." Morawetz had answered (in a manner perhaps purposefully misleading to a competitor) that the business was only profitable to the extent that the company was able to fill empty cars going north (these cars returning after having delivered crops from the north to Galveston for onward ocean transport).⁴⁰ Morawetz adopted this tactic because the Frisco had no line to a Texas port from the mid-west, so had no ready supply of empty boxcars on hand to supply the needs of east Texas timber shippers, and would have to send the cars specially for the traffic if it were to build to that point. Such considerations were critical during a time of nationwide rail car shortages - any time a company could fill a car with what was (and still is) known in the shipping trades as a "backhaul," *i.e.*, fill a car both going and coming along a particular route, its efficiency and therefore profitability was dramatically increased. He asked Ripley if his analysis of the backhaul profitability was correct, supposing that, if so, it might pay to let competing railroads have such share of the timber traffic as exceeded the Santa Fe's backhaul needs if they would supply the necessary cars. Ripley answered that Morawetz's analysis was not correct, commenting that "we want all of this business we can get even if we have to send empty cars for it from Kansas - in fact, we are sending empties now, the grain prices at Chicago and Minneapolis being so high that nothing can be exported via Galveston."⁴¹ He further commented that he had no doubt that the St. Louis interests had hopes of controlling the Kirby Lumber Company, probably through a foreclosure that would eliminate Kirby from the management, but that it would be difficult for them to dislodge the Santa Fe from its controlling position in the East Texas timber transportation market because of its trackage to the mills and the rail connections it offered to midwestern markets.

Ripley was almost certain that Kirby would be unable to pay the \$250,000 due on the Kountze lands option in a few months, and was expecting to hear soon a request for relief. In mid-August Kirby presented Ripley with a detailed statement of the financial affairs of the lumber company, which he stated was in need of recapitalization as operating funds were severely depleted. He blamed the problem on his inability to mill timber from the oil company lands for which he had already paid \$1.25 million. He was engaged in significant efforts to construct additional mill capacity, but it had not come on line as fast as he had hoped. Without identifying them by name, he made reference to "certain parties in New York...[with] plans of dethroning the Kirby Lumber Company," which he asserted he had foiled for the time being by making a timber payment in July which they had expected him to miss.⁴² The unnamed parties

³⁹Letter, Ripley to Morawetz, 8-04-03. K.S.H.S.

⁴⁰Letter, Morawetz to Ripley, 08-07-03 K.S.H.S. (emphasis original).

⁴¹Letter, Ripley to Morawetz, 08-10-03 K.S.H.S.

⁴²Letters (two bearing same date), Kirby to Ripley, August 14, 1903. K.S.H.S.

were Brown Brothers & Co. and Patrick Calhoun. Kirby proposed a complex scheme of reorganization.

Kirby actually did not make the July 1903 timber payment to the oil company in full - he paid the interest but not the principal then due. It had been apparent for some months that he would be unable to make the full payment, since he was not milling lumber at the requisite rate. But rather than declare a default the Maryland Trust Company consented on behalf of the beneficiaries to a deferral of the principal payment.⁴³ By this time, however, the Trust Company, Brown Bros. and Calhoun were losing patience with Kirby. His showing of board footage cut for the year ending July 1903 would be no better than that for the prior year, still representing only about one-half of the level required to meet the obligations of the timber contract.⁴⁴ In March he resisted a request by Brown Bros. to accept an accountant from its New York office as an auditor on the lumber company staff, and in the same month he fired his milling department manager, who had formed a close working relationship with Brown Brothers by virtue of almost daily correspondence with them. Apparently the relationship was too close, in Kirby's mind.⁴⁵ Brown Bros. made similar criticism of other personnel decisions made by Kirby that spring, all of which brushed off by him.

Ripley forwarded Kirby's letters regarding the prospect of reorganization to Morawetz with a memorandum summarizing his perspective on the current state of the timber business in eastern Texas and Louisiana. He noted that the three railway companies with lines through the heaviest remaining stands of pine timber in this area were the Santa Fe, the Kansas City Southern (KCS) and the Texas Pacific, observing that all of the choice timber tributary to the routes of the Iron Mountain, the Cotton Belt, the Frisco and the Southern Pacific company lines had already been cut out. He reported a "pernicious practice" by the KCS and Texas Pacific of paying the owners of the tram railroads delivering lumber to trackside a fee ranging from two to five cents per pound as a division for the cost of delivery along the tram. Kirby was asserting he ought to receive the same sorts of divisions on traffic revenue, and Ripley considered this request to be justified, particularly to hold the traffic. The cost would be between \$5.00 and \$15.00 per car of lumber, and if it would bind Kirby further to the Santa Fe and help sustain his financial viability, all the better.⁴⁶ The rails of these tram roads were laid right on top of the ground without ballast as temporary spurs out from the main lines into the timberlands. They utilized smaller rails and light equipment to cover the forest in an intricate web of steel which would be removed after logging of the area was completed. At times it was necessary to build a substantial bridge for these lines, and at least one of them still stands, stretching across Little Pine Island Bayou within the Big Thicket National Preserve in Hardin County. One who looks closely observes that part of the substructure of this bridge is made from the old tram-sized rails, much thinner than those used by any modern railroads. Kirby would ultimately be allocated revenue for delivery of lumber along his tram rails to the Santa Fe's main line.

⁴³King, *Ibid.*, p. 72-74. The stockholders of the Houston Oil Company were required to consent to deferral of a dividend payment, which they did. Nathaniel Silsbee's faith in John Henry Kirby must have been wavering by this time.

⁴⁴King, *Ibid.*, p. 70.

⁴⁵King, *Ibid.*, p. 69.

⁴⁶Letter, Ripley to Morawetz, 8-24-03 K.S.H.S.

