other appropriate legal or equitable remedy, as the Trustee, being advised by counsel learned in the law, shall deem most effectual to protect and to enforce any of its rights or duties hereunder. Provided, nevertheless, that after the Railway Company, by its board of directors, shall have made a determination as to the amount of surplus net earnings for any fiscal year applicable to the payment of interest on the bonds hereby secured, no suit shall lie or remedy be enforceable against the Railway Company on account of any error in such determination, or any failure to perform any of the covenants or provisions contained in Article Three hereof with respect to the ascertainment of such surplus net earnings, unless the holders of one-half in amount of the bonds hereby secured then outstanding, before the expiration of six months after written notice of such determination shall have been given by the Railway Company to the Trustee hereunder, shall, by an instrument in writing, request the Trustee to institute proceedings to protect and enforce its rights and the rights of the bondholders by a suit for an accounting to correct such error, or for the foreclosure of this indenture, or for the enforcement of some other legal or equitable remedy, it being the intention hereof that the determination of the board of directors whether there are any surplus net earnings for any fiscal year, and as to the amounts of such surplus net earnings, shall be conclusive and binding upon the Railway Company and upon the Trustee and the holders of the bonds hereby secured, unless the holders of not less than one-half in amount of the bonds hereby secured shall, before the expiration of six months after the Railway Company shall have given the Trustee notice in writing of such determination, request the Trustee to institute legal or equitable proceedings. Sec. 3. In case default shall be made in the payment of the principal of any of the bonds hereby secured when and as the same shall become due and payable; or, in case default shall be made in the payment, upon demand, of any interest on any of said bonds when and as such interest shall have been declared to be due and payable, and such default shall continue for a period of ninety days; or, in case the Railway Company shall make default in the performance of any covenant or agreement herein contained with respect to the ascertainment of the amount of surplus net earnings applicable to the payment of interest on said bonds, or with respect to the payment of interest thereon, and any such default shall continue for a period of ninety days after the existence of such default shall have been ascertained, or the performance of such covenant or agreement shall have been adjudged or decreed by the final judgment or decree of any court of competent jurisdiction in a proceeding brought by the Trustee against the Railway Company for that purpose, upon the written request of the holders of one-half in amount of the bonds hereby secured, then outstanding—then, and