

MONEY TRUST INVESTIGATION

INVESTIGATION

OF

**FINANCIAL AND MONETARY CONDITIONS
IN THE UNITED STATES**

UNDER

HOUSE RESOLUTIONS NOS. 429 AND 504

BEFORE A

**SUBCOMMITTEE OF THE COMMITTEE ON
BANKING AND CURRENCY**

PART 10

**WASHINGTON
GOVERNMENT PRINTING OFFICE**

1913

SUBCOMMITTEE OF THE COMMITTEE ON BANKING AND CURRENCY.

HOUSE OF REPRESENTATIVES.

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MONEY TRUST INVESTIGATION.

SUBCOMMITTEE OF THE
COMMITTEE ON BANKING AND CURRENCY,
HOUSE OF REPRESENTATIVES,
Washington, D. C., December 12, 1912.

The subcommittee met at 11 o'clock a. m.

Present: Messrs. Pujo (chairman), Stephens, Daugherty, Byrnes, Neeley, McMorran, Hayes, Guernsey, and Heald.

Present also: Samuel Untermyer, Esq., of New York, counsel for the committee.

The CHAIRMAN. The committee will come to order, and the chairman desires to read this statement to be handed to the press:

In view of the statements in this morning's papers that brokers connected with the New York Stock Exchange are being unduly detained in Washington and thereby inconvenienced by this inquiry, the chairman desires to say that there is no foundation whatever for any such complaint and that from statements made by the counsel for the stock exchange the gentlemen in question do not support and are not responsible for these reports.

The chairman understands that there are five gentlemen now present representing the governors of the exchange, only two of whom have been asked to attend. Two of the others were examined last June and their presence is not needed by the committee. The two who are required as witnesses were notified through their counsel on the telephone on Tuesday afternoon that their presence would not be required until to-day, and have therefore not as yet been inconvenienced to any extent by the committee. None of the witnesses now in attendance were subpoenaed for earlier than Tuesday.

As soon as yesterday's disturbing financial conditions in New York were known the stock exchange governors here were offered the option of returning home and coming back for Monday's session. Every possible courtesy consistent with the work of the committee has been extended everyone.

Owing to the unexpected length of Mr. Frew's testimony these gentlemen have suffered one day's inconvenience, but if the committee is to progress with its work and to have witnesses at hand it is impossible to avoid occasional slight inconvenience.

The committee has been exceptionally considerate with respect to witnesses. Every afternoon they have been notified by telephone in New York whether they would be required the following morning, but in some cases they had left for Washington on early trains before they could be reached.

Witnesses instead of being subpoenaed all for the same day have been subpoenaed for different days with the express view of saving them every possible inconvenience.

Are you ready to proceed?

MR. UNTERMYER. We will ask Mr. Griesel to take the stand.

TESTIMONY OF J. H. GRIESEL.

The witness was sworn by the chairman.

Mr. UNTERMYER. Where do you reside?

Mr. GRIESEL. New York City.

Mr. UNTERMYER. What is your business?

Mr. GRIESEL. I am a commission broker.

Mr. UNTERMYER. Are you a member of any firm?

Mr. GRIESEL. Griesel & Rogers.

Mr. UNTERMYER. Are you a member of the stock exchange?

Mr. GRIESEL. Yes.

Mr. UNTERMYER. For how many years have you been a member of the New York Stock Exchange?

Mr. GRIESEL. About 29. Within a few months of 29 years.

Mr. UNTERMYER. You have been asked to come here, Mr. Griesel, in connection with the loaning of money on the New York Stock Exchange?

Mr. GRIESEL. Yes, sir.

Mr. UNTERMYER. I believe you do the largest amount of business of that kind on the stock exchange of any single broker?

Mr. GRIESEL. Very likely.

Mr. UNTERMYER. Have you been engaged in the business of lending money for loaners on the stock exchange?

Mr. GRIESEL. Since I have been a member. I did it before I was a member.

Mr. UNTERMYER. Have you specific clients for whom you lend the money?

Mr. GRIESEL. Banks and trust companies and individual firms—banking houses.

Mr. UNTERMYER. How is the loaning of money arranged on the exchange; will you explain that? Is there a stand for that purpose?

Mr. GRIESEL. A banking house or trust company or bank sends in to loan so much money, either at the market or at a rate, and the demand comes through stock exchange members.

Mr. UNTERMYER. What I meant to ask was whether there is a stand or a place for that particular purpose?

Mr. GRIESEL. Yes. It is called "the money crowd"; there is a post and a bulletin there.

Mr. UNTERMYER. Is there anybody in charge of that post—any stock-exchange official?

Mr. GRIESEL. Not necessarily. The committee on arrangements look to it that the record is kept there, and that it is a uniform one. If there is a dispute some one is sent for, and there may be a difference as to an eighth or a quarter of a per cent on renewal rate. We have got down to eighths. In that event some member of the committee on arrangements would be sent for, and it is discussed pro and con by those who are interested. Some of the bank loaners want the maximum or the broker would like to have the minimum; and where there is a dispute as to whether a rate should be, for instance, $5\frac{1}{4}$ or $5\frac{3}{4}$, that is adjusted and the announcement is put up there, the renewal rate at such a rate.

Mr. UNTERMYER. Who puts up the announcement?

Mr. GRIESEL. Anybody.

Mr. UNTERMYER. Any broker marks the price of money on this board?

Mr. GRIESEL. He turns around and says, "What should the renewal rate be; what ought it to be under the market as it stands?"

Mr. UNTERMYER. When the exchange opens at 10 o'clock in the morning, does the lending of money then begin?

Mr. GRIESEL. No, sir.

Mr. UNTERMYER. Then the lending of money begins at what time?

Mr. GRIESEL. In a market in which there is very small business, no interest, not before a quarter past 11; or, of course, the necessities may be such that sometimes it would be before that; sometimes it might be at 11 o'clock, and sometimes when there are fluctuations, when something has occurred in the market which makes people feel as if they ought to get their money at once, they will start at half past 10; but uniformly about 11 o'clock.

Mr. UNTERMYER. Is there a given time at which the renewal rate is fixed on the exchange?

Mr. GRIESEL. Custom, which is the basis of every law that is made, makes it about 11 or half past 11.

Mr. UNTERMYER. Please tell us what is meant by making a renewal rate on the exchange.

Mr. GRIESEL. There are loans some mornings of a million and a half or two or three or four millions in the course of three or four minutes, and that is the basis on which the renewal rate may be made; and both the trust companies and the banks are immediately informed, through their agents, what is going on on the exchange.

Mr. UNTERMYER. The question is, what is meant by the renewal rate.

Mr. GRIESEL. A rate at which money can be obtained.

Mr. UNTERMYER. As from day to day.

Mr. GRIESEL. As to supply for that day.

Mr. UNTERMYER. That is, the rate at which money can be had for that particular day?

Mr. GRIESEL. For that day, and the supply which is there in evidence.

Mr. UNTERMYER. The bulk of the loans made at this money stand are demand loans; are they?

Mr. GRIESEL. Yes, sir.

Mr. UNTERMYER. And they are made on what sort of collateral?

Mr. GRIESEL. Sixty-five and thirty-five, about. Sixty-five railroads and thirty-five industrials.

Mr. UNTERMYER. I did not mean that. I mean they are all made on the stock-exchange collaterals?

Mr. GRIESEL. Mixed collaterals; yes.

Mr. UNTERMYER. Did you bring with you any data showing the amount of money that you lend out on the exchange?

Mr. GRIESEL. That is absolutely beyond the ken of any man.

Mr. UNTERMYER. I am speaking of the amount you lend out.

Mr. GRIESEL. In a given day?

Mr. UNTERMYER. Yes.

Mr. GRIESEL. That will vary according to the demand.

Mr. UNTERMYER. I understand; but the range of loans you arrange from day to day?

Mr. GRIESEL. It will vary. The average?

Mr. UNTERMYER. Yes.

Mr. GRIESEL. That is beyond the ken of anyone.

Mr. UNTERMYER. What is the highest amount you have loaned in a day?

Mr. GRIESEL. The highest amount?

Mr. UNTERMYER. Yes.

Mr. GRIESEL. The highest amount that I have loaned in a day?

Mr. UNTERMYER. Yes; loaned or borrowed for clients?

Mr. GRIESEL. I dare say I have loaned \$20,000,000 to \$25,000,000 in one day, and possibly borrowed \$10,000,000 of it, or \$15,000,000 of it.

Mr. UNTERMYER. You mean you have acted for the lender as to \$20,000,000 or \$25,000,000 and for the borrower as to \$10,000,000 or \$15,000,000?

Mr. GRIESEL. Yes, sir.

Mr. UNTERMYER. What is your ordinary business, approximately, as a rule?

Mr. GRIESEL. That depends, of course, on the market.

Mr. UNTERMYER. I understand. Does it average anything like \$5,000,000 a day?

Mr. GRIESEL. Oh, surely. It would probably average \$10,000,000.

Mr. UNTERMYER. It would average at least \$10,000,000 a day?

Mr. GRIESEL. \$10,000,000 in a day, yes; except in some summer season, when people are away and money is at $2\frac{1}{2}$ per cent or 3 per cent. It depends upon the rate.

Mr. UNTERMYER. I understand. When money is low and things are inactive, you do not have as much business?

Mr. GRIESEL. No, sir.

Mr. UNTERMYER. But the highest day's business you remember doing would be about \$35,000,000?

Mr. GRIESEL. I have done that, surely—both sides of the account.

Mr. UNTERMYER. I understand; yes. You do act at times for one side and at times for another side?

Mr. GRIESEL. I am more particularly the man who looks after the borrowing end for the broker, which brings to me the lending end, as I can put them together and get the institution, probably, a better rate than if they were competitors.

Mr. UNTERMYER. You represent the borrower, as a rule, rather than the lender?

Mr. GRIESEL. Yes, sir.

Mr. UNTERMYER. Who is there on the exchange at the loan stand who more particularly represents the lenders?

Mr. GRIESEL. There are four or five men in the money market who lend money.

Mr. UNTERMYER. For particular banks?

Mr. GRIESEL. Yes.

Mr. UNTERMYER. Who are the big lenders on the exchange?

Mr. GRIESEL. That varies, too, from time to time.

Mr. UNTERMYER. At the present time, and in the past few years, who have been the big lenders?

Mr. GRIESEL. There are three or four that have always been big lenders.

Mr. UNTERMYER. Who are they?

Mr. GRIESEL. The City Bank.

Mr. UNTERMYER. Yes.

Mr. GRIESEL. The Chase Bank, the Bank of Commerce. Those are the three largest lenders.

Mr. UNTERMYER. And the First National?

Mr. GRIESEL. The First National is a lender at times. They are not frequent lenders.

Mr. UNTERMYER. They are not among the largest lenders?

Mr. GRIESEL. Not on the exchange; no, sir.

Mr. UNTERMYER. And as to private banking houses, who are the largest?

Mr. GRIESEL. Kuhn, Loeb & Co. and Goldman, Sachs & Co.

Mr. UNTERMYER. And Morgan & Co.?

Mr. GRIESEL. J. P. Morgan is in the market when crises appear and help is needed.

Mr. UNTERMYER. Do not J. P. Morgan & Co. lend on the exchange?

Mr. GRIESEL. Yes, sir.

Mr. UNTERMYER. Practically all the time?

Mr. GRIESEL. Sometimes for months they do not lend.

Mr. UNTERMYER. Then, when things get active, are they lenders?

Mr. GRIESEL. They are lenders when they are needed.

Mr. UNTERMYER. And the other banking houses you have named also lend?

Mr. GRIESEL. Kuhn, Loeb & Co. are lenders the year round, almost.

Mr. UNTERMYER. Do the Speyers lend money on the exchange?

Mr. GRIESEL. Yes; I had forgotten the Speyers.

Mr. UNTERMYER. They lend money, do they not?

Mr. GRIESEL. Yes.

Mr. UNTERMYER. And you say Kuhn, Loeb & Co. are constant lenders?

Mr. GRIESEL. Yes.

Mr. UNTERMYER. They lend more regularly than any of the large banking houses?

Mr. GRIESEL. They do.

Mr. UNTERMYER. And do they lend in large amounts?

Mr. GRIESEL. At times. At times Speyers lend more than Kuhn, Loeb & Co. It depends upon the transactions.

Mr. UNTERMYER. At times do J. P. Morgan & Co.?

Mr. GRIESEL. J. P. Morgan & Co. lend very largely at times.

Mr. UNTERMYER. But, in the main, is it or not the fact that the great banks are the people who supply the money market?

Mr. GRIESEL. Yes, sir.

Mr. UNTERMYER. That is true, is it not?

Mr. GRIESEL. Yes, sir.

Mr. UNTERMYER. Who represents the City Bank in the lending of money?

Mr. GRIESEL. Charles W. Turner.

Mr. UNTERMYER. He is here, is he not?

Mr. GRIESEL. Yes.

Mr. UNTERMYER. And who, more particularly, represents the other banks at the loan stand?

Mr. GRIESEL. The firm of Manville & Ware represents the First National Bank and the Guaranty Trust Co. and the Bank of Commerce.

Mr. UNTERMYER. And the Bankers' Trust?

Mr. GRIESEL. The Bankers' Trust is divided among three of us.

Mr. UNTERMYER. Their business is divided?

Mr. GRIESEL. Among three brokers. I lend for the Bankers' Trust Co. when they think I can do it better than the other fellow.

Mr. UNTERMYER. Who else?

Mr. GRIESEL. Manville & Ware; Luke, Banks & Weeks.

Mr. UNTERMYER. Who lends for the Chase Bank?

Mr. GRIESEL. I do, sir.

Mr. UNTERMYER. And the Hanover National?

Mr. GRIESEL. R. T. H. Halsey; Halsey & Hudnut.

Mr. UNTERMYER. Are they not large lenders?

Mr. GRIESEL. Very large lenders.

Mr. UNTERMYER. How do they rank in the order of lenders on the exchange, as between them and the other banks?

Mr. GRIESEL. I should say that the City outranks them all.