Kirby headed for New York to discuss the recapitalization matter with General Counsel Morawetz, but found the Santa Fe unwilling to infuse the substantial funds necessary to keep his lumber company afloat. A.T.&S.F. officials privately considered that a receivership for the company was inevitable. Kirby requested and received an extension of his \$250,000 note payment, but this was not enough to forestall financial failure. He remained in New York City throughout the fall trying to raise capital, but by mid-November conceded to Morawetz that he was at the end of his rope. He asked for a blessing from the Santa Fe to approach the Frisco with a request for a \$600,000 loan, and Morawetz replied that the collateral terms offered by that company were suicidal and would at most delay the bankruptcy of Kirby's company by perhaps six weeks, thereafter throwing control into the hands of the Frisco. He urged Kirby instead to file for bankruptcy immediately. Kirby calculated that he needed between \$1.5 million and \$2 million to remain in business but found the Santa Fe wholly unwilling to provide it. One reason for the railroad board's reluctance to advance further funding was a perception that Kirby was not fully disclosing his financial situation and prospects, and did not have competent people in charge of the Texas end of the business. Had he adopted their management suggestions and been more forthright with the board, and less inclined to try to play the Frisco control card against them, he might have been more successful in his efforts at this point. Morawetz commented to Ripley:

"I have no faith in Mr. Kirby's ability as a financier and I should not feel confident that his statements to us would present the whole situation fully and frankly so that we should be in a position to judge for ourselves whether his company can pull through if it gets the advances which he now says would be sufficient. Moreover, our directors have so little faith in Mr. Kirby that I should not care to propose to them to put more Atchison money at risk in this lumber business. I feel myself that nothing Mr. Kirby may say will give me sufficient confidence in the facts to warrant our advancing any more money."⁴⁷

In desperation, Kirby accepted the loan proposition made by the Frisco, which in mid-December announced it would build a new main line from Houston northeast to a point in Newton county, tapping and incorporating Kirby's tram lines.⁴⁸ This was to be an extension of a line originating at Brownsville and running up the Texas coast to Houston. The arrangement amounted to a direct assault on the Santa Fe's timber traffic, but both Kirby and F. B. Yoakum, president of the Frisco, asserted to Morawetz that the new arrangement would honor previous contracts with the Santa Fe as to lumber produced from existing mills. The traffic from new mills would, however, flow to the Frisco. Morawetz pressed Kirby for specifics and found, as suspected, that Kirby had withheld financial details of the earlier transactions with the Frisco, which arrangements had enabled it to threaten him with foreclosure unless he should pursue a closer relationship between the two of them.⁴⁹ Morawetz doubted that Kirby would make the payment that was due shortly to retain his purchase option in the Kountze lands, and thought it best that the company not offer him any flexibility in that regard. Ripley was of the same mind, stating in a letter crossing in the

⁴⁷Letter, Morawetz to Ripley, 11-20-03. K.S.H.S.

⁴⁸Article, Houston Post, December 11, 1903.

⁴⁹Letter, Morawetz to Ripley, 12-16-03. K.S.H.S.

mail that he considered the Frisco contract to be "a direct menace to our interests" and concluding that "we must take the pound of flesh now" in declaring the Kountze lands option terminated as of Jan. 1, 1904 upon nonpayment of the option fee due on that date.⁵⁰ Ripley commented further a few days later that the Frisco arrangement would deprive the Santa Fe of much of what it had counted on for the future, and that it was "a little galling to have our plans upset...and...not pleasant to feel that so large an institution as ours is must remain quiescent under such an attack."⁵¹ He and Morawetz consoled themselves with the thought that ownership of the Kountze lands would secure at least that degree of timber traffic for the Santa Fe, and that the Frisco's plans also might fail for want of funds. On January 5, 1904, Kirby was served by hand with a notice from the Santa Fe that his option on the Kountze lands had terminated, and that he was no longer authorized to cut timber on that acreage.⁵²

Kirby would soon have far larger problems to contend with. On the morning of December 11th, the bankers at Brown Brothers had opened up their morning editions of the New York Times and read a long story on the new loan transaction between Kirby and the Frisco. The article stated that the deal would include sale to the Frisco of all of the tram railroads operated by the lumber company, aggregating some 150 miles in length, and the company's Beaumont terminal facilities. The problem was that these facilities were all pledged as collateral for other financing obtained earlier by Kirby. The Maryland Trust Company immediately sent Kirby a letter demanding an explanation, but there was no reply. What could be said? Kirby had reached the end of his rope. On January 10, 1904, another timber contract payment was due to the oil company but missed, and on this note the Maryland Trust Company filed suit in Federal District Court in Houston on January 28th asking that both the oil company and the lumber company be placed in receivership.⁵³

Morawetz had predicted that the infusion of \$600,000 in cash from the Frisco would forestall this event by only six weeks. He missed the mark by only four days. The receivership and resulting litigation would last for four years. During the 12 months prior to Kirby's failure, the Santa Fe moved about 10,000 carloads of his commercial timber traffic out of East Texas, and having seen the fruits of its vision, the company would take all steps possible in the coming court battles to retain as much of the traffic as possible.⁵⁴ Of first immediacy to the Santa Fe for the protection of its stockholders was to file a claim against the receivers for the \$250,000 loan, as well as for payment due on some 12.3 million board feet of lumber cut from the Kountze lands in 1903, but for which Kirby had not paid. In essence, he had been "borrowing" money from the Santa Fe by cutting about one per cent of the standing timber on these lands without payment, the sum owed being about \$43,162. These claims together amounted to about ten per cent of the total debt calculated by the receivers.

⁵⁰Letter, Ripley to Morawetz, 12-16-03. K.S.H.S.

⁵¹Letter, Ripley to Morawetz, 12-23-03. K.S.H.S.

⁵²Letter, Gallup to Kirby, 1-05-04. K.S.H.S. Delivery of this notice was deemed sufficiently important that a notary public was charged with witnessing a statement that it was handed to Kirby at 4:45 p.m. The delivery could not have been any surprise to the recipient.

⁵³King, *Ibid.*, p. 77, letter, Morawetz to Ripley, Feb. 2, 1904. K.S.H.S.

⁵⁴Letter, Ripley to Morawetz, 2-04-04. K.S.H.S.

Kirby was soon assailed by even more pressing problems. On March 25th another suit was filed against him in the Houston Federal District Court by certain stockholders of the lumber company asserting fraud and mismanagement. The petition included an assertion that Kirby had colluded with President F. B. Yoakum of the Frisco in a scheme to set up a secret holding company called the Kirby Investment Corporation with a control over a majority of the shares of the lumber company under terms advantageous to the Frisco.⁵⁵ Kirby had not disclosed this arrangement to the Santa Fe, but Morawetz had sensed at the time that he was withholding information.

Kirby filed a countersuit, alleging that the timber contract was far in excess of market values and that the oil company had failed to provide lands containing eight billion board feet of timber, as originally proposed.⁵⁶ Both claims were true, but Kirby bore the responsibility for each and in addition had, through managerial weakness and the inability to provide his \$2.5 million share of the promised capital, been unable to cut timber fast enough to satisfy the requirements of the contract.

The Santa Fe inquired of some of Kirby's competitors for their analysis of the reasons behind Kirby's failure. The common perception was that Kirby had agreed to pay too much for standing timber, in an expectation that prices would continue to rise at the same rate seen at the turn of the century, and had then dumped such large quantities on the market in a desperate attempt to raise cash that the price of lumber nationwide had been depressed.⁵⁷ Kirby asserted in the litigation that the market price for standing timber in 1901 was \$1.50 per thousand board feet, whereas the price contracted to the Houston Oil Company at the time was \$3.00 per thousand board feet.⁵⁸ Yet who knew better than Kirby the market value of timber at the time he promoted the scheme, and why had he agreed to such a large price up front? He seems to have proposed it in what Ripley styled "his usual slap-dash fashion." Kirby's problem with the price and volume requirements of the oil company timber contract was exacerbated by the fact that he had to cover the carrying cost of his timber long in advance of harvest, because it like most other timber owners would not permit him to cut on credit and pay semi-annually after the fact only for what he had cut, as the Santa Fe did. Of course, the other owners did not enjoy the resulting rail traffic revenue from lumber shipments which might have inclined then toward such an accommodation.

The entire business scheme designed by Kirby and attorney Patrick Calhoun was poorly conceived. It would have been easy from the outset to peg the charge for standing timber to market values for finished lumber and the harvest amount required to mill capacity, focusing the capital expenditures more on mill construction than on timber acquisition. Kirby's eyes were bigger than his stomach. There was no purpose served in procuring eight billion board feet of standing timber subject to a contractual carrying charge of six per cent, when the mills could only cut two per cent of that lumber a year and it was questionable how much finished lumber the marketplace could quickly absorb.

⁵⁵Article, Houston Post, March 25, 1904.

⁵⁶King, *Ibid.*, p. 80.

⁵⁷Letter, Terry to Morawetz, 3-31-04. K.S.H.S.

⁵⁸King, *Ibid.*, p. 80.

In October Morawetz was approached privately by a Baltimore representative for the Calhoun interests, proposing a combination of efforts to eject Kirby from control and reorganize the company. The representative stated that the Baltimore stockholders were disgusted with Kirby and thought him to be willfully misleading the creditors. It was suggested that a combination of the Calhoun and Santa Fe interests would constitute a majority of the shareholders, and proposed that the Santa Fe have control over the affairs of the company. The railroad never seriously considered this proposition, even briefly. It was clear to its management that the company's interests would be better aligned with those having local control; a classic case of "the devil you know" being favored over unknown interests who would undoubtedly be inclined toward later liquidation by sale to the highest bidder, which would have no particular reason to favor the Santa Fe with its lumber shipments.

During the pendency of the receivership and related litigation, the Santa Fe continued to ship prodigious quantities of lumber out of East Texas, as the receivers were intent on maximizing cash flow. During the second half of 1904 and first quarter of 1905, the company shipped about 15,000 cars north, and projected some 20,000 carloads for all of 1905.⁵⁹ The company resolved to press ahead with earlier plans to build a new line east from Kirbyville to Oakdale, Louisiana, a distance of about 80 miles, in order to tap the pine forests of the Calcasieu parish area and forestall expansion by the Frisco into that territory.⁶⁰ Ripley projected that if the A.T.&S.F. could hold the business without effective competition, it would be the largest lumber carrying railroad in the country. He favored the purchase of timber holdings in Louisiana to help protect the company's interests along the new line, but the executive committee hesitated to take this step until the Kirby controversy was resolved. Morawetz thought there would be no resolution until the Santa Fe and the Frisco could come to terms on a division of the lumber traffic, the Frisco owning a fourth of the lumber company's stock as a result of its financing efforts prior to the receivership.⁶¹ However, he was in no particular hurry to see that resolution since in the meantime the traffic was going exclusively to the Santa Fe, and was so lucrative for it.

Yet the receivership could not continue indefinitely, and from time to time the A.T.&S.F. management was called upon to consider one prospect or another for settlement of the affair. Remarking on one of these, Ripley wrote Morawetz in January of 1906:

"This southern lumber furnished a million and a half dollars of our revenue last year and will furnish two and a quarter millions this year. You and I have often said that we could not expect to monopolize the lumber carrying business of the Texas and Louisiana pine belt, but if we can control the Kirby business we can snap our fingers at competition. It would not pay anybody to build into the territory, and while other roads would for some years find a supply around the edges of the belt and in outlying territory the cream of it would be ours until it is all cut off, which would take at least thirty years, and give us seventy-five millions of gross earnings. It is as important a subject as we were ever called

⁵⁹Letter, Ripley to Morawetz, April 26, 1905. K.S.H.S.

⁶⁰Keith L. Bryant, Jr., *History of the Atchison, Topeka & Santa Fe Railway*, MacMillan, New York, 1974, p. 189.