Mr. UNTERMYER. And the next in volume is what?

Mr. GRIESEL. Between the Commerce and Chase.

Mr. UNTERMYER. And then the Hanover?

Mr. GRIESEL. Then the Hanover.

Mr. UNTERMYER. How would you say that the loans of all the three banking houses you have named, Kuhn, Loeb & Co., J. P. Morgan & Co., and Speyer & Co., would compare with the loans of the City Bank at the loan stand?

Mr. GRIESEL. In volume?

Mr. UNTERMYER. Yes; in volume.

Mr. GRIESEL. I think Kuhn, Loeb & Co. sometimes loan as much money as any of the banks do.

Mr. UNTERMYER. How about the other bankers?

Mr. GRIESEL. I think that is the only house that would compare. On some given dates, when, for instance, Pennsylvania payments on some big bond transaction are made to them, on such a date Kuhn, Loeb & Co. have loaned \$15,000,000, while the money is temporarily with them, perhaps only for a day or two.

Mr. UNTERMYER. That is, when they get in money from some big bond issue?

Mr. GRIESEL. Yes.

Mr. UNTERMYER. And do the other banking houses make the same use of their money when they get it in from big bond issues?

Mr. GRIESEL. Speyer & Co., when they have some large transactions going through, and before the money is needed where it belongs, will loan it on the exchange.

Mr. UNTERMYER. How about the Morgans? When they make big bond issues and get in money, do they lend it on the stock exchange?

Mr. GRIESEL. Yes; they lend their money on the stock exchange.

Mr. UNTERMYER. In the same way?

Mr. GRIESEL. Yes.

Mr. UNTERMYER. They make a great many big bond issues, do they not?

Mr. GRIESEL. I am not familiar with what they do. I have all I can do to take care of my end of it.

Mr. UNTERMYER. You were in New York when money was at 20 per cent here recently, were you not?

Mr. GRIESEL. Within the last week or 10 days?

Mr. UNTERMYER. Yes.

Mr. GRIESEL. Yes. I think it was on the 29th of November.

Mr. UNTERMYER. Just after Thanksgiving?

Mr. GRIESEL. Yes.

Mr. UNTERMYER. Have you any record to tell us how much money you loaned on both sides of the account on that day?

Mr. GRIESEL. I have no record; no.

Mr. UNTERMYER. Have you any memory, so that you could tell us?

Mr. GRIESEL. On that day—on the 29th?

Mr. UNTERMYER. Yes.

Mr. GRIESEL. I think I traded in about \$20,000,000 that day—\$15,000,000 to \$20,000,000—on the loan side.

Mr. UNTERMYER. Is there any record of the amount of money loaned on the exchange day by day?

Mr. GRIESEL. No, sir; none whatever.

Mr. UNTERMYER. None is kept?

Mr. GRIESEL. There is a bulletin in the money crowd, and as the first loan is recorded—the opening loan—it is called—

Mr. UNTERMYER. That fixes the rate?

Mr. GRIESEL. No; the average fixes the rate—the opening, the low, the high. Then there is a bulletin in which the first loan made is entered, and as the loans are made for half an hour or three-quarters of an hour they are recorded there so as to put up for that total of transactions the renewal rate.

Mr. UNTERMYER. The total transactions are recorded as to the amount of loans, too?

Mr. GRIESEL. Yes. That is only done voluntarily to help those who come in to see what is taking place and to give them an affirmative idea of what to do in the money market.

Mr. UNTERMYER. At the end of the day—

Mr. GRIESEL. After 12 o'clock or so we keep no more records.

Mr. UNTERMYER. Do you not lend any money after 12 o'clock?

Mr. GRIESEL. We lend money right on until 3 o'clock. We are not commanded to keep that record. That record is a matter of convenience.

Mr. UNTERMYER. Then would this bulletin show, so that every broker could see, how much money had been loaned up to 12 o'clock?

Mr. GRIESEL. Yes.

Mr. UNTERMYER. In volume?

Mr. GRIESEL. Yes.

Mr. UNTERMYER. Then you can give us some idea of about the amount of money that is loaned up to 12 o'clock?

Mr. GRIESEL. Yes.

Mr. UNTERMYER. How much is it?

Mr. GRIESEL. It varies from day to day, according to the demand.

Mr. UNTERMYER. Give us some idea.

Mr. GRIESEL. On this particular morning I suppose there were five or six million dollars loaned before 12 o'clock.

Mr. UNTERMYER. You mean on this day when money was high?

Mr. GRIESEL. Yes.

Mr. UNTERMYER. I understood you to say that you dealt in \$15,000,000 yourself?

Mr. GRIESEL. Yes.

Mr. UNTERMYER. Where was the rest?

Mr. GRIESEL. I have told you in conversation that I loaned on that day, from 2 o'clock until half past 2, \$10,000,000.

Mr. UNTERMYER. But there would be no record, then, either on the bulletin or elsewhere, from which anybody could gather the amount of loans in a single day?

Mr. GRIESEL. No, sir; no record.

Mr. UNTERMYER. But have you any idea of what it is?

Mr. GRIESEL. I have already stated—on that day, you are asking about?

Mr. UNTERMYER. No; on the average day. How much money is dealt in on the average day? You can give no idea?

Mr. GRIESEL. That you could not supply; there are so many millions and millions loaned privately, over the telephone.

Mr. UNTERMYER. Who lends the money for Kuhn, Loeb & Co. on the exchange?

Mr. GRIESEL. I do.

Mr. UNTERMYER. Who lends the money for J. P. Morgan & Co.?

Mr. GRIESEL. Mr. Rogers; Roberts & Rogers; R. Rogers & Co.

Mr. UNTERMYER. And for Speyer?

Mr. GRIESEL. I do.

Mr. UNTERMYER. And for Goldman, Sachs & Co.?

Mr. GRIESEL. I do.

Mr. UNTERMYER. Then, as you say, there are four or five of you who do the bulk of this business?

Mr. GRIESEL. Yes.

Mr. UNTERMYER. Who looks after the collateral that has to be given to secure these loans?

Mr. GRIESEL. That we never see. The loan clerk of the bank attends to that.

Mr. UNTERMYER. That is done directly with the bank?

Mr. GRIESEL. Yes; that is done directly with the banks.

Mr. UNTERMYER. But you know the method of business, do you not? You know the course of business?

Mr. GRIESEL. Of what business?

Mr. UNTERMYER. Of consummating these loans?

Mr. GRIESEL. I said it is 65 and 35, industrials and railroads.

Mr. UNTERMYER. The margin must be in a ratio of 65 per cent for railroad securities and 35 per cent for industrials?

Mr. GRIESEL. You are supposed to have 20 per cent on the loan. If you make a loan of \$100,000, you must have \$120,000 worth of collateral. You might want to make a loan of all Erie, selling at 34 or 35, and at 35 you would not have 10 per cent on the stock. You must have 10 per cent on the price of the stock. Erie has to come in on the loan, if the price is 35, at 25, and enough Erie at 25 to go into the loan to make 80 per cent on the money.

Mr. UNTERMYER. Why is that discrimination?

Mr. GRIESEL. There is no discrimination. That is the custom. All loans are supposed to be made that way.

Mr. UNTERMYER. That is more than the 20 per cent margin, is it not?

Mr. GRIESEL. I do not know whether there is any new-fangled banking now. No banker who has been in the business the years that I have been would lend you except there was 10 per cent margin on the stock.

Mr. UNTERMYER. You mean 10 points, do you not?

Mr. GRIESEL. Yes. I beg your pardon. I mean 10 points on the stock.

Mr. UNTERMYER. That is more than 20 per cent margin?

Mr. GRIESEL. Oh, yes. You have to put in more than \$120,000 to get your margin, if you put up Erie.

Mr. UNTERMYER. What makes for the availability of security as collateral?

Mr. GRIESEL. What is that?

Mr. UNTERMYER. What makes it available as collateral? Is it the fact of its having a free market?

Mr. GRIESEL. That, more than anything else. Steel is considered—

Mr. UNTERMYER (interposing). The best collateral.

Mr. GRIESEL. It has the greatest market of any stock in the world, probably.

Mr. UNTERMYER. Steel was considered the best collateral before it ever paid a dividend, was it not—I mean the common?

Mr. GRIESEL. I do not know how high Steel went before it paid a dividend. There was a market, whether it paid a dividend or not.

Mr. UNTERMYER. Yes. You know there were quite a number of years before Steel common paid any dividend.

Mr. GRIESEL. Yes.

Mr. UNTERMYER. You remember that?

Mr. GRIESEL. Yes.

Mr. UNTERMYER. You remember that after it started paying there were some years when it reduced its dividends, or, I think, stopped its dividends?

Mr. GRIESEL. It stopped its dividends.

Mr. UNTERMYER. During a period of years?

Mr. GRIESEL. Yes.

Mr. UNTERMYER. During all that time did Steel common continue to have a wide market?

Mr. GRIESEL. It always has had a market. I do not know how wide.

Mr. UNTERMYER. What I want to get at is, what is it that gave it such availability as collateral for loans on the stock exchange? Was it the fact that it had this wide market?

Mr. GRIESEL. I dare say it was.

Mr. UNTERMYER. Is it or not the fact that it secured this wide market and maintained this wide market, whether it paid dividends or not, because it was considered good collateral?

Mr. GRIESEL. That I would not answer. It may not be considered good as collateral, but it—

Mr. UNTERMYER. Is it not considered the very best kind of collateral?

Mr. GRIESEL. Steel?

Mr. UNTERMYER. Yes.

Mr. GRIESEL. There are better.

Mr. UNTERMYER. Are there collaterals that are considered better for loaning purposes or that are taken more readily?

Mr. GRIESEL. There are, by conservative bankers; yes.

Mr. UNTERMYER. I am speaking of the ordinary run of bankers and banks that loan on the exchange. Is there any kind of collateral that is preferred to Steel common? If so, what?

Mr. GRIESEL. Personally?

Mr. UNTERMYER. No; not personally. No; not what you think, but what is the rule?

Mr. GRIESEL. I do not know of any rule governing that matter at all. Personally, I would as lief take Steel as anything on the list, because of the market.

Mr. UNTERMYER. I understand. Is it or not the fact that you can put more Steel common into a loan than you can of any other security?

Mr. GRIESEL. No, sir; you can not.

Mr. UNTERMYER. Can you put as much?

Mr. GRIESEL. Oh no; you can not put as much.

Mr. UNTERMYER. As much as what, for instance?

Mr. GRIESEL. New York Central.

Mr. UNTERMYER. You can put more New York Central common into a loan?

Mr. GRIESEL. Or Northwest common.

Mr. UNTERMYER. Than you can of Steel?

Mr. GRIESEL. Yes.

Mr. UNTERMYER. Do you arrange the collateral at all?

Mr. GRIESEL. I have nothing to do with it whatever.

Mr. UNTERMYER. Then the bargain as to what sort of collateral shall be taken—

Mr. GRIESEL. Is never entered into by us.

Mr. UNTERMYER. It does not come under your notice at all?

Mr. GRIESEL. No, sir. The loan clerk in the bank or the banker is the judge of what he shall take or not take.

Mr. UNTERMYER. Where do you get this information as to what good collateral is or is not, then?

Mr. GRIESEL. Out of an experience of about 29 years on the exchange. We know generally what people hold.

Mr. UNTERMYER. That is not an experience, is it, of dealing with collateral?

Mr. GRIESEL. And from my own experience as a man who has borrowed money.

Mr. UNTERMYER. From your own experience as a broker?

Mr. GRIESEL. Yes. As a borrower of money at times.

Mr. UNTERMYER. Do you loan a great deal of funds for out-of-town banks?

Mr. GRIESEL. They come through other banks.

Mr. UNTERMYER. I know; but when they come through city banks do you know whether they are for the account of the banks in the city or whether they are for the account of the out-of-town banks?

Mr. GRIESEL. The names are given up.

Mr. UNTERMYER. The names of the out-of-town banks are given up by the city banks?

Mr. GRIESEL. At such and such a place—Austin, Tex., at the Park Bank; Cripple Creek, at the Park Bank; Rainbowville, at the Park Bank.

Mr. UNTERMYER. Which bank is the largest lender of money for out-of-town banks?

Mr. GRIESEL. I should say the Park Bank was.

Mr. UNTERMYER. Is not the Chase Bank the largest?

Mr. GRIESEL. I should say not.

Mr. UNTERMYER. By far?

Mr. GRIESEL. I should say not.

Mr. UNTERMYER. Do you know how many out-of-town correspondents the Chase Bank has?

Mr. GRIESEL. No, sir. The Illinois Savings & Trust, the one Mitchell is connected with—

Mr. UNTERMYER. No. Do you know how many banks—

Mr. GRIESEL. I know nothing whatever about it.

Mr. UNTERMYER. Did you know there were over 3,100?

Mr. GRIESEL. I know nothing whatever about it.

Mr. UNTERMYER. Do you know how many banks—you say you do not?

Mr. GRIESEL. I do not.

Mr. UNTERMYER. But when the Chase Bank tells you to lend money for an out-of-town bank it gives the name of the out-of-town bank?

Mr. GRIESEL. They do not. I started to say that the Chase Bank is an exception. They do not lend money for out-of-town banks in the name of the out-of-town bank.

Mr. UNTERMYER. They do not give up the out-of-town bank's name?

Mr. GRIESEL. No.

Mr. UNTERMYER. They give up their own name?

Mr. GRIESEL. Yes, sir.

Mr. UNTERMYER. I see. But the others give up the out-of-town bank's name?

Mr. GRIESEL. The Hanover does and the Park does.

Mr. UNTERMYER. The First National's custom you do not know?

Mr. GRIESEL. I am quite familiar with their form. I formerly loaned their money. They do not give up any—

Mr. UNTERMYER. They do not give up the name of the out-of-town bank?

Mr. GRIESEL. No, sir.

Mr. UNTERMYER. How about the City Bank; do you know whether they do?

Mr. GRIESEL. The City Bank loans the money in its own name.

Mr. UNTERMYER. And loans the money of out-of-town banks in its own name?