⁶¹Letter, Morawetz to Ripley, 9-28-05. K.S.H.S.

on to deal with, and it seems perfectly plain to me that if properly secured we would be justified in putting even ten millions into this timber..."⁶²

The company's original intention, to control its own destiny in terms of the resource base, was fully vindicated. Kirby approached Ripley and offered to sell the company more standing timber the following year, but the board declined to support Ripley in his desire to make the purchase. The stated reason was for fear that such an investment would represent a "departure from the proper purposes of the company" and for concern that there might be an assertion that one particular shipper was receiving unduly favorable treatment. Of course, the railroad had already significantly departed from its chartered purposes of pure transportation with the purchase of the Kountze lands, and greatly favored Kirby by supplying him with empty cars when others went begging. These rationales masked the truth in a face-saving way, which was that the executive committee was unhappy with the notably loose manner in which Kirby conducted his business. Ripley defended him on the eve of the vote: "I think you do not altogether do justice to Kirby; it is difficult for one of your precise moral and business standards to understand a person of his type, although the type is not uncommon in the south and west."⁶³ Ripley was not present for the discussion by the executive committee before the vote, but afterwards wrote to Morawetz that he was not the least surprised at the outcome. Kirby had focused all of his energy on the relationship with Ripley, and none on the directors comprising the executive committee. Ripley amplified his analysis of Kirby's personality and proclivities a few months later, speaking now with the benefit of some eight years of experience with the relationship:

"Kirby is of a type not uncommon in the West and especially in the Southwest, but not much understood in the North and East - inclined perhaps to look upon contract obligations too loosely; swayed too much perhaps by personal feeling, not as accurate and precise as a business man should be in business matters, but full of vigor, with large constructive ability and loyal to his friends - a power already in his territory and likely to be a greater one - perhaps a very great one in State or even National affairs."

This reading of the man differed little from Ripley's earliest assessment of Kirby, but confounded the Santa Fe's board. Yet with all of his faults, the board could not overlook his contributions to the company's bottom line. In the first decade of the 20th Century, Kirby was the largest shipper in Texas, and the largest across the entire Santa Fe system.⁶⁴

The litigation between Kirby and his creditors was bitterly fought for four years, finally resulting in a settlement in the summer of 1908 by which the performance obligations under the timber contract were reduced (to 64/80ths of the original amount, since the lands were estimated to contain 6.4 billion board feet rather than 8 billion board feet, for failure to exercise the Kountze option).⁶⁵ This settlement was achievable in part because of the rapidly rising price of

⁶²Letter, Ripley to Morawetz, 01-10-06. K.S.H.S.

⁶³Letters, Ripley to Morawetz, 11-07-07 and 11-11-07. K.S.H.S.

⁶⁴Letters, Ripley to Morawetz, 11-07-07 and 02-10-08. K.S.H.S.

⁶⁵King, *Ibid.*, p. 85-86.

lumber during these years and in part because Kirby was finally able to substantially increase the capacity of his mills so as to be able to produce the required amount of lumber. In 1907 he was able to produce 301 million board feet of lumber from 12 mills, making him by far the largest manufacturer in the state.⁶⁶ This output was up from about 175 million feet in his first full year of operation under the Houston Oil Company timber contract, but notably after five years of effort at mill construction and improvements in the face of a rising market for his product, he still had not reached the level of 350 million board feet a year required by that agreement. A 64/80ths portion of 350 million is 280 million board feet, and the settlement therefore accorded nicely with mill capacity at the time. Yet it required all of Kirby's capacity to log the oil company lands, and for this reason he did little logging on the Santa Fe's Kountze lands during these years.

John Henry Kirby survived the receivership of his company with control of its affairs, but under somewhat reduced financial circumstances and still lacking the strength to contribute the capital necessary for its operations or expansion. He did proudly say that he had prevented Calhoun and the eastern bankers from "plucking him like a chicken."⁶⁷ He did not publicly admit to the substantial assistance which the Santa Fe provided that enabled him to prevent that plucking. By this time, the value of standing timber had advanced considerably. Kirby polled his principal competitors in 1909 for their opinions on the market and its future. In reply, the consensus was that prices would continue to increase as depletion of the virgin growth timber proceeded to a conclusion projected by 1920 or 1925. Standing timber commonly sold for two dollars a thousand board feet in 1900, had risen in value to \$5.00 per thousand board feet in 1909, and the industry expected a price of between \$12.00 to \$15.00 per thousand board feet by 1920, one observer projecting a price as high as \$18.00 per thousand board feet. At the middle range, with a projected price of perhaps \$14 per thousand board feet being the average expectation, the increase represented an anticipated advance in value of 700 per cent from 1900 to 1920. Kirby's focus on cutting timber first on the oil company lands was unexpectedly beneficial to the Santa Fe, because its timber remained unharvested as prices rose.

Kirby, seeking operating capital after the end of the receivership, again approached the A.T.&S.F. for assistance. He first proposed that the Santa Fe syndicate a bond issue of four million dollars, secured by a mortgage on the Kirby Lumber Company's timber holdings. The railroad retained the services of the Price Waterhouse accounting firm to investigate the proposition and did not receive a favorable report; for this reason it declined to syndicate the bonds.⁶⁸ Ripley pressed his concerns about retaining the timber traffic revenue and below-market lumber supplies for the road (leaving unspoken the interests of the board's Boston friends in supporting Kirby's endeavors), and the board approved a plan to purchase additional standing timber from Kirby, giving him options to buy it back in the future and log it in the meantime at market rates. The Santa Fe also made a new tie contract and obtained additional traffic guarantees for the transportation of lumber produced from these lands. It purchased from Kirby individually a collection of tracts of timber land for \$1.02 million, and from the Kirby Lumber Company other holdings of timber land for \$1.98 million; in addition it made a new loan to the

⁶⁶Maxwell & Baker, *Ibid.*, page 102.

⁶⁷Maxwell & Baker, *Ibid.*, p. 102.

⁶⁸Price Waterhouse Report, 3-30-09, K.S.H.S.

lumber company of \$500,000.⁶⁹ So much for earlier professions of reluctance to support Kirby on the grounds of "favoritism" or "departure from proper purpose of the company"! Ripley had his way at last, and significantly so, setting the stage for another decade of large timber revenues for the railroad. The timber acreage newly purchased from the Kirby interests was referred to internally as the "Chapman lands," so named for the trustee designated to nominally hold them for the Santa Fe. The total price paid for this acreage was \$3,001,802.25, and it was estimated to contain 963,175,700 board feet of pine timber, for an average price of \$3.10 per thousand board feet. The price paid for stumpage on the Kountze lands in 1902 was about \$2.00 per thousand board feet. Kirby was given options to purchase these lands, as before, but by this time it had become apparent to the Santa Fe that he would never exercise them, choosing instead to log the standing timber as ready without purchasing the property. However, they knew he depended heavily on the fact that he could carry the options on his company books, listing an increasing valuation for them over the years as market prices for timber rose.

By this time, as Kirby was ending the first decade of his relationship with the Santa Fe, it was becoming more publicly apparent that there was a strong and continuing link between the timber company and the A.T.&S.F.. The Railroad Commission of Texas had heard rumors for years of favoritism being shown to certain timber shippers by private arrangement of the railroads. It docketed an investigation of these allegations in the fall of 1909, transmitting interrogatories to the Santa Fe's Comptroller David Gallup asking very specific questions regarding the company's transactions with Kirby. Ripley telegraphed Gallup with instructions that he refuse to respond, saying Kirby would attend and answer the Commission's questions. The Commission's record of this proceeding does not survive.⁷⁰

As the decade came to an end, company statistics clearly indicated the value of the Kirby relationship to the Santa Fe. The Gulf, Colorado & Santa Fe, its Texas subsidiary which generated the traffic, reporting the following to the Railroad Commission in the annual reports required by that agency for the years 1900 and 1910 regarding the tonnage of the seven largest classes of commodities it carried:

Year	Grain	Cotton	Fruits & Vegetables	Livestock	Lumber	Household Goods	Merchandise
1900	387,039	172,358	31,052	143,108	406,731	5295	163,917
1910	445,918	125,207	64,542	138,400	1,090,095	26,815	189,846

The company more than doubled its lumber tonnage during this decade; this tonnage outweighed all of the other significant categories put together. By 1909 Ripley reported to his board that the tonnage controlled by the Kirby Lumber Company represented some \$1.5 million in annual gross earnings to the Santa Fe, which was purchasing for its own account some 18 per cent of the output of Kirby's mills. The G. C. & S. F. accounting staff calculated that its purchases under the tie contract for the year 1909 would run about \$750,000 (for an estimated two million ties), and that the cost of this lumber would have been on the order of \$1,000,000 had it been necessary to

⁶⁹Letter, Ripley to Gallup, 09-27-09 K.S.H.S.

⁷⁰ Telegram, Ripley to Gallup, 12-08-09, K.S.H.S. The Railroad Commission docketed the case as "Matter of Lumber Rates, Circular No. 3263, Hearing 981."

buy the material on the open market.⁷¹ Thus the relationship continued to benefit the Santa Fe in both freight traffic revenue and cost savings for operating supplies.

Despite the significant infusion of cash which the Chapman lands purchase provided to the lumber company, it continued to operate on the edge of financial failure. Kirby was frequently behind on making his timber payments during this decade, and also did not timely make payments after 1912 on the \$500,000 loan from the A.T.&S.F. The lumber company showed no net income in 1910, 1911 or 1912, and about \$425,000 in net income for 1913. The Santa Fe could have foreclosed on the loan and canceled the timber purchase options, but Ripley remained as president and chose to let these delinquencies slide, refinancing the obligations from time to time.⁷² Ripley also approved a new additional personal loan to Kirby in the amount of \$200,000 at the end of 1914, when the lumber company was judged to be on the edge of bankruptcy.⁷³ No doubt this tolerance was motivated by the fact that Ripley's prediction that Kirby would someday be a political power in his territory had by this time come true, Kirby having been elected as a state representative in 1913.⁷⁴

Prices for lumber, and therefore the value of stumpage, increased dramatically in the second decade of the twentieth century as a result of rising consumer needs and industrial demand fueled by World War I. War requirements in particular fueled a spectacular boom in timber prices between 1915 and 1918, the local marketplace benefitting from a federal government drive for the construction of a significant fleet of wooden ships at Texas Gulf Coast shipyards at Houston, Beaumont and Orange.⁷⁵ The Southern Pine Association estimated that in addition to meeting these needs, the industry delivered nearly 2 billion board feet of lumber to the United States and its Allies to meet war demand.⁷⁶

The Santa Fe reacted to this strength in the marketplace by increasing the price charged to Kirby for the timber cut from these lands, increasing it to \$6.25 per thousand board feet and finally by 1916 abandoning fixed rates entirely and using a sliding scale based on the selling price of lumber, which during much of 1917 and 1918 resulted in payments of \$10.00 or more per thousand board feet.⁷⁷ Wartime demand for turpentine provided a significant new source of revenue for the Santa Fe, as it approved contracts with third party companies such as the Western Naval Stores Company to collect the pine resin which was the raw ingredient for that product. Workers for these companies carefully sliced the bark on standing pine trees in such a way as not

⁷¹Letter, Ripley to W. D. Hines, Acting Chairman of Executive Committee, Jan. 13, 1909; Letter, W. D. Hodges, Purchasing Agent, to W. D. Hines, Dec. 16, 1908. K.S.H.S.

⁷²Memorandum to Santa Fe land file, 05-23-14 K.S.H.S.

⁷³Letter, Ripley to Hines, 12-28-14. K.S.H.S.