Mr. GRIESEL. I do not know. Mr. Turner might be familiar with that, sir.

Mr. UNTERMYER. Can you tell us when the business of lending money for the out-of-town banks is most active?

Mr. GRIESEL. When it is most active?

Mr. UNTERMYER. Yes.

Mr. GRIESEL. More or less the year around.

Mr. UNTERMYER. Is it most active when the money is in demand?

Mr. GRIESEL. When the money is in demand and the rates are higher, money is attracted to New York, and they lend it.

Mr. UNTERMYER. That brings money to New York from all over the country, does it not—the high rate?

Mr. GRIESEL. Yes.

Mr. UNTERMYER. What, in your judgment, would be the effect of limiting the rate of interest on the stock exchange as to inducing the banks of the country to keep the money at home instead of sending it to New York?

Mr. GRIESEL. What would be the effect?

Mr. UNTERMYER. Yes. Do you think it would keep a great deal of money in the localities instead of bringing it to New York?

Mr. GRIESEL. I do not know but what it would do so. Money is a commodity, and it will go where it finds the highest price. It will go to Europe, or go anywhere, where it finds the highest price.

Mr. UNTERMYER. When the rate goes down, then does the money of the country which is in New York go away from New York back to the localities throughout the country?

Mr. GRIESEL. If they need it, it does; and if not, it stays in New York. It has been in New York as freely in a 2 or 3 per cent market as in a 6 or 8 per cent market.

Mr. UNTERMYER. That was when there was a glut of money all over the country?

Mr. GRIESEL. No; but it will stay there if there is no use for it at home.

Mr. UNTERMYER. Is the New York Stock Exchange market the only public money market that you know of in the United States?

Mr. GRIESEL. I do not know whether there is any other. I suppose they must be lending in Boston and Chicago.

Mr. UNTERMYER. Do you know of any other money market except New York?

Mr. GRIESEL. Personally, I do not.

Mr. UNTERMYER. Do you know whether the Boston brokers borrow money largely in the New York Stock Exchange market?

Mr. GRIESEL. I do not think so. I have quite a large—

Mr. UNTERMYER. Do not such brokers as Hayden, Stone & Co. borrow in New York?

Mr. GRIESEL. They borrow in New York for their New York necessities.

Mr. UNTERMYER. Do you know anything of the operations of the Boston Stock Exchange or the Chicago Stock Exchange?

Mr. GRIESEL. No, sir.

Mr. UNTERMYER. Do you know whether they have any lending of money on the stock exchanges there?

Mr. GRIESEL. No. I have been too busy to find that out.

Mr. UNTERMYER. So far as you know is there any place in the United States where there is a public bidding and public offering of money except on the New York Stock Exchange?

Mr. GRIESEL. Not that I know of.

Mr. UNTERMYER. I think that is all. We are much obliged to you.

Witness excused.

TESTIMONY OF CHARLES W. TURNER.

The witness was sworn by the chairman.

Mr. UNTERMYER. You live in New York?

Mr. TURNER. In New York City; Manhattan.

Mr. UNTERMYER. What is your business?

Mr. TURNER. Broker.

Mr. UNTERMYER. Are you a member of the New York Stock Exchange?

Mr. TURNER. Yes; and have been for 26 years.

Mr. UNTERMYER. With what firm are you connected?

Mr. TURNER. Charles W. Turner & Co.

Mr. UNTERMYER. Are you the gentleman referred to by the last witness?

Mr. TURNER. I believe so; yes, sir.

Mr. UNTERMYER. And you act for the City National Bank, do you, in the lending of its money on the stock exchange?

Mr. TURNER. Yes; solely.

Mr. UNTERMYER. You are its sole representative for that purpose?

Mr. TURNER. Yes, sir.

Mr. UNTERMYER. How long have you so acted?

Mr. TURNER. It will be 16 years next May.

Mr. UNTERMYER. Is it or not the fact, Mr. Turner, that the City National Bank is the only bank in New York that never charges over 6 per cent?

Mr. TURNER. That is a fact.

Mr. UNTERMYER. No matter how high the money rate is?

Mr. TURNER. No matter how high the money rate is.

Mr. UNTERMYER. And does it lend out its correspondents' money on the same terms?

Mr. TURNER. I am unable to say; but no money has been loaned by me at a rate above 6 per cent for 12 years—for between 12 and 14 years.

Mr. UNTERMYER. Why would it not be practicable for the other banks in New York to follow that custom?

Mr. TURNER. I am unable to answer that question.

Mr. UNTERMYER. Do you not think if they did follow that custom that it would keep a great deal of money away from New York at times when it was needed in the localities from which it comes?

Mr. TURNER. You are asking me for opinions?

Mr. UNTERMYER. Yes.

Mr. TURNER. Sometimes opinions are very expensive things to be had.

Mr. UNTERMYER. Well, I would like your opinion. That is the reason I ask for it.

Mr. TURNER. I believe money finds its level and comes to where it is greatly demanded and the price is paid.

Mr. UNTERMYER. But if the other banks chose to follow the same policy as the City Bank, then the rate for call money on the stock exchange would never go above 6 per cent, would it?

Mr. TURNER. I do not think that that necessarily follows.

Mr. UNTERMYER. The City Bank has always money to loan, has it not?

Mr. TURNER. No, sir; not by any means. But when it has money to loan, and there is a need for money, it has always, whether from altruistic motives or not, acted in a very benevolent manner.

Mr. UNTERMYER. Yes. It has always kept the rate down.

Mr. TURNER. It has helped to keep the rate down. The rate has gone up in spite of that fact, sir, when there was a greater demand for money than there was supply to meet that need.

Mr. UNTERMYER. How much money did you lend the other day for the City Bank, when the rate was 20 per cent?

Mr. TURNER. I loaned on one particular occasion \$3,000,000 at 6 per cent, and I so arranged that the greatest good could be done to the greatest number.

Mr. UNTERMYER. Yes; but the question was how much you loaned that day.

Mr. TURNER. \$3,000,000, sir.

Mr. UNTERMYER. That was the day's business of the City Bank?

Mr. TURNER. That was the day's business for the City Bank.

Mr. UNTERMYER. Do you know how much money was loaned on the exchange that day?

Mr. TURNER. It would be impossible to tell that.

Mr. UNTERMYER. You could not give any idea?

Mr. TURNER. Sometimes there is, I should judge, forty or fifty million dollars, as Mr. Griesel has said.

Mr. UNTERMYER. And sometimes a great deal more?

Mr. TURNER. I question whether the amount of money rises much above \$50,000,000 at any time.

Mr. UNTERMYER. On each day?

Mr. TURNER. On any one day; and it is very much smaller than that on days when there is less demand for money.

Mr. UNTERMYER. But you have no data?

Mr. TURNER. Absolutely nothing. The exchange does not keep any data with reference to the matter, and I might explain that, and the opening and renewal rate of money, and the manner in which it is accomplished, if it would enlighten you in any way.

Mr. UNTERMYER. Yes; I would be glad if you would do so.

Mr. TURNER. Well, men gather around the money crowd at about a quarter of 11 o'clock. The average broker comes in there perhaps with some little amount to lend, but more generally to meet the needs of his office requirements. For instance, if his office has bought a considerable amount of stock the previous day he has to make provisions for that day's needs; and so maybe from one to fifty or a hundred brokers will appear in the crowd at about a quarter to 11 and 11 and a quarter past. The market opens there, not like it does on the exchange for stock at an arbitrary time, 10 o'clock; but we gather together there, and when the money men come in with money, or the men that have money to borrow meet in that crowd, they say, "How is money?" "How is money?" "Any money here?" Some say, "No, I have not heard any remark made about money." "Yes, the City Bank is here with money," and whatever or about whatever the market rate was yesterday. Now, that slip that Mr. Griesel speaks of is merely an informal thing. There is no registration of that made at any other place in the exchange, and it is just for the convenience of the borrower and lender for the moment.

Mr. UNTERMYER. You mean the slip on the bulletin board?

Mr. TURNER. This slip, this little slip; larger than that [indicating.] It hangs on the board, you know. There is that slip blank except so far as it says that on yesterday money opened at such a rate, the low price for money was such a rate, the high price for money was such a rate, and the low price for money was such a rate for the previous day. And maybe there is a collection of 19 or 20—according to the month—of those slips, one hanging on the other. don't you see?

Mr. UNTERMYER. Yes, I understand. All this money that is loaned out at the stock exchange stand is loaned to members of the stock exchange, is it not—to brokers?

Mr. TURNER. To members of the exchange; yes, sir. They represent the interests outside of the exchange.

Mr. UNTERMYER. No; the question is, That is entirely a place for lending to members of the stock exchange?

Mr. TURNER. Absolutely; yes, sir; a place that is located for their congregating; and anybody that wants to borrow or lend money goes to that particular spot.

Mr. UNTERMYER. When you say "anybody," you mean any stock exchange broker?

Mr. TURNER. Any member of the exchange who has a right to do business on the floor.

Mr. UNTERMYER. Nobody can do business in there except a member of the exchange?

Mr. TURNER. No, sir.

Mr. UNTERMYER. In addition to the many that is loaned out on call loans from day to day at that stand, do the stock exchange brokers make their arrangements generally with the banks for loans?

Mr. TURNER. Oh, large quantities of money are borrowed over telephone wires with the banks that never have anything to do with that money crowd.

Mr. UNTERMYER. That is what I supposed. Then the daily loans on collateral at the money stand represent what proportion of the daily stock exchange loans on stock exchange collateral? Could you say?

Mr. TURNER. It would be an impossibility to give any answer of any kind.

Mr. UNTERMYER. You can not give any conception?

Mr. TURNER. No conception whether it is large or small.

Mr. UNTERMYER. But you know, do you not, that the stock exchange houses arrange most of their loans on collateral with their banks?

Mr. TURNER. I could not say that, either.

Mr. UNTERMYER. You do not know what proportion are arranged in that way?

Mr. TURNER. No; I could not even express an opinion.

Mr. UNTERMYER. And there is no way of ascertaining, is there, what the daily loans are in New York to stock exchange brokers on stock exchange collateral?

Mr. TURNER. No, sir.

Mr. UNTERMYER. No statistics on that subject are obtainable?

Mr. TURNER. I do not think they could be obtained.

Mr. UNTERMYER. Do you lend for any institutions other than the City Bank?

Mr. TURNER. I lend incidentally for the Knickerbocker Trust Co., who lend very, very little money.

Mr. UNTERMYER. But apart from that, your business is entirely for the City Bank?

Mr. TURNER. Absolutely. My arrangement with Mr. Stillman, many years ago, was this: "Mr. Turner, we would be very glad to have you lend our money. You can lend our money or you can lend somebody else's money; but you can not lend our money and somebody else's money at the same time." He believed in an undivided interest on the part of the man that represented him.

Mr. UNTERMYER. Do you represent borrowers, too?

Mr. TURNER. No, sir; I practically represent nobody but the City Bank. I might incidentally borrow for some other particular person; but, as all know that know me, I represent simply the City Bank and its interests.

Mr. UNTERMYER. That is not so with the other men, is it?

Mr. TURNER. No. There are some brokers who are purely money brokers. Mr. Griesel is a man who is so highly esteemed—he more naturally represents the borrower; but he has so much the confidence of the lender as well that they often give him money to lend for them at the same time he is a representative of the borrower on the exchange. That is his reputation.

Mr. UNTERMYER. Then, as he has said, he frequently represents both sides of the transaction?

Mr. TURNER. He very often represents both sides of a transaction.

Mr. UNTERMYER. As to the other three or four men who do this business, do they do it in the same way that Mr. Griesel does?

Mr. TURNER. Take the firm of Mann, Bill & Ware, I think it is. They are purely money brokers. That firm has representation on the exchange, and they lend the time money of these institutions. These institutions have large amounts of money that they loan out on time.

Mr. UNTERMYER. At this stand?

Mr. TURNER. Oh, no. Rarely ever is any time money loaned on the exchange. It is nearly all call money.

Mr. UNTERMYER. Does this firm also act as broker in lending call money?

Mr. TURNER. Yes. This broker lends the call money of these various banks. Mr. Mann lends the money of the First and of the Chase banks—no, not the Chase.

Mr. UNTERMYER. Mr. Griesel represents the Chase.

Mr. TURNER. Yes. The First, the Commerce, the Guaranty Trust, and some other institutions that I can not recall at the moment, on the exchange.

Mr. UNTERMYER. Does he also lend call money for these institutions off the exchange?

Mr. TURNER. Yes; he may lend money for call off the exchange as well as on.

Mr. UNTERMYER. There is considerable call business done off the exchange, is there not?

Mr. TURNER. Oh, yes; oh, yes.

Mr. UNTERMYER. I mean, done with the banks directly?

Mr. TURNER. Certainly.

Witness excused.

TESTIMONY OF MARCUS HEIM.

The witness was sworn by the chairman.

Mr. UNTERMYER. Where do you live?

Mr. HEIM. In New York.

Mr. UNTERMYER. You have asked to be heard here to-day in connection with the relations between the New York Stock Exchange and the Consolidated Stock Exchange, have you not?

Mr. HEIM. Yes, sir.

Mr. UNTERMYER. Are you a member of the Consolidated Stock Exchange?

Mr. HEIM. I am.

Mr. UNTERMYER. And are you an investor?

Mr. HEIM. I am both an investor and a commission broker.

Mr. UNTERMYER. How long have you been engaged in business in New York?

Mr. HEIM. In New York? Forty years.

Mr. UNTERMYER. As an investment broker?

Mr. HEIM. No; only since 1879 in Wall Street.

Mr. UNTERMYER. Will you go on and state what you desire to say concerning the differences between you and the New York Stock Exchange?

Mr. HEIM. I supposed I was summoned here for that purpose. Do you wish me to state it in my own way or to answer questions?

Mr. UNTERMYER. Please go on and state the complaint you have to make.