⁷⁴Maxwell & Baker, *Ibid.*, p. 103. Kirby was active in the political sphere. He served as chairman of the state Democratic Convention in 1904, and was appointed as a Regent of the University of Texas in 1911. From 1917 to 1921 he was the President of the National Lumber Manufacturers Association, and during World War I was the appointed the lumber administrator for the southern region in the Emergency Fleet Corporation for the United States Shipping Board. After the war was over he served President Harding as a member of the Presidential Conference on Unemployment, and in 1927 he was again elected to the Texas State legislature as a representative.

⁷⁵Maxwell & Baker, *Ibid.*, p. 186-188.

⁷⁶Maxwell & Baker, *Ibid.*, footnote 49 page 194.

⁷⁷Letter, Ripley to Gallup, 11-04-18, K.S.H.S.

to kill them, but to enable the resin to drip into cups hung on the trees for collection purposes. A substantial royalty was paid to the timber owners for this privilege, and the commercial value of the lumber when later cut was not adversely affected.⁷⁸ Turpentine was a raw ingredient for both paint and dynamite.

The railroad also continued to benefit from the lumber traffic revenue. Yet that benefit would ultimately be eclipsed by the profit the company would make from timber sales to third parties in the third decade of its endeavor, the 1920s. That decade opened with foreboding for Kirby. His long-time Santa Fe champion Edward P. Ripley was compelled to retire on January 1, 1920, a victim of the company's age rule. The railroad was his life, and without it he was lost. He died five weeks later.⁷⁹ Ripley was succeeded by William B. Storey; yet the two companies were by now so intertwined that the change did not adversely affect Kirby's relationship with the Santa Fe, which continued to support him as before. By 1920 the original long leaf pine was almost entirely exhausted, and the timber industry had not yet realized the dream of some that replanting pine seedlings would create a sustained yield lumber industry in the area. Because the 20 year timber contract with the Houston Oil Company had forced the Kirby Lumber Company to focus its cutting efforts preferentially on those lands, the Santa Fe found itself the owner of some of the most significant remaining stands of virgin pine timber in the area by this time. Soon it began to receive frequent inquiries from the owners of mills competitive with Kirby regarding the possibility of timber purchases so that they might keep their mills in operation.

In March 1921, with the company's blessing, Kirby conveyed his option rights to certain portions of the Santa Fe's timberlands to the Frost-Johnson Lumber Company for slightly more than \$900,000, the sum to be paid over a five year period and credited to the amount due from Kirby to the Santa Fe for the transaction.⁸⁰ In December of 1921 the railroad agreed to the conveyance of other portions of its land to the Trinity Lumber Company for \$1.3 million, also crediting Kirby for this amount.⁸¹ In February 1923 the Santa Fe agreed to sell certain of its Angelina County acreage, containing some three hundred million board feet of pine timber, to the San Augustine Lumber Company for a sale price of about \$10.00 per thousand board feet, the total sum paid being \$3.2 million.⁸² Later that year, the Santa Fe conveyed all of its remaining East Texas timber lands to the Kirby Lumber Company, taking corporate stock as collateral for the sums owed. By this time, the Santa Fe owned or controlled almost all of the capital stock in the company. During the second half of the 1920s the Santa Fe would loan some \$1.2 million to the company for the purchase of additional timber lands, much of this acreage in Louisiana.

Beginning in 1928, the Santa Fe acceded to requests by Kirby for loans to him in his individual capacity of amounts totaling nearly \$1.5 million by June 1930, taking from him as collateral portions of his remaining stock in the Kirby Lumber Company. By 1931, Kirby had no more stock to pledge, and was still short of funds, but still asking the railroad for help. The company came to his aid one final time in April of 1931, when "because of certain pressing

⁷⁸Letter, Terry to Gallup, 08-04-17, K.S.H.S.

⁷⁹ James Marshall, Santa Fe, The Railroad that Built an Empire, Random House, New York, 1945, p. 362.

⁸⁰Letter, Storey to Gallup, 11-08-21, K.S.H.S.

⁸¹Letter, Storey to Gallup, 12-22-21, K.S.H.S.

⁸²Memo to Gallup Lands File, 02-15-23, K.S.H.S.

financial difficulties confronting Mr. Kirby" it loaned him \$135,000 on his execution of a demand note secured by 270 shares of the Gladys City Oil, Gas & Manufacturing Company. The difficulties were pressing indeed, as were the times. The price of lumber had collapsed with the coming of the depression, and by this time the virgin pine was almost completely cut out in East Texas, with only perhaps five per cent of the original first growth timber remaining, and that in broken isolated stands not easily logged by any single entity.⁸³ The year 1932 was the worst for the industry in a very long time; Texas sawmills produced at a level lower than seen since 1880, producing about 15 per cent of the level milled in the peak year of 1907.⁸⁴ Many mills closed entirely because the timber in their areas had been exhausted, and others reduced their days of operation in an effort to stay in business. One of Kirby's most prominent competitors, the Lucher and Moore Lumber Company of Orange, closed its mills at the beginning of the 1930s and did not reopen them until after World War II. One of the company's principal owners, H. J. Lucher Stark, remarked later that in order for the company to survive, it even raised alligators.⁸⁵

John Henry Kirby was beset by alligators of a different sort, the same ones which had by this time shadowed him for more than 30 years. The Santa Fe could do nothing further for him, as he had no more collateral. On May 9, 1933, he filed a voluntary petition in bankruptcy in Houston. The Santa Fe was the largest single creditor, holding notes for more than three million dollars which was secured by shares of the Kirby Lumber Company's stock.⁸⁶ After the bankruptcy, Kirby remained in somewhat of a figurehead position as president of the company. He spent his last years quietly and died November 9, 1940, a few weeks shy of his 80th birthday.

Kirby's original idea was sound, and the Kirby Lumber Company prospered beyond the imagination of the promoters in 1901. A 1951 publication marking its 50th anniversary stated that the company owned 550,000 acres of second growth timber, and had planted 20 million trees on 20,000 acres.⁸⁷ In 1974, the last 5 per cent of company shares owned by outsiders were sold to Santa Fe Industries, and the lumber company became wholly owned by the railroad.⁸⁸ In December of 1986, Kirby sold its properties to the Louisiana Pacific Lumber Company, which still operates them today.

One who traverses the old Kirby lumber lands now sees little remaining evidence of the tram railroad network that once linked all of these lands to the Santa Fe as the outermost reach of its rail empire. The National Park Service is considering demolition of the bridge which is one of the few remaining traces of the Santa Fe funded timber development efforts found within the Big Thicket Preserve. This is ironic, because the park owes its very existence to a long-time Santa Fe

⁸³Maxwell & Baker, *Ibid.*, pp. 195-200, 201, 203; about 1 million acres remained out of an original quantity estimated to cover between 14 and 18 million acres.

⁸⁴Maxwell & Baker, *Ibid.*, pp. 159, 201.

⁸⁵Maxwell & Baker, *Ibid.*, p. 201.

⁸⁶Article, New York Herald Tribune, May 10, 1933. The Santa Fe debt was in the name of its lumber subsidiary, the Southwestern Lumber Company of New Jersey.

⁸⁷ Gulf Coast Lumberman, Vol. 39 No. 8, July 15, 1951. This publication makes no mention that the Santa Fe owned a majority of the company. The only clue to the reader is a one line reference to the fact that the president of the company was then residing in Chicago (the city in which the Santa Fe was headquartered).

⁸⁸ Wall Street Journal, August 2, 1974.

employee, Conductor R. E. Jackson.⁸⁹ Jackson spent many a lonesome mile traveling the company's lines through the area for some decades, at times with little to do but look out the window, and was the first person to make a concerted effort to ignite community interest in preserving for the future some part of what he saw. But the hand of either man or nature will ultimately erase every physical trace left by the Prince of the Pines across his kingdom - a kingdom heavily financed and finally owned by the Atchison, Topeka & Santa Fe Railway Company.

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Acknowledgments and Background Information

William S. Osborn obtained a B.S. in Geology from Brown University in 1981 and a J.D. from the University of Texas School of Law in 1984. He practices oil and gas law with the firm of Patman & Osborn in Austin. This paper is the first draft of a chapter in a projected corporate history of the Santa Fe's Texas subsidiary, the Gulf, Colorado & Santa Fe Railway Company. The author has been gathering historical material on the company for more than 10 years, including conducting more than 50 interviews with company retirees and collecting some 1500 photographic images of activity along the company's lines. Other portions of this work, which remains in progress, have been published elsewhere.

The Gulf, Colorado & Santa Fe was an independent company from 1873 to 1886, and thereafter until its dissolution in 1965 was a wholly owned subsidiary of the Atchison, Topeka & Santa Fe. The G.C.&S.F. was headquartered in Galveston and at its peak operated 2118 miles of mainline trackage stretching to western limits at Weatherford, Sweetwater, Sterling City, Eden, Menard and Matagorda. This mileage represented about one sixth of the national system of the parent company. John Henry Kirby merits a chapter of his own in the company's history because the company built to East Texas on the strength of his dreams, he became its single largest shipper in the first decade of the 20th century, and the railroad wound up owning his lumber company. His timber was used to build all of the railroad's Texas depots, one of which was moved from San Saba to Austin and restored by the author some years ago. Built in 1911, this depot is now located at 9120 Highway 290 West and leased to a commercial tenant.

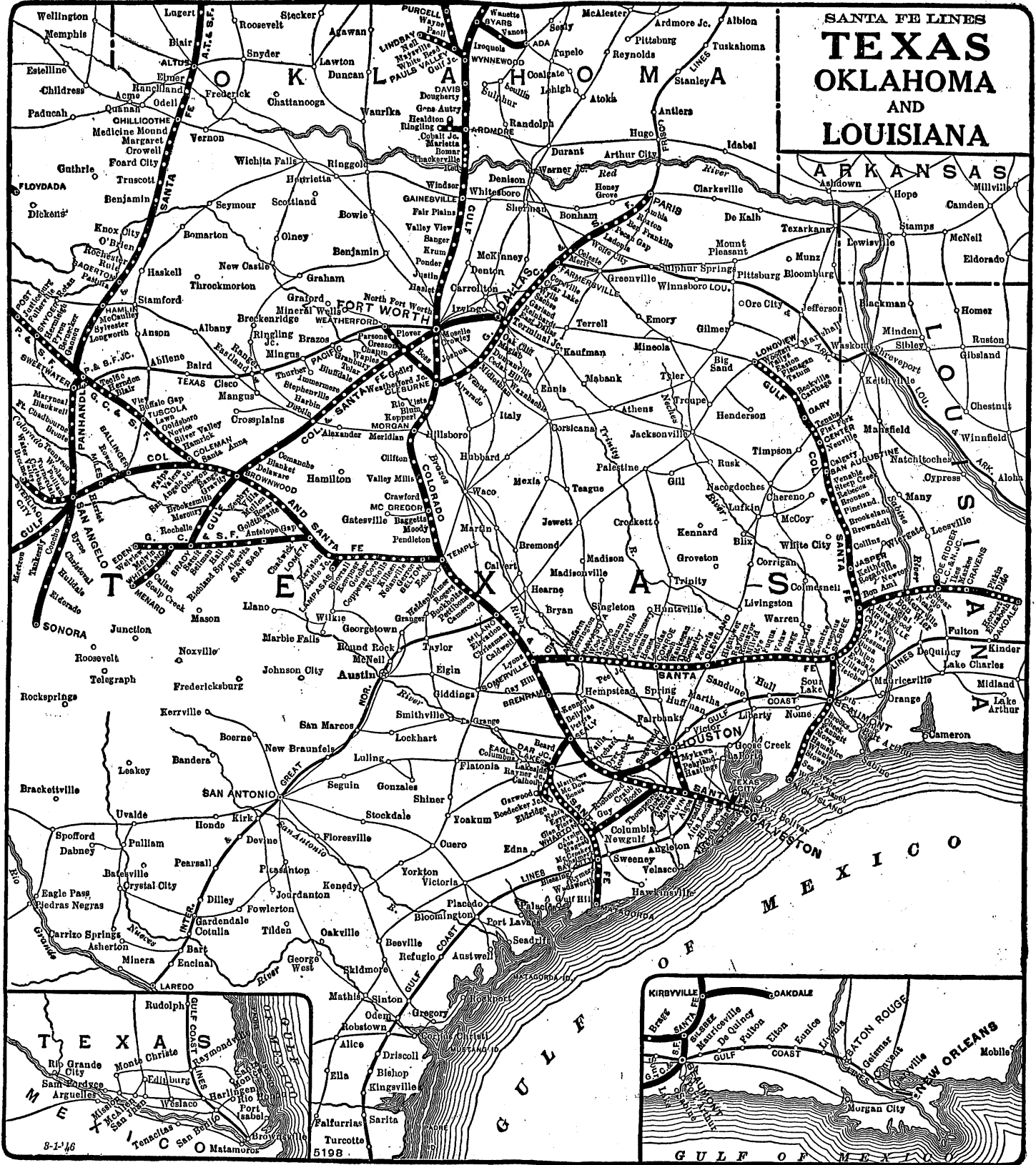
⁸⁹ On the first floor of the Hardin County Courthouse there is an extensive permanent display documenting the life and work of R. E. Jackson and his efforts to establish the park which would become the Big Thicket National Preserve.

The bulk of the archival material analyzed for this chapter comes from the files of the Kansas State Historical Society at Topeka. The Society is the designated repository for the retired corporate records of the A.T.& S.F. Railway Company and holds a significant quantity of material which has not yet been fully processed for public access. The assistance of KSHS archivist Connie Menninger is gratefully acknowledged; the extraction of the Kirby story would probably have been impossible without her perseverance over the years. These files allow a close tracing of the relationship between Kirby and the Santa Fe. Readers are cautioned that the evidence in support of Bostonian Nathaniel Silsbee's role in the location of the route to and through East Texas to favor his own personal interests is largely circumstantial. Additional research in New England will be required to confirm the speculations. However, to quote a certain 19th Century Supreme Court Justice, "some kinds of circumstantial evidence are particularly strong, as when you find a trout in the milk" (you know that it has been watered down).

The editorial assistance of law partner Philip F. Patman is gratefully acknowledged, and likewise the organizational support of legal assistant Marsha Emerson. Robert Pounds, special agent with the Burlington, Northern & Santa Fe Railway Company at Temple, Texas, started all of this effort with a chance remark in the middle 1980s and since then has provided encouraging support. BNSF legislative counsel Dennis Kearns has given every possible assistance whenever requested. And most importantly, the author's wife and children kindly tolerate his countless weekend hours spent on the front porch while consumed with this endeavor.

September 28, 2001

SANTA FE LINES TEXAS OKLAHOMA AND LOUISIANA



8-1-46

5198



The Hermitage

JUST OFF BROADWAY
AT 42ND STREET
(TIMES SQUARE WEST)
NEW YORK

Kirby

New York July 3/08

Dear Mr. Ripley:

I congratulate you upon the dignity of your reply to the wicked and reckless attacks of ^{our} tough-riding President.

Called on Mr. Gallup today and got your address.

The Kirby Lumber Co. litigation will soon be at an end. The decree in accordance with the settlement agreed to will be entered in the course of the next six or seven weeks.

I shall not desire to have the corporation discharged from the receivership just yet but in ^{probably} mean time I shall act as sole receiver. The



JUST OFF BROADWAY
AT 42ND STREET
(TIMES SQUARE WEST)
NEW YORK

The Hermitage

2,

New York

ending of the litigation establishes the Lumber Co. on firm ground and assures its future timber supply and therefore assures its future successful career.

You can count with more definiteness on me and mine in the future because our status is now defined and nothing can ever menace it.

While under this settlement the Houston Oil Co. will owe me about \$150,000 and the Kirby Lumber Co. about \$250,000, neither ^{sum} ~~sums~~ will be presently available and I must realize on my B. F. B. & C. R. R. bonds. I can do so but it is from



JUST OFF BROADWAY
AT 42ND STREET
(TIMES SQUARE WEST)
NEW YORK

The Hermitage

3

New York

sources which I know better than you do will embarrass your tonnage and I shall regret to have to do it. Only stern necessity can induce me to permit it.

Now that the Kirby Lumber Co's status is fixed and our full and free control of that great tonnage is for all time assured, I thought perhaps Mr. Morawitz and the Committee might take a different view of the situation and desire to lend me some assistance in holding that tonnage for



JUST OFF BROADWAY
AT 42ND STREET
(TIMES SQUARE WEST)
NEW YORK

The Hermitage

4

New York

the Santa Fe

What I would want would be to have the Santa Fe lend me on my bonds 75% of their face value, taking my personal note due in two years. Should want \$125,000 now and \$250,000 in 4 to 6 months, whenever I could have the bonds registered by the R.R. Commission of Texas. These are maximum figures - your total loan might not exceed \$300,000.

I wish you would telegraph me on receipt of this letter whether you think it worth while for me to take this up with Mr. Morawitz. I would not



JUST OFF BROADWAY
AT 42ND STREET
(TIMES SQUARE WEST)
NEW YORK

The Hermitage

5 New York

Take this up with you again
but for the fact that I
know it will not be to
your interest for me to
do what my necessities
may compel me to do.

With profound re-
spect and sincere personal
regards, I am,

Your friend
Geo. H. Kirby

Please do not fail to wire me
and send your messengers care
of this Hotel.

Kirby