Mr. HEIM. I have been a member of the Consolidated Exchange since the consolidation of 1885. I have been in Wall Street since 1879. I have always stood "A-1" financially; I have always been ready to meet every obligation on demand during all that time, in times of stress and otherwise—and we have had a great many during that time. I have had business relations with the New York Stock Exchange as an investor, as a speculator, and as a commission broker, during that time.

Mr. UNTERMYER. You mean with members of the stock exchange?

Mr. HEIM. With members of the New York Stock Exchange, placing orders there at times that I could not fill at any other exchange but the New York Stock Exchange. It was the only market in the world where those securities could be bought or sold. Therefore I was obliged to have an account or do business with stock-exchange members. I have had an open account practically since 1879 with possibly about half a dozen different houses.

Mr. UNTERMYER. You mean New York Stock Exchange houses?

Mr. HEIM. New York Stock Exchange houses. They were always ready to seek my business. Sometimes, as a matter of favor, I would open an account at certain houses for the asking. All my business arrangements have always been perfectly satisfactory to these brokers. I have paid the full commissions, as every other man did that traded in those offices. My accounts were conducted on the same lines. There was no difference, no variation whatever.

On May 19, 1909, the board of governors of the New York Stock Exchange, in meeting, passed a resolution that no member of the New York Stock Exchange should transact any business, directly or indirectly, with any member of the Consolidated Exchange.

Mr. UNTERMYER. Is this the resolution to which you refer? I think it is in the record, but I will read it here:

Resolved, That any connection, direct or indirect, by means of public or private telephone, telegraph wire, or any electrical or other contrivance or device or pneumatic tube or other apparatus or device whatsoever, or any communication by means of messengers or clerks, or in any other manner, directly or indirectly, between the New York Stock Exchange Building or any part thereof, or any office of any member of said New York Stock Exchange, and any building of the Consolidated Stock Exchange, or any part thereof, or any room, place, hallway, or space occupied or controlled by said Consolidated

Stock Exchange, or any office of any member of said Consolidated Stock Exchange who is engaged in business upon said Consolidated Stock Exchange, or any transmission, direct or indirect, of information from said New York Stock Exchange Building, or from the office of any member of said New York Stock Exchange, to the said Consolidated Stock Exchange, or to the office of any member of said Consolidated Stock Exchange who is engaged in business upon said Consolidated Stock Exchange, through any means, apparatus, device, or contrivance as above mentioned, is detrimental to the interest and welfare of this exchange and is hereby prohibited.

Resolved, That any member of this exchange who transacts any business, directly or indirectly, with or for any member of said Consolidated Stock Exchange who is engaged in business upon said Consolidated Stock Exchange shall, on conviction thereof, be deemed to have committed an act or acts detrimental to the interest and welfare of this exchange.

Is the Consolidated Stock Exchange incorporated?

Mr. HEIM. It is not.

Mr. UNTERMYER. That is the resolution to which you refer?

Mr. HEIM. That is the resolution to which I refer.

Mr. UNTERMYER. Go on and state what happened after that was passed.

Mr. HEIM. The day when that resolution was passed I saw it printed on the news ticker. I was astonished. The firm that I had an account with at the time called me up on the telephone and said they would like to see me. I said I would be over there after the close of business. They asked me, "Have you seen the resolution that the New York Stock Exchange has passed about doing business with an active member of the Consolidated Exchange?" I said, "Yes; I saw it on the ticker." They said, "What can we do about it?" I said, "I do not know what you can do about it, but it is up to you; you ought to fight your own battle on that."

Mr. UNTERMYER. I do not think it is necessary, Mr. Heim, to go into the conversation; just tell us what happened.

Mr. HEIM. They said we would have to close the account, and I told them that I did not propose to do it.

Mr. UNTERMYER. What happened?

Mr. HEIM. The partners had a little "confab" in the private office and then they came to me and called me in. They said, "Now, we can not keep your account; it is forbidden by the New York Stock Exchange."

Mr. UNTERMYER. But will you not just tell us what happened? You see, relating the conversation will take a long time.

Mr. HEIM. They insisted upon closing the account, which I refused to do. In the course of a few days I went to my counsel; and, in fact, I told him that I would go to court on it, which I did.

Mr. UNTERMYER. Was that the only account that was closed?

Mr. HEIM. It was the only account I had open at the time. I went to my counsel and laid the matter before them and proceeded to get an injunction.

Mr. UNTERMYER. The injunction was dissolved, was it not?

Mr. HEIM. They got a temporary injunction, and then it was dissolved after that; and during the pendency of that temporary injunction they did no business for me—would not accept any business—and the account stood still as it was.

Mr. UNTERMYER. What has happened since?

Mr. HEIM. When the injunction was dissolved they insisted upon my taking up the account. Then, in order not to meet with terrible

loss—I had a very large account there—I made myself an inactive member, which that resolution allowed. If I did no business on the consolidated exchange, I could do business with them, but as long as I did business on the consolidated exchange I was barred from them. So they asked me if I would put that in writing. They said: “We will take your word for it, but we want to have something to show in case any question arises.” I said I would do so, and I gave them a letter.

Mr. UNTERMYER. Where is that?

Mr. HEIM. I have a copy of the letter.

Mr. UNTERMYER. You mean you gave it to the New York Stock Exchange?

Mr. HEIM. I gave the New York Stock Exchange member a copy of the letter stating that I was an inactive member. Here is the letter. Shall I read it?

Mr. UNTERMYER. Let me see it. [After examining letter.] Will you read it into the record, please?

Mr. HEIM. Yes, sir. After the injunction was dissolved, I made myself an inactive member in order to do business with them. [Reading:]

EXHIBIT No. 112, DECEMBER 12, 1912.

SEPTEMBER 7, 1909.

Messrs. ALBERT LOEB & Co.,

32 Broadway, New York City.

GENTLEMEN: In view of the decision of the court in my case, and my personal interest being very much damaged in not being able to have members of the New York Stock Exchange to accept my orders to buy or sell securities, which are only traded in that exchange, I have decided to withdraw as an active member of the consolidated exchange, and therefore intend to continue my business relations with your firm and expect to continue to do my business with you as heretofore.

Yours, very truly,

Mr. UNTERMYER. Please mark that as an exhibit.

The letter above referred to was marked “Exhibit No. 112, December 12, 1912.”

Mr. HEIM. I continued then until October, and I think the firm was about to dissolve. They were split up there, and between the two partners they got into a controversy. They did not want that account any longer. Bear in mind that I was an inactive member, but still they insisted upon my taking up the account. I received a letter from them dated October 11, 1909, as follows:

EXHIBIT No. 113, DECEMBER 12, 1912.

[Albert Loeb & Co., 32 Broadway.]

NEW YORK, October 11, 1909.

Mr. MARCUS HEIM,

32 Broadway, New York City.

DEAR SIR: Will you please take up your account at your earliest convenience as we do not wish to carry it any longer, and oblige.

Yours, very truly,

ALBERT LOEB & Co.

The letter above referred to was marked “Exhibit No. 113, December 12, 1912.”

Mr. HEIM. I was an inactive member at that time, and still I was obliged to take up the account. They did not care to carry it any longer for fear of getting into trouble. I obeyed that summons. I suppose it is necessary to tell you what kind of an account I had.

Mr. UNTERMYER. No; I do not think that is necessary.

Mr. HEIM. I brought it with me.

Mr. UNTERMYER. Had it been a satisfactory account to your brokers?

Mr. HEIM. I had an account there of something like over 4,000 shares of stock.

Mr. UNTERMYER. There had been do default on your account, had there?

Mr. HEIM. Not at all. I took up the account. The day I got that letter I think was on a Friday, and on Monday I proceeded to take up the account. On Saturday we do not have any banking arrangements. There was a debit balance of two hundred and forty-three thousand and some odd dollars. On Monday I gave them a check for \$80,000 and took up a portion—

Mr. UNTERMYER. I do not think that is necessary.

Mr. HEIM. All right. I simply want to show the size of the account.

Mr. UNTERMYER. We do not want to go into your private affairs any further than necessary.

Mr. HEIM. I merely want to show the size of the account; that is all. Then, being an inactive member, as I say—they refused it and did not care to carry the account any longer—I opened an account with Pearl & Co., who were anxious to do business for me as an inactive member. I continued that account there—

Mr. UNTERMYER. Is that a stock-exchange house?

Mr. HEIM. Yes, sir; that is a New York Stock Exchange house. I continued that account there for possibly about five or six months only. I then decided it was to my disadvantage to bar myself from my exchange, where I have been since 1885; and I then notified them that I was going to cease to be an inactive member and that if they wished to do business with me, all well and good; if not, I would have to take up the account. I notified them to that effect—that I was going to cease to be an inactive member—and I then closed the account. Since that time I have had no account with any stock-exchange house.

Mr. UNTERMYER. That is all, is it not?

Mr. HEIM. I received from time to time circulars from different stock-exchange houses making a bid for business, probably not knowing that I was a member of the Consolidated Exchange, or probably I would not have heard from them. But here a short time ago—this probably will be in point—the firm of Alexander & Co. advertised very extensively in the newspapers, and advertised a market circular on Chesapeake & Ohio Railroad. I happened to be interested very largely in the property, and they stated in their ad that it could be had on request. I wrote them and asked them if they would kindly send me this Chesapeake & Ohio circular letter, which, in the course of a day or two, I received, also with order blanks to take my orders and a letter expressing their desire to do business with me at any time or to give me any information I wanted.

Mr. UNTERMYER. When was this?

Mr. HEIM. That was here lately—in November. I think it was in November.

Mr. UNTERMYER. What was the date of that; November of this year?

Mr. HEIM. November of this year; yes; just here within a couple of months. After receiving this circular letter and this letter of theirs, I naturally, as a matter of common courtesy, acknowledged the receipt of it, thanking them for the same, and wrote, stating in the letter: "As per your request to do business, I will be pleased to open an account with you to do business for cash and for an open account if you are willing to accept my account. I am a member of the Consolidated Exchange"—not to deceive them at all. I received a letter in response to that as follows:

EXHIBIT No. 114, DECEMBER 12, 1912.

JUNE 20, 1912.

Mr. MARCUS HEIM,
32 Broadway, New York City.

DEAR SIR: We beg to acknowledge receipt of your favor of June 15, and regret that we are unable to do business for you as you are a member of the Consolidated Exchange.

Yours, very truly,

ALEXANDER & CO.

The letter above referred to was marked "Exhibit No. 114, December 12, 1912."

Mr. UNTERMYER. By whom is that signed?

Mr. HEIM. That is signed by Alexander & Co., members of the New York Stock Exchange. This is the original letter.

Mr. UNTERMYER. Does that complete what you wanted to say?

Mr. HEIM. Unless you wish to notice the length of time—I have here the open account with this firm.

Mr. UNTERMYER. No; I do not think that is material.

Mr. HEIM. It is 10 or 12 years.

Mr. UNTERMYER. Mr. Milburn, would you like to have us ask any questions of this witness for you?

Mr. MILBURN. No, sir.

Mr. UNTERMYER. Mr. Heim, are these the papers in the suit brought by you, and is this the opinion of the court in that action, that you furnished us [indicating papers]?

Mr. HEIM. I have a copy of the opinion. If you have not got it, you can have it.

Mr. UNTERMYER. No; you furnished it to us.

Mr. HEIM. I do not believe you have the opinion there.

Mr. UNTERMYER. Yes; the opinion is here.

Are there a number of interstate corporations the securities of which are listed on the New York Stock Exchange and not elsewhere listed?

Mr. HEIM. The Consolidated Exchange has a very small market. We practically try to trade in anything that brings an order in there. But the New York Stock Exchange is a broader market, and there are a great many stocks, hundreds of them, that are traded in there only and not elsewhere.

Mr. UNTERMYER. The question is whether or not there are a great many interstate corporations the securities, bonds, and stocks of which are listed only on the New York Stock Exchange.

Mr. HEIM. That is correct; yes, sir.

Mr. UNTERMYER. That find no other market?

Mr. HEIM. No other market.

Mr. UNTERMYER. There are how many members of the Consolidated Stock Exchange?

Mr. HEIM. At the present time—we have been reducing them by cancellation—there are about 800.

Mr. UNTERMYER. Can a member of the Consolidated Stock Exchange who personally owns bonds or stocks that are listed only on the New York Stock Exchange sell them at any public market?

Mr. HEIM. Not in any public market that I know of except the New York Stock Exchange.

Mr. UNTERMYER. Can he sell them there?

Mr. HEIM. Probably, if you used some one else's name than your own, but not in your own name.

Mr. UNTERMYER. You could only sell them under cover; is that it?

Mr. HEIM. Under cover, possibly; yes.

Mr. UNTERMYER. I think that is all, Mr. Heim.

Witness excused.

Mr. UNTERMYER. Perhaps the committee would like to see the opinion of the court in this case. It is quite long.

The CHAIRMAN. Let it be marked and filed and incorporated as a part of the proceedings.

The paper referred to, being the opinion in the injunction suit brought by the foregoing witness, was marked "Exhibit No. 115, December 12, 1912," and is as follows:

EXHIBIT NO. 115, DECEMBER 12, 1912.

Supreme court, Kings County, special term for motions.

Marcus Heim *v.* New York Stock Exchange.

Delmas, Towne & Spellman, attorneys for plaintiff; Delphim M. Delmas, of counsel.

Carter, Ledyard & Milburn, attorneys for defendant, Stock Exchange; Lewis Cass Ledyard and Walter F. Taylor, of counsel.

Harry R. Kohn, attorney for defendants, Josephthal, Rothschild, Hochstadter, and Albert Loeb & Co.

Crane, J.:

The New York Stock Exchange is a voluntary association limited to 1,100 members, furnishing facilities for the transaction of the business of buying and selling stocks and bonds for others on commission. The exchange as such does no business, although its governing committee of 40 can regulate the conduct of the members under the constitution and resolutions.

One of the resolutions adopted May 19, 1909, was as follows:

"Resolved, That any member of this exchange who transacts any business, directly or indirectly, with or for any member of the Consolidated Stock Exchange, who is engaged in business upon the said Consolidated Stock Exchange, shall, on conviction thereof, be deemed to have committed an act or acts detrimental to the welfare of this exchange."

Section 6 of article 17 of the constitution reads:

"A member who shall have been adjudged by a majority of votes of all the existing members of the governing committee guilty of willful violation of the constitution of the exchange, or of any resolution of the governing committee regulating the conduct or business of members, or of any conduct or proceeding inconsistent with just and equitable principles of trade, may be suspended or expelled, as the said committee may determine, unless some other penalty is expressly provided for such offense."

A member of the stock exchange, therefore, who transacts any business with an active member of the consolidated exchange is liable to suspension or expulsion.

This plaintiff is and was an active member on the Consolidated Exchange, also transacting business with Albert Loeb & Co., a stock exchange house through whom he bought and sold stocks and bonds upon the floor of said stock exchange. On May 21, 1909, Albert Loeb & Co. notified the plaintiff that because of the above resolution of their exchange he must withdraw his account and that thereafter they could transact no further business with him. It is alleged and not denied that by reason of the constitution and resolution above referred to all the members of the stock exchange will refuse to buy or sell stocks and bonds for the plaintiff or any other active member of the Consolidated Exchange.

It is conceded that the Consolidated Exchange, organized in 1875 as a mining stock exchange, is to a degree a rival of the stock exchange, its sales of stocks averaging per annum nearly one-fourth of those of the latter. There are 1,225 members, of whom 450 are active. The nature of the business transacted upon the floor of the Consolidated Exchange is very largely the same as that of the stock exchange.

The plaintiff by this action seeks to enjoin the stock exchange from enforcing this resolution of nonintercourse as to him and to prevent Albert Loeb & Co. from rejecting his account upon the reasons stated by them. He claims:

First. That the resolution is void, because it constitutes an illegal combination in restraint of trade.

Second. It is void because the business transacted in the stock exchange is affected with a public interest and must, therefore, be carried on without unjustifiable discrimination.

Third. Its enforcement may be restrained at the suit of the plaintiff.

Disposing of the second contention at the outset, I may say that if the stock exchange is affected with a public interest this may justify the interference with its rules, regulations, and methods by the legislature of the State, but not by the courts upon motion of nonmembers. (*Wilson v. The Telegram Co. & Ors.*, 18 N. Y. St. Rep., 73.)

As to the first and third claim, is this resolution void as being an illegal combination in restraint of trade, and may its enforcement be restrained at the suit of the plaintiff?

Any one of the members could refuse to do business with the plaintiff, and no law would interfere; all of the members individually could refuse to buy or sell for the plaintiff, and it would simply be a business misfortune. The question is, Can the members unite and agree not to do business with the plaintiff while he is a member of a rival association?

It would be illegal for them to agree not to transact any business with him at all for no other reason than that they did not like him or his business, and it would be illegal for them to combine not to buy or sell for him while he was a member of any particular club, church, or political organization, for this would be a clear interference with his liberty and a direct attack upon him; but can they base their nonintercourse resolve upon the ground that the plaintiff belongs to and is actually engaged in building up and strengthening a rival to their detriment? I think they can. The distinction which the decided cases make is that if the combination not to do business with the plaintiff is for the purpose of injuring and destroying him it is illegal, but if injury to him follows as an incident from action sought to protect, increase, and strengthen the business of the associates, then it is as legitimate as other forms of competition which the law leaves parties and combinations free to indulge in.

The plaintiff is not driven out of the stock-and-bond business; he simply can not enjoy one privilege openly and the other secretly. He can buy and sell freely of the stock exchange members upon ceasing active work for its rival, or he can confine his activities to the Consolidated Exchange, of which he is a member.

The only condition which the above resolution of the stock exchange places upon him is that he shall not continue indirectly to injure their business. It is a case of give and take.

It can not be said in view of the history of the two exchanges that this resolution has been passed through any bad motives or for the purpose of injuring the plaintiff. From the papers submitted it appears that but for the well-organized system of the stock exchange and the ready, speedy method of ascertaining the salable value of securities the other exchange would have little business, that the business of the Consolidated Stock Exchange in listed

stocks and bonds depends upon the prices ruling at the latter place. In its report to the governor of the State the committee on speculation in securities and commodities, June, 1909, have the following to say about these two exchanges:

"The Consolidated Exchange was organized as a mining stock exchange in 1875, altering its name and business in 1886. Although of far less importance than the stock exchange, it is nevertheless a secondary market of no mean proportions; by far the greater part of the trading is in securities listed upon the main exchange, and the prices are based upon the quotations made there. * * * Very strained relations have existed between the two securities exchanges since the lesser one undertook, in 1886, to deal in stocks. The tension has been increased by the methods by which the Consolidated obtains quotations of the other—through the use of tickers conveying them. It is probable that without the use of these instruments the business of the Consolidated Exchange would be paralyzed."

Various litigations over the use of information thus obtained evidence the efforts which have been made by the stock exchange to protect its good will and prestige.

The following cases bear out my statement of the law:

In *National Protective Association of Steam Fitters and Helpers v. Cummings* (170 N. Y., 315), the Court of Appeals of this State held that it was lawful for one labor organization to call out all its men on a strike and refuse to work with a man who was a member of a rival union. As a practical result all work was stopped. That the nonmember would be unable to obtain work anywhere in New York City, where the same conditions would not prevail, did not make this form of competition for work illegal. The effect of the decision, of course, would be that to get work the man must join the stronger union. Mr. Justice Parker said:

"Whenever the court can see that a refusal of members of an organization to work with nonmembers may be in the interest of the several members it will not assume, in the absence of a finding to the contrary, that the object of such refusal was solely to gratify malice and inflict injury upon such nonmembers."

Turn about is fair play. The law which was applied by our court of appeals to the labor organization is now being applied by capital, a result, of course, to be expected. This case did not go without strenuous dissent upon the part of three members of that court, as evidenced by the splendid dissenting opinion of Judge Vann, but the case has been followed by other courts, and it is the law which I am obliged to apply until it is modified or limited by the highest court of our State, as some day it may be.

See also *Mills v. U. S. Printing Co.*, of Ohio (99 App. Div., 605); *National Fireproofing Co. v. Mason Builders' Association* (169 Fed. Rep., 259).

A case very nearly in point with the present one arose in Illinois—*American Live Stock Commission Co. v. Chicago Live Stock Exchange* (143 Ill., 210). The facts in this case were as follows: The Chicago Live Stock Exchange adopted the following by-laws and rules:

"1. No person shall be received for membership in this exchange who in any manner represents or acts for, either as an officer, agent or broker, or commission merchant, any other live-stock corporation or exchange whose charter, regulations, rules, or by-laws provide for discrimination in rates or charges or commissions between stockholders or other patrons or customers, whether under guise of dividends, drawbacks, or any scheme or device whatever.

"2. If any member of this exchange shall hereafter act for, either as officer, agent, broker, or commission merchant, any other live-stock corporation or exchange whose charter, regulations, rules, or by-laws provide for discrimination in rates or charges or commissions between stockholders or other persons or customers, whether under the guise of dividends, drawbacks, or any other scheme or device whatever, he shall be liable to suspension for the first offense and to expulsion for any subsequent offense.

"Nobody in this exchange shall buy or cause to be bought at the Union Stock Yards, Chicago, Ill., from any agent, individual, firm, incorporation, or other live-stock commission company who are or may be regularly selling live stock for nonresidents on commission unless some one or more of the members of such firm or stockholders of such company are members in good standing of this exchange: *Provided, however*, That any party or parties beginning a live-stock commission business at said yard shall not be considered subject to these rules until 30 days from the date of their beginning such business, and provided fur-

ther that nothing herein contained shall be construed as in any manner prohibiting any party from selling his own live stock on the market for such stock yards or any member of this exchange from buying such stock of the owner."

A bill was filed in chancery brought by the American Live Stock Commission Co. to enjoin the exchange from carrying out and enforcing these regulations. Among other things the court had this to say:

"Absolute freedom of commercial intercourse to which a party may be entitled is not interfered with by the refusal of another to deal with such party on any terms. The refusal of any or all of the members of the exchange to purchase live stock of the complainant is merely an exercise of their clear legal prerogative, and if they have a right to so refuse it is difficult to see how an agreement, as between themselves, to abstain from dealing with the complainant is a matter in respect to which the complainant is entitled to any species of equitable relief. * * *

"If the by-laws in question are invalid because of being in improper restraint of trade, they are merely void, and the members of the exchange, being under no obligation to obey them, may perhaps be entitled, at their own instance, to protection against such disciplinary consequences as the exchange may see fit to impose in case of disobedience. But such protection can not be invoked in their behalf by a stranger nor can they be required to disobey such rules except at their own volition. * * *

"These rules having been adopted, presumably with the approval of the members of the exchange, there is no reason to suppose that they will not be voluntarily obeyed, and such voluntary obedience is a matter which the courts have no power to restrain.

"But the position is taken on behalf of the complainant, and most strenuously insisted upon, that the live-stock market at the Union Stock Yard, by reason of its magnitude and its far-reaching influence upon the commerce of the country, has become a public market and therefore impressed with the public use, and that not only said market, but all those doing business therein, are brought within the influence of those rules of public policy which apply to and govern the public employments and which it is the business of the courts to administer and enforce. * * *

"The bill alleges, and the truth of the allegation is not questioned, that the amount of business annually transacted at said stockyards is such as to constitute the market thus established the largest live-stock market in the world. * * *

"But we are not prepared to hold that the mere fact that the business of a particular market has become very large gives to the courts any power to declare such markets public and impressed with the public use or to apply to them any rules of public policy peculiar to that class of markets.

"* * * The business which is here sought to be subjected to a public use was, at its commencement, confessedly private, and private only, and the public use is sought to be impressed upon it not by virtue of any voluntary grant to the public but simply because, by mere process of growth and expansion, the business has reached such magnitude as to affect public interests because of its magnitude alone."

The plaintiff's counsel recognizes this authority as being in point in this litigation and disposes of it in his brief in these words: "Much that is said in the opinion is irreconcilable with more recent decisions and with principles in formerly established cases."

But the law of this case seems to have been reiterated and followed in the case of National Fireproofing Co. v. Mason Builders' Association, decided by the Circuit Court of Appeals for the Second Circuit in March, 1909 (cited above).

But supposing for the moment that the resolution of the stock exchange is illegal as in restraint of trade, as claimed by the plaintiff, yet the plaintiff, a nonmember, could not enjoin its enforcement. The members might disregard it and continue doing business with the plaintiff, and if any action was attempted to suspend or expel them, then they might seek equitable relief, but strangers have not this right, but must seek damages at law. As was said in the Illinois case above cited:

"The law does not prohibit the making of contracts in the restraint of trade; it merely declines to recognize their validity or to enforce them." (See also Russell v. New York Produce Exchange, 58 Supp., 842; Gildersleeve, J.)

The plaintiff submitted a very voluminous and exhaustive brief, and I have given much time in reading the cases which he has cited. It would be impos-

sible to refer to many of them and show their inapplicability. A few instances will suffice. The case of *Strauss v. The American Publishers' Association* (177 N. Y., 473) was held to be in violation of chapter 690 of the laws of 1899 in that the contract was in purpose and effect a restraint of competition in the sale of articles in common use, to wit, books.

The case of *Knight & Jillson Co. v. Miller* (87 N. E., 823) was brought under a special statute of Indiana, very broad in its scope.

Balley v. Association of Master Plumbers of the City of Memphis (103 Tenn., 99) was an action between the association and a member, not a third party.

The case which comes nearest to the present controversy, sustaining much of the plaintiff's argument with strong reasoning, is *Boutwell v. Marr* (71 Vt., 1), but this was an action at law for damages and not a suit in chancery for injunction.

All of the cases cited by the plaintiff are of this nature. They bear upon the subject but are not directly in point, being either actions under the Federal antitrust law, State statutes extending the remedy if not the right, or else involving contracts and agreements the direct purpose of which was to control prices and create monopoly in articles in common use.

I do not find one that gives or would give the plaintiff the right and remedy he seeks here.

It may be that the plaintiff and his associates will suffer some financial loss from this action of the stock exchange, but business is made up of gains and losses; competition means selection, not inclusion, and while there is always a wide opportunity for fairness and magnanimity, the courts interfere only when competition becomes combined force seeking another's injury or ruin. Legislation in some of the States pertaining to combination or association for trade or business is much broader than here, but I do not consider our law, which was chapter 690 of the laws of 1899, applicable to this case.

For the reasons expressed I shall deny an injunction.

September 3, 1909.

TESTIMONY OF MIGUEL E. DE AGUERO.

The witness was sworn by the chairman.

Mr. UNTERMYER. Mr. de Aguero, where do you live?

Mr. DE AGUERO. New York.

Mr. UNTERMYER. Are you the president of the Consolidated Stock Exchange?

Mr. DE AGUERO. I am.

Mr. UNTERMYER. What is your firm.

Mr. DE AGUERO. M. E. and J. W. de Aguero.

Mr. UNTERMYER. Are you stockbrokers?

Mr. DE AGUERO. Yes, sir.

Mr. UNTERMYER. How long have you been stockbrokers?

Mr. DE AGUERO. Since 1884. The firm was established in 1884.

Mr. UNTERMYER. And you have been continuously in existence all that time?

Mr. DE AGUERO. We have; yes, sir.

Mr. UNTERMYER. Have the members of the Consolidated Stock Exchange experienced any difficulty or any discrimination on the part of great corporations in respect to transfers of securities bought on that exchange?

Mr. DE AGUERO. We claim that we have; yes, sir.

Mr. UNTERMYER. You claim that you are being discriminated against, as against the New York Stock Exchange, in such transactions?

Mr. DE AGUERO. We do; yes, sir.

Mr. UNTERMYER. Have you had the subject up with some of the corporations?

Mr. DE AGUERO. We have.

Mr. UNTERMYER. With what corporations?

Mr. DE AGUERO. I think you have a list there of the corporations. Perhaps I could give it to you here. This is a list of those who will not accept the guaranty of the exchange itself on certificates of stock for transfer.

Mr. UNTERMYER. And they do accept the guaranty of the New York Stock Exchange?

Mr. DE AGUERO. Yes, sir; so I am informed.

Mr. UNTERMYER. But you know they do not accept yours, do you not?

Mr. DE AGUERO. I do.

Mr. UNTERMYER. Just state the list of them; will you?

Mr. DE AGUERO. You have the list there. It is a pencil list.

Mr. UNTERMYER. I will read it into the record.

Mr. DE AGUERO. If you please.

Mr. UNTERMYER. This is a list of transfer officers who will not accept the guaranty of the consolidated exchange: Pennsylvania Railroad, Lehigh Valley Railroad, Atchison, Topeka & Santa Fe, United States Steel Co., Harvey Fiske & Sons, the Bankers' Trust, the Manhattan Trust, and the Guaranty Trust.

Mr. DE AGUERO. Yes, sir.

Mr. UNTERMYER. Do the other corporations whose shares are dealt in on your exchange accept the guaranty of the exchange?

Mr. DE AGUERO. Yes, sir.

Mr. MILBURN. It is not the guaranty of the Consolidated Exchange.

Mr. UNTERMYER. No; of the members of the Consolidated Exchange.

Mr. DE AGUERO. No; I beg your pardon—of the exchange itself. That is a list of those who will not accept the guaranty of the Consolidated Stock Exchange itself, placed on the certificate by the chairman of the exchange under authority of the board of governors of the exchange.

Mr. UNTERMYER. In other words, you have offered the exchange's guaranty in addition to the guaranty of the members, have you not?

Mr. DE AGUERO. Yes, sir.

Mr. UNTERMYER. Have you had any correspondence on that subject?

Mr. DE AGUERO. We have.

Mr. UNTERMYER. With whom?

Mr. DE AGUERO. With the United States Steel Co., mostly.

Mr. UNTERMYER. Have you furnished the committee that correspondence?

Mr. DE AGUERO. I have, yes, sir; part of it.

Mr. UNTERMYER. Is this what you have furnished the committee [indicating papers]?

Mr. DE AGUERO. Yes, sir; it is.

Mr. UNTERMYER. That is it, is it?

Mr. DE AGUERO. Yes; that is it.

Mr. UNTERMYER. We will read that into the record.

Mr. DE AGUERO. Very well, sir.

Mr. UNTERMYER. Does that constitute all the correspondence on this subject?

Mr. DE AGUERO. No, sir; it does not.

Mr. UNTERMYER. Where is the rest of it?

Mr. DE AGUERO. The rest of the correspondence was had with the counsel of the exchange.

Mr. UNTERMYER. Would it not be fairer to have it all, Mr. de Aguero? These seem to be only letters from you to Mr. Gary, are they not?

Mr. DE AGUERO. Yes, sir.

Mr. UNTERMYER. Where are the replies?

Mr. DE AGUERO. We had no replies, as that shows, except this one, and one other; and the other I can not find. This is the one reply; this is the only one I can find.

Mr. UNTERMYER. This is the only one you can find?

Mr. DE AGUERO. Yes, sir.

Mr. UNTERMYER. The United States Steel Corporation is its own transfer agent, is it?

Mr. DE AGUERO. Yes, sir.

Mr. UNTERMYER. Therefore you applied to it?

Mr. DE AGUERO. We did.

Mr. UNTERMYER. Do you remember what the other communication was, which you say you can not find?

Mr. DE AGUERO. I think the answer there, as of February 15, 1910, will give you an idea.

Mr. UNTERMYER. We will read it over; and will you see if you can find the other letters, so as to have the correspondence complete?

Mr. DE AGUERO. I have looked for it, sir; and I can not find it.

Mr. UNTERMYER. But you can tell us what its substance was when we get to it, can you not?

Mr. DE AGUERO. Very nearly.

Mr. Untermeyer thereupon read the following letters:

EXHIBIT No. 116, DECEMBER 12, 1912.

CONSOLIDATED STOCK EXCHANGE OF NEW YORK,
PRESIDENT'S OFFICE,
New York, January 3, 1910.

Mr. E. H. GABY,

*Chairman United States Steel Corporation,
71 Broadway, New York City.*

MY DEAR SIR: We have endeavored, over the telephone, for many weeks to get an appointment with you in order to reach some conclusion in regard to transferring stock for several of our leading commission houses who followed your suggestion by making a statement such as you outlined. These statements were sent to you a number of weeks ago.

Would it not be possible to arrange a meeting with us at your convenience when you could give the matter the consideration due and come to some conclusion, as our business in Steel is very large at the present time and our exchange is greatly in need of transfer facilities in the stock?

Small investors are now putting their money into Steel on the belief that it is one of the best investments of the day, and the Consolidated Exchange is probably handling more of the stock in small lots than all the other exchanges in the United States combined.

Awaiting your answer, I have the honor to remain,

Yours, very truly,

S. A. LUTHER,
First Vice and Acting President.

H. PLUMMER,
C. H. VAN BUREN,
Committee.

The letter above referred to was marked "Exhibit No. 116, December 12, 1912."

Mr. UNTERMYER. Were you away when this letter was written, or were you then the president?

Mr. DE AGUERO. I was not the president at that time. Mr. Badeau was president.

Mr. UNTERMYER. Was he away at the time?

Mr. DE AGUERO. He was away at the time.

Mr. UNTERMYER. What committee is that that signed this letter?

Mr. DE AGUERO. A special committee appointed to take up the subject with the United States Steel Corporation.

Mr. UNTERMYER (continuing reading):

EXHIBIT No. 117, DECEMBER 12, 1912.

CONSOLIDATED STOCK EXCHANGE OF NEW YORK,
PRESIDENT'S OFFICE,
New York, January 26, 1910.

Mr. E. H. GARY,
Chairman United States Steel Corporation,
71 Broadway, New York City.

DEAR SIR: We wrote you on the 3d instant concerning the matter of transfers for a few of our commission houses who at your suggestion prepared statements of their financial condition, which were delivered at your office several weeks ago. Many thousands of small investors in the United States Steel Corporation shares place their orders on the Consolidated Stock Exchange, which is an institution organized primarily to benefit business in fractional lots. In justice to these investors and the Consolidated Stock Exchange, we think the United States Steel Corporation, as represented by yourself, should make an early decision regarding this matter of transfers.

Trusting that you will fix a near-by date for an interview, we have the honor to remain,

Yours, very truly,

S. A. LUTHER,
First Vice and Acting President.
H. PLUMMER,
C. H. VAN BUREN,
Committee.

The above letter was marked Exhibit No. 117, December 12, 1912.

EXHIBIT No. 118, DECEMBER 12, 1912.

CONSOLIDATED STOCK EXCHANGE OF NEW YORK,
PRESIDENT'S OFFICE,
New York, February 9, 1910.

Mr. E. H. GARY,
Chairman United States Steel Corporation,
71 Broadway, New York City, N. Y.

DEAR SIR: Your telephone message, refusing to grant transfer facilities to a number of our old-established commission houses, was received.

Your action reveals a most astonishing situation, that you, as head of one of the largest corporations in this country, should refuse to transfer stock for your own stockholders because they do business through the commission houses of the Consolidated Stock Exchange, an institution which is conducted on strictly business principles in every respect, and does the second largest business of any exchange in the United States, and probably the largest odd-lot business of any exchange in the world. Yesterday our official list of sales, which is inclosed, shows a total of between 82,000 and 83,000 shares of United States Steel common traded in on our floor, a showing which should command respect, as it is free from any matched orders, wash sales, or manipulative orders put in to influence prices.

When it becomes generally known that you have taken this stand against your own stockholders who trade through this exchange, will you be backed up

by your own board of directors, in view of the fact that you are the only corporation or railroad who refuses the privilege of transfer facilities to our members? Would the anti-Sherman Act and the general laws of the land allow you to "boycott" your own stockholders and our commission houses in this respect?

Some time ago we submitted, at your request, financial statements of some of our oldest commission houses. Will you kindly return these financial statements, as they are the property of the members who submitted the same, and should be justly restored to their possession if you do not propose to grant transfer facilities to them.

We feel the stand you have taken is unjust as discriminating against this exchange, which is organized especially for the benefit of the small investor.

It is unjust to you and your corporation to take a stand which places you in the position of not appreciating the fact that you are practically attempting to block the progress of increasing legitimate commission business in your own stock.

Don't you think this whole matter would be worth your reconsideration in view of all the agitation now before the public regarding stocks, stock transactions, and anticorporation legislation?

Awaiting your reply, we have the honor to remain,

Yours, truly,

C. H. BADEAU,
President.
C. H. VAN BUREN,
H. PLUMMER,
Committee.

The foregoing letter was marked "Exhibit No. 118, December 12, 1912."

Mr. UNTERMYER. I see you say, in this letter of February 9, 1910, that the United States Steel Corporation is the only corporation or railroad that refuses the privilege of transfer facilities to your members. Was that accurate at the time?

Mr. DE AGUERO. I suppose it was, sir. I really could not answer the question, because I did not write the letter.

Mr. UNTERMYER. The list you have given of those who refused is a list of those who now refuse, is it?

Mr. DE AGUERO. Yes, sir.

Mr. UNTERMYER (reading):

EXHIBIT No. 119, DECEMBER 12, 1912.

CONSOLIDATED STOCK EXCHANGE OF NEW YORK,
PRESIDENT'S OFFICE,
New York, February 15, 1910.

Mr. E. H. GARY,

*Chairman United States Steel Corporation,
71 Broadway, New York City.*

DEAR SIR: Your esteemed letter received. We are surprised that by your actions and words you seem to advocate the upholding of discriminations.

You state that one of your rules to be complied with is as follows: "In order to obtain a transfer, the assignment by the stockholder upon the back of the certificate must be acknowledged by him before a notary public or his signature must be guaranteed by a firm having membership in the New York Stock Exchange." The latter part of your rule is not in keeping with the progress of business in Wall Street. It has become too obsolete to meet the requirements of the business to-day. How can you reconcile your statement, "it seemed necessary for the protection of the corporation and its stockholders to limit as far as possible the responsibility of our transfer office," when you take the unquestioned guaranty of every member of the New York Stock Exchange? What protection has that been to your corporation and its stockholders under existing business conditions in the past few years? What protection did your

corporation and its stockholders receive from the guaranties of such New York Stock Exchange firms as A. O. Brown & Co., T. A. McIntyre & Co., Coster, Knapp & Co., Marshall, Spader & Co., Tracy & Co., Otto Heinze & Co., Meadows, Williams & Co., Freeman, Rollins & Co., Fisk & Robinson, J. M. Fiske & Co., Roberts, Hall & Criss, and Lathrop, Haskins & Co.? The combined indebtedness of the above concerns alone would amount to more than the total of all the failures which have ever occurred on the Consolidated Stock Exchange since its formation in proportion to the business executed on the respective floors of the two exchanges.

We fail to see any corroboration "that the wisest course for the Steel Corporation to pursue is to abide by the rule regarding transfer of stock which has heretofore been followed" when you carefully consider the disastrous consequences of the guaranties of these New York Stock Exchange firms as a necessity to protect the interest of your stockholders.

You need to bring your transfer methods up to date, to conform to the methods of other principal railroads and corporations, if you wish to be abreast of the present times.

We concur when you state that the request which was made to your corporation was on behalf of certain individual firms and not on behalf of the exchange itself or all of its members, but we can not agree when you state, "upon reflection you will see that to extend the limits of the rule to certain members of the Consolidated Stock Exchange and not to others would be much more of a discrimination than is the rule as it exists at present," for the reason that the request was made only for firms who have stood the test of their responsibility during all the vicissitudes of Wall Street for upwards of 17 years and should therefore be entitled to transfer facilities on their past and present reputation alone. How can it be considered a discrimination against other members who have only been in business for periods of much less time and have not so thoroughly proven the same standard of responsibility and are not in the same relative position? But when they have withstood the same test they should certainly be entitled to the same consideration. The test of merit should be based upon proven responsibility.

We maintain that every firm, or individual, who can satisfactorily prove their, or his, responsibility, whether they are members of an exchange, or do not belong to any exchange, are entitled, by right and by law, to transfer facilities for themselves and their customers, on their guaranty, and it is direct discrimination against them by refusing such transfer, simply because they are not members of the New York Stock Exchange. We are at a loss to understand how a man of your vast business experience and extensive legal mind can look at the situation with any other view. It is less than 30 years when leading railroad companies refused to transfer except for a few New York Stock Exchange firms, on their guaranty, but times have progressed since then, and are equally progressing to-day.

The Consolidated Stock Exchange is a young and a rising institution, and when you decide to use your power, and that of your corporation, to attempt to obstruct or curtail the building up of the legitimate business of our long-established commission houses by refusing transfer facilities to responsible concerns, you place yourself in the position of advocating the restraint of trade, and put a direct "boycott" by your action on members of the Consolidated Stock Exchange.

The request to transfer for seven long-established firms on the Consolidated Stock Exchange, in addition to the one you already take the guaranty of, is based simply on right, fairness, and a square deal, which we trust that you will appreciate and concede when you give your ever-busy mind the opportunity to thoroughly weigh in all its particulars, as has been done by some of the greatest interests in Wall Street.

We have the honor to remain,
Yours, very truly,

C. H. BADEAU,
President.
C. H. VAN BUBEN,
H. PLUMMER,
Committee.

The above letter was marked "Exhibit No. 119, December 12, 1912."

EXHIBIT No. 120, DECEMBER 12, 1912.

CONSOLIDATED STOCK EXCHANGE OF NEW YORK,
New York, March 2, 1910.

Mr. E. H. GARY,
*Chairman, United States Steel Corporation,
 71 Broadway, New York City, N. Y.*

DEAR SIR: On February 15 we sent to your office, per messenger, an answer to your letter of February 12. Not having received a reply from you, or the return, requested by us on February 9, of the seven statements made to you, in confidence, and at your special request, we can only infer that you have decided to give the matter of discrimination, by the United States Steel Corporation, against these seven concerns a thorough reconsideration.

Trusting to hear from you that such is the case, and that you have finally decided to grant so just a request, as we have made of you, we have the honor to remain,

Yours, very truly,

C. H. BADEAU,
President.
 C. H. VAN BUREN,
 H. PLUMMER,
Committee.

The above letter was marked "Exhibit No. 120, December 12, 1912."

EXHIBIT No. 121, DECEMBER 12, 1912.

UNITED STATES STEEL CORPORATION,
New York, March 4, 1910.

Mr. C. H. BADEAU, President,
 MESSRS. C. H. VAN BUREN and H. PLUMMER, Committee,
Consolidated Stock Exchange of New York, New York.

DEAR SIR: Referring to your letter of March 2, addressed to Mr. E. H. Gary, chairman, I am directed to return under seal the seven statements referred to and inclosed herewith, and to state that we can not see our way clear to change our position in the matter.

Yours, truly,

RICHARD TRIMBLE,
Secretary.

The above letter was marked "Exhibit No. 121, December 12, 1912."

This correspondence which I have just read refers to a letter of February 12 from Mr. Gary?

Mr. DE AGUERO. It is quoted from so largely that you may have a very good idea of what it said; of the contents of the letter.

Mr. UNTERMYER. Do you not think it is more just to have the letter?

Mr. DE AGUERO. If I had it, I should be very happy to give it to you. I have looked for it, but have not been able to find it.

Mr. UNTERMYER. May it then be understood, Mr. Chairman, that Mr. Gary will be invited to put that letter in the record, or that counsel for the stock exchange may do so?

The CHAIRMAN. Certainly; or a copy of it.

Mr. UNTERMYER. And that Mr. Gary's letter will go into the record.

Mr. DE AGUERO. I should be very happy to have it.

The CHAIRMAN. If they desire to avail themselves of the privilege.

Mr. DE AGUERO. May I state that we continued our efforts to get transfers from the United States Steel, and so from time to time it went along for a year and a half or more; and eventually we decided

that we would address the chairman of the exchange to guarantee the signatures on certificates for all companies, and passed the resolution and sent a copy to the transfer officers.

The United States Steel Corporation still refused, or would not transfer when certificates were sent over to them. They questioned, as this correspondence will show, the power of the board to pass the resolution authorizing the chairman to act for the exchange. We offered to have their counsel draw the resolution, and pass whatever they would draw. Notwithstanding that, they finally declined. They turned it over to the Guaranty Trust Co. as the registrar, and they finally declined to change their rule.

On the 9th of this month we had some steel to transfer, and I directed the chairman to send a certificate over to the United States Steel Corporation with the guaranty of the exchange on it. He did so. They returned it—would not transfer it. Then he put a notarial certificate on it, and it was, of course, transferred, which they must do according to law.

Mr. UNTERMYER. Yes. But they do not require these notarial certificates from the members of the New York Stock Exchange?

Mr. DE AGUERO. No, sir.

Mr. UNTERMYER. How does that requirement for a notarial certificate, if at all, embarrass business dealings in the stock?

Mr. DE AGUERO. In this way: A man must appear before the notary—in this case the chairman of the exchange himself—and give evidence to the fact that he is the signer, and he must be known to the notary.

Mr. UNTERMYER. He must do that as to every certificate?

Mr. DE AGUERO. He must do that as to every certificate. A man out of town sends his certificate in to New York to be sold by one of our houses, and that stock is sold, perhaps on order—telegraphic order over the wire—and when they receive the certificate it has no notarial certificate upon it, and that certificate must be returned to the owner, perhaps 500 to 1,000 miles away, to have that notarial certificate put upon it, and must be sent back to New York and then transferred to the man who buys the stock.

Mr. UNTERMYER. To what extent would any such requirement embarrass business on your exchange, as against the other exchange?

Mr. DE AGUERO. I do not know to what extent; but of course anybody can see that it does make a difference.

Mr. UNTERMYER. Would it make business practically impossible?

Mr. DE AGUERO. Not impossible, but it makes it very hard for our brokers out of town to receive orders to buy or sell stock when they must go to the owner of that stock and tell him that he must have a notarial certificate put upon it; or they must have the certificate returned and then go to him. He naturally comes to the conclusion that we have no standing in New York, and we have no right, therefore, to have stocks transferred.

We claim two things, Mr. Chairman. One is that these people are acting against the interests of their own stockholders, in that they force them to sell their securities through one exchange and one exchange only, because they give them no transfer rights if they sell through any other exchange; whereas they have the signature on their books of every one of their stockholders, and are best able

to judge whether that signature is correct or not. Also gentlemen in our exchange, of good standing, sell their seats and join the New York Stock Exchange, and the next day they can transfer in the offices of all these railroads and the Steel Corporation. The day before they could not; although they had more money than they had the next day, because they had to pay for the seat in the exchange.

Mr. UNTERMYER. In making transfers on the books of the corporation of stocks sold through members of the New York Stock Exchange, does the New York Stock Exchange itself guarantee the genuineness of the signature?

Mr. DE AGUERO. I think not. I have never heard of it.

Mr. UNTERMYER. That rests upon the brokerage firm?

Mr. DE AGUERO. Yes.

Mr. UNTERMYER. Do I understand that, in the case of your exchange, in addition to the guaranty of the brokerage firm you offer the guaranty of the exchange itself?

Mr. DE AGUERO. Yes; with free assets of probably \$600,000.

Mr. UNTERMYER. The Consolidated Exchange has free assets of \$600,000?

Mr. DE AGUERO. Yes.

Mr. UNTERMYER. You own your own building, too, do you not?

Mr. DE AGUERO. Yes; and the land; mortgaged, of course. But I am speaking of free assets. I am talking about the equity in the building and the free assets.

Mr. UNTERMYER. Is this a certified copy of the resolution of the Consolidated Stock Exchange that you tendered to the United States Steel Corporation?

Mr. DE AGUERO. To the transfer officers; yes.

The paper referred to was marked "Exhibit No. 122, December 12, 1912," and is here printed in the record, as follows:

EXHIBIT No. 122, DECEMBER 12, 1912.

Resolved, That Valentine Mott, as chairman of the Consolidated Stock Exchange of New York, be, and he is hereby, authorized and empowered, until the rescission or amendment of this resolution by the further resolution or resolutions of this board of governors, in the name and as the act and deed of the Consolidated Stock Exchange of New York, to guarantee the genuineness of any and all indorsements of certificates of stock; and be it further

Resolved, That each and every guaranty of the genuineness of the indorsement of a certificate of stock hereafter made or given by said Valentine Mott as such chairman, in the name of said exchange, be, and is hereby, ratified, approved, and confirmed as the act and deed of the Consolidated Stock Exchange of New York; and be it further

Resolved, That the secretary be, and is hereby, authorized to transmit to any corporation or to the transfer agent or agents thereof a duly certified copy of this resolution.

I, James E. Lynch, secretary of the Consolidated Stock Exchange of New York, do hereby certify this 29th day of November, 1912, that the foregoing is a full and correct copy of a resolution duly adopted at a meeting of the board of governors of the Consolidated Stock Exchange of New York, duly called and held on the 9th day of November, 1911, and that the same has not been rescinded or amended except the resolution attached.

JAMES E. LYNCH, *Secretary*.

I, Miguel E. de Aguero, president of the Consolidated Stock Exchange of New York, hereby certify, this 29th day of November, 1912, that the signature to the foregoing certificate is the signature of James E. Lynch and that said Lynch is the secretary of the Consolidated Stock Exchange of New York.

M. E. DE AGUERO, *President*.

Mr. UNTERMYER. Is this a copy of the resolution under which that was done?

Mr. DE AGUERO. The other is the resolution. This is a part of the resolution passed, for the information of the chairman himself. It does not apply to the resolution.

Mr. UNTERMYER. Will you tell me whether or not that is a list of corporations that accept the guaranty of the Consolidated [showing witness paper]?

Mr. DE AGUERO. It is; yes.

Mr. UNTERMYER. Is that a further list [referring to another paper]?

Mr. DE AGUERO. This is a list of those that accept the guaranty of the chairman without the guaranty of the exchange.

Mr. UNTERMYER. And the second is a list of those that accept the guaranty of the chairman accompanied by the guaranty of the exchange?

Mr. DE AGUERO. That is the first one.

Mr. UNTERMYER. I will read that [reading]:

EXHIBIT No. 123, DECEMBER 12, 1912.

New York Central, Southern Pacific, Pacific Mail, Union Pacific, City National Bank, American Sugar, American Smelting & Refining Co., Consolidated Gas Co., Colorado Fuel & Iron, Central Leather, Canadian Pacific, Great Northern, Louisville & Nashville, Texas Pacific, Wabash, Denver & Rio Grande, and United States Rubber Cos.

That is the list of those that accept the guaranty of the house and that of the exchange together?

Mr. DE AGUERO. Yes.

The list referred to was marked "Exhibit No. 123, December 12, 1912."

Mr. UNTERMYER. Is this a list of concerns that accept the guaranty of the stock exchange house, without that of the exchange?

Mr. DE AGUERO. And the chairman. Mr. Mott signs it. They accept his signature.

Mr. UNTERMYER. Without the guaranty of the exchange?

Mr. DE AGUERO. Without the guaranty of the exchange; yes, sir.

Mr. UNTERMYER. I will read it [reading]:

EXHIBIT No. 124, DECEMBER 12, 1912.

Rock Island; National Lead; Brooklyn Rapid Transit; Chesapeake & Ohio; Ontario & Western; Winslow, Lainer Co.; Central Trust Co.; Peoples Gas; J. P. Morgan & Co.; New York Air Brake; Distillers' Securities; New York Trust Co.; Equitable Trust Co.

The paper referred to was marked "Exhibit No. 124, December 12, 1912."

Mr. UNTERMYER. I think that covers all that you wanted to say, does it not?

Mr. DE AGUERO. Yes, sir. There was one point that I would like to make, if I may.

Mr. UNTERMYER. Very well.

Mr. DE AGUERO. That is this: Can a man who belongs to our exchange sell securities in the New York Stock Exchange if he is appointed executor of a will?

Mr. UNTERMYER. We are not here to take up problems, Mr. de Agüero; but I suppose what you want me to ask is as to whether

or not an executor of an estate would be able to sell his estate's securities on the Consolidated Stock Exchange?

Mr. DE AGUERO. Under the ruling, he would not.

Mr. UNTERMYER. That is a matter in which we are not concerned.

Mr. DE AGUERO. All right.

Witness excused.

TESTIMONY OF MAURICE OBER.

The witness was sworn by the chairman.

Mr. UNTERMYER. What is your business?

Mr. OBER. I am a broker on the Consolidated Exchange, making a specialty of mining stocks, securities listed on our exchange, New York Stock, and on western exchanges. I also trade on the curb. I fill orders there.

Mr. UNTERMYER. Do you know whether the New York Stock Exchange houses do business on the curb too?

Mr. OBER. All of them, as far as I know.

Mr. UNTERMYER. How long have you been a broker in New York?

Mr. OBER. Over 20 years.

Mr. UNTERMYER. What is your firm?

Mr. OBER. Maurice Ober. I have no partner.

Mr. UNTERMYER. You are alone?

Mr. OBER. Yes.

Mr. UNTERMYER. Prior to the passage of this resolution of May 19, 1909, did you have accounts with New York Stock Exchange houses?

Mr. OBER. I had no account. My business is all on a cash basis. I was cut off, however, from trading on the exchange.

Mr. UNTERMYER. Your business is done on a cash basis?

Mr. OBER. Altogether.

Mr. UNTERMYER. It is purely an investment business, is it?

Mr. OBER. Yes.

Mr. UNTERMYER. That is, you do not buy stocks for customers on margin?

Mr. OBER. I do not carry any.

Mr. UNTERMYER. You do not carry anything for customers?

Mr. OBER. Nothing.

Mr. UNTERMYER. They have to pay for what they buy?

Mr. OBER. They have to pay for what they buy, or turn in the stocks and I get the money the next day.

Mr. UNTERMYER. You had been doing business with New York Stock Exchange houses, had you?

Mr. OBER. A few of them.

Mr. UNTERMYER. Do you know of any brokers on the New York Stock Exchange who confine their business to cash purchasers, and do not carry stocks for customers?

Mr. OBER. I do not.

Mr. UNTERMYER. Will you be good enough to go on and tell us what happened to you on the 19th of May, 1909?

Mr. OBER. I received this letter here, which I hand to you.

Mr. UNTERMYER. On the 24th of May, 1909, you received this letter?

Mr. OBER. I guess I did, on that date.

Mr. UNTERMYER. What need had you for a New York Stock Exchange house in your business?

Mr. OBER. There are a number of stocks listed over there in which I traded. I received orders and bought some on my own account.

Mr. UNTERMYER. And those orders you had to fill through a New York Stock Exchange broker?

Mr. OBER. I did.

Mr. UNTERMYER. I will read this letter into the record [reading]:

EXHIBIT No. 125, DECEMBER 12, 1912.

[Beers & Owens, Bankers and Brokers, 52 Broadway. Telephone 6930 Broad. John W Beers, member New York Stock Exchange. C. H. Dickinson.]

NEW YORK, *May 24, 1909*

MAURICE OBER, Esq.,
24 and 26 Stone Street.

DEAR MR. OBER: We will make the delivery of 200 Comstock as soon as it comes in to us. At present, or at least for the time being, we are sorry to say that we will not be able to execute any orders for you, under interpretation of resolutions passed by New York Stock Exchange relative to your exchange members. If Mr. Bush is in any way connected with you we would prefer not to do business for him.

We are very sorry to lose your account, for you are one of our oldest clients, and our relations have been most cordial in every way. We hope for your continued friendship and good will, and thank you most cordially for your past favors. Call to see us any time.

Yours, very truly,

BEERS & OWENS.

The above letter was marked "Exhibit No. 125, December 12, 1912."

Mr. UNTERMYER. What is this stock exchange house with which you have been dealing?

Mr. OBER. Beers & Owens.

Mr. UNTERMYER. Who is Mr. Bush—referred to in the letter?

Mr. OBER. Mr. Henry C. Bush is one of my customers. I sent him over there to fill some orders which I could not fill on our exchange. I recommended him to Beers & Owens.

Mr. UNTERMYER. He was a customer of yours?

Mr. OBER. And is still.

Mr. UNTERMYER. Was he connected with you in any way in business?

Mr. OBER. In no way whatever.

Mr. UNTERMYER. Was he a member of the consolidated exchange?

Mr. OBER. He was not.

Mr. UNTERMYER. He was simply a customer who was buying stocks?

Mr. OBER. Buying and selling stocks through me.

Mr. UNTERMYER. And they declined to do any business for him because you recommended him?

Mr. OBER. So the letter states.

Mr. UNTERMYER. This reference in the letter to "200 Comstock," refers to the Comstock Mine?

Mr. OBER. The "Comstock Tunnel," as we call it.

Mr. UNTERMYER. That is listed on the New York Stock Exchange?

Mr. OBER. Yes.

Mr. UNTERMYER. And is not listed on your exchange?

Mr. OBER. Yes; it is sold.

Mr. UNTERMYER. Have you been connected with the New York curb market?

Mr. OBER. I was until February, 1910, when they organized.

Mr. UNTERMYER. You mean the curb market organized then into the New York Curb Market Association?

Mr. OBER. Yes.

Mr. UNTERMYER. Did they have some negotiations, then, with the New York Stock Exchange?

Mr. OBER. They must have had. Mr. Franklin Leonard, their secretary, is a customer and friend of mine, and he was instrumental in organizing the exchange. His father is a member of our exchange, perhaps the oldest member we have, a resident of Nevada; and I think—and I have good reason to think—that he was influenced by the stock exchange to bring in the following article—

Mr. UNTERMYER. A resolution was passed in the New York Stock Exchange or on the curb market?

Mr. OBER. On the curb market.

Mr. UNTERMYER. When it became an association?

Mr. OBER. When it became an association.

Mr. UNTERMYER. Is that section 2 of the articles?

Mr. OBER. I have it right here [producing paper].

Mr. UNTERMYER. Are those the regulations of the curb?

Mr. OBER. That is what they are.

Mr. UNTERMYER. I will read from section 2, article 12 [reading]:

Any person who shall be connected, directly or indirectly, or by a partner, with any association, corporation, or exchange other than the New York Stock Exchange in the city of New York which permits dealings in any security or property admitted to dealing in any department of the New York Stock Exchange shall be ineligible for membership.

Under that you ceased to be eligible for membership?

Mr. OBER. Yes. I simply stepped out. I had to. I asked them to refund the money I paid in.

Mr. UNTERMYER. You stepped out of the curb?

Mr. OBER. Yes. I had to.

Mr. UNTERMYER. You had to get out of one or the other?

Mr. OBER. That is right.

Mr. UNTERMYER. Mr. Ober, during your entire business experience have you ever defaulted in any of your obligations?

Mr. OBER. Never in my life.

Mr. UNTERMYER. On any trade of any sort?

Mr. OBER. On no trade whatever.

Mr. UNTERMYER. Are there securities dealt in on the curb that are not deal in on either of the exchanges?

Mr. OBER. A good many.

Mr. UNTERMYER. And what part does the curb play in the stock-exchange business of New York City?

Mr. OBER. Well, they must do over 75 per cent of the entire business of the curb.

Mr. UNTERMYER. You mean the stock-exchange members do over 75 per cent?

Mr. OBER. The stock-exchange houses. None of them are members of the curb, but they have people doing their business there on commission or on salary.

Mr. UNTERMYER. What I meant to ask was what office the curb market plays in the general dealings in securities in New York.

Mr. OBER. There are all kinds of stocks listed there by the members of the stock exchange. Our exchange does not list any. None of the members have ever listed anything, to my knowledge.

Mr. UNTERMYER. They are not now allowed to?

Mr. OBER. Some time ago. They are not now, I presume.

Mr. UNTERMYER. The securities that are listed on the curb are securities that are not listed on the New York Stock Exchange?

Mr. OBER. They are.

Mr. UNTERMYER. Is the curb allowed to list any security that is on the New York Stock Exchange?

Mr. OBER. No, sir; they are not.

Mr. UNTERMYER. Which is the temporary market for securities before they are engraved and put on the stock exchange?

Mr. OBER. The curb.

Mr. UNTERMYER. They are all dealt in there?

Mr. OBER. Yes.

Mr. UNTERMYER. And are there certain securities of great corporations dealt in there that are never listed on the New York Stock Exchange?

Mr. OBER. I should say a great many.

Mr. UNTERMYER. Such as the Standard Oil?

Mr. OBER. Standard Oil, for one.

Mr. UNTERMYER. What other large one?

Mr. OBER. Well, they have a number of stocks. I do not take any orders in them. I refuse to take orders in them.

Mr. UNTERMYER. That is all, unless you have something else to say.

Mr. OBER. I want to say this, if you will pardon me. Up to a very short time ago one of the stock-exchange houses—

Mr. UNTERMYER. You mean of the New York Stock Exchange?

Mr. OBER. Yes; one of the stock exchange houses of the New York Stock Exchange, who maintained an out of the city office, had a manager on the curb, and he was very glad to take my trades. He considered me perfectly responsible. Here the other day they came to New York and opened an office on Broadway, and from that time on I was excluded. The manager refused to trade with me.

Mr. UNTERMYER. Perhaps we had better not go into that. That is a matter of individual complaint that we do not care to go into.

Witness excused.

TESTIMONY OF LAWRENCE J. DIETZ.

The witness was sworn by the chairman.

Mr. UNTERMYER. Are you a broker?

Mr. DIETZ. A commission broker.

Mr. UNTERMYER. Are you a member of the Consolidated Stock Exchange?

Mr. DIETZ. Yes, sir.

Mr. UNTERMYER. And you have been for how many years?

Mr. DIETZ. About five years.

Mr. UNTERMYER. What is your firm?

Mr. DIETZ. Lawrence J. Dietz & Co.

Mr. UNTERMYER. Did you, prior to May 19, 1909, have accounts and dealings with New York Stock Exchange houses?

Mr. DIETZ. I did.

Mr. UNTERMYER. With what stock exchange house?

Mr. DIETZ. I have had accounts with Sutro Bros. & Co., Post & Flagg, and Halle & Stieglitz.

Mr. UNTERMYER. After the passage of that resolution what happened to your account with Halle & Stieglitz?

Mr. DIETZ. I received a letter to come to see them. I responded, and they told me that on account of the resolution passed by the New York Stock Exchange I would have to cease doing business with them.

Mr. UNTERMYER. And from that time on did you cease doing business with them?

Mr. DIETZ. Yes; I took up my account.

Mr. UNTERMYER. From that time on have you been able to do any business with New York Stock Exchange houses?

Mr. DIETZ. Oh, no; I would not attempt it, because I did not want to go a roundabout way. Of course, I felt chagrined. I did not see why I should be prohibited from doing that. I did not think that I had disgraced myself.

Mr. UNTERMYER. How about your relations with the curb?

Mr. DIETZ. I have no relations with them. I have had no difficulty there. I do not do any curb business.

Mr. UNTERMYER. You do not?

Mr. DIETZ. No, sir. It is very seldom. I have had no trouble there with the little business that I wanted to do.

Mr. UNTERMYER. Is it investment business that you do?

Mr. DIETZ. Investment business, and also I do business for correspondents.

Mr. UNTERMYER. I believe that is all.

Mr. DIETZ. You do not want to say anything about transfers?

Mr. UNTERMYER. You have had trouble with transfers in the same way that has been indicated with respect to the other witnesses?

Mr. DIETZ. Yes.

Mr. UNTERMYER. I think we have gone into that, through the president of the exchange.

Mr. DIETZ. Very well.

Witness excused.

TESTIMONY OF B. M. JARVIS.

The witness was duly sworn by the chairman.

Mr. UNTERMYER. What is your occupation?

Mr. JARVIS. I am a member of the Consolidated Stock Exchange.

Mr. UNTERMYER. What?

Mr. JARVIS. I am a stock broker.

Mr. UNTERMYER. Are you connected with the Produce Exchange?

Mr. JARVIS. No, sir.

Mr. UNTERMYER. You are on the Consolidated Exchange, are you?

Mr. JARVIS. Yes.

Mr. UNTERMYER. And how long have you been on that exchange?

Mr. JARVIS. Sixteen years last January.

Mr. UNTERMYER. What is your firm?

Mr. JARVIS. I am alone.

Mr. UNTERMYER. And did you do business with New York Stock Exchange houses until the passage of this resolution of 1909?

Mr. JARVIS. With one firm there for about 14 years, from 1895 to about 1909.

Mr. UNTERMYER. One firm?

Mr. JARVIS. Yes.

Mr. UNTERMYER. Had you, prior to that date, any difficulty with them?

Mr. JARVIS. I never had any difficulty with them at any time.

Mr. UNTERMYER. Did you ever default on your obligations?

Mr. JARVIS. Never.

Mr. UNTERMYER. What happened after that resolution was passed?

Mr. JARVIS. When the resolution was passed, my recollection is that I had no credit with them. I had only a cash credit, and of course I knew of the passage of the resolution from the public prints and heard of it from hearsay, and I went to see them, and they told me about the resolution and expressed their regret, and so forth; and I knew the position they were in, that they had to obey their authority, and I never had any words with them about it.

Mr. UNTERMYER. From that time have you been able to do any business with New York Stock Exchange brokers?

Mr. JARVIS. I had too much pride. I did not want to do business with them. If they did not want me, I did not want them.

Mr. UNTERMYER. You knew the rule?

Mr. JARVIS. Oh, yes; of course.

Witness excused.

Mr. Frank Knight Sturgis was sworn by the chairman, and, at 1 o'clock p. m., the committee took a recess until 2 o'clock p. m.

AFTERNOON SESSION.

The subcommittee met, pursuant to the taking of the recess, at 2 o'clock p. m.

TESTIMONY OF FRANK KNIGHT STURGIS.

The witness had already been sworn by the chairman.

Mr. UNTERMYER. Will you please be good enough to state your residence and occupation?

Mr. STURGIS. I reside at No. 17 East Fifty-first Street, New York City. I am a banker and broker by occupation.

Mr. UNTERMYER. What is your firm?

Mr. STURGIS. Strong, Sturgis & Co.

Mr. UNTERMYER. You are a member of the New York Stock Exchange?

Mr. STURGIS. I am.

Mr. UNTERMYER. And have been for how long?

Mr. STURGIS. Since the 12th of January, 1869.

Mr. UNTERMYER. And how long has your firm of Strong, Sturgis & Co. been in existence?

Mr. STURGIS. The present firm was formed in 1896 and succeeded the firm of Wilkes, Strong & Co., which was formed in 1881. They succeeded Scott, Strong & Co., which firm was formed in 1865.

Mr. UNTERMYER. Have you been president of the New York Stock Exchange?

Mr. STURGIS. I was president from 1892 to 1894; two terms.

Mr. UNTERMYER. Have you been a member of the governing committee; and if so, for how long?

Mr. UNTERMYER. I have been a member of the governing committee since 1876.

Mr. UNTERMYER. Are you still a member of that committee?

Mr. STURGIS. I am.

Mr. UNTERMYER. Have any of your associates on the present governing committee been members of the governing committee for many years?

Mr. STURGIS. For many years.

Mr. UNTERMYER. Which of them are the oldest members of the governing committee?

Mr. STURGIS. Mr. Keppler has been a member for many years.

Mr. UNTERMYER. Do you remember how many years?

Mr. STURGIS. I could not tell you exactly.

Mr. UNTERMYER. What other members have been members for many years?

Mr. STURGIS. Mr. Romney has been a member there for many years.

Mr. Mabon has been a member for some years; not so long. He is a younger man.

Mr. UNTERMYER. Are there subdivisions of the governing committee into other committees?

Mr. STURGIS. There are. It is subdivided into working committees.

Mr. UNTERMYER. Are you a member of any of those working committees?

Mr. STURGIS. Yes; I am a member of the committee on admissions, and I am chairman of the committee on law.

Mr. UNTERMYER. What are the duties of the committee on law?

Mr. STURGIS. The law committee has charge of the legal business of the exchange, and it also exercises, under the constitution, a general supervision over such matters as pertain to legal conditions.

Mr. UNTERMYER. Is there also a committee on stock list?

Mr. STURGIS. There is.

Mr. UNTERMYER. And does that committee take charge of the passing on applications for listing of bonds as well as of stocks?

Mr. STURGIS. They act as a subcommittee and bring their decisions to the governing committee, whose decision is final.

Mr. UNTERMYER. Then the governing committee has to pass on the listing of securities?

Mr. STURGIS. It does.

Mr. UNTERMYER. What is the membership of the governing committee?

Mr. STURGIS. Forty persons.

Mr. UNTERMYER. What is the membership of the exchange?

Mr. STURGIS. One thousand one hundred men.

Mr. UNTERMYER. How long has that been the limit of membership?

Mr. STURGIS. Prior to the 9th of May, 1869, there were two stock exchanges in New York, one known as the "Open Board of Brokers"

and one known as the "New York Stock Exchange." They amalgamated on the 9th day of May, 1869, and at about that time they also associated with themselves what had been known as the Government Board, a small organization dealing only in Government securities. They also combined with an exchange known as the Mining Exchange. That brought the membership up to, I think it was in the early seventies, 1,068 men. At the time that the stock exchange wanted to enlarge their building they decided that they would sell enough memberships to bring it up to 1,100, and they offered those memberships at the minimum price of \$13,000 each, and appointed a committee, of which I was one, to examine the qualifications of the candidates. They elected at that time 40 men. The lowest sale of seats then was \$13,025 and the highest, I think, was \$15,000. That brought the maximum membership up to 1,100, where it remains to-day.

Mr. UNTERMYER. Have you brought with you a statement of the volume of business at that time?

Mr. STURGIS. I have not. No request has been made upon me to that effect.

Mr. UNTERMYER. Is it practicable to give the committee a statement of the volume of business in 1869, when the membership was placed at 1,100?

Mr. STURGIS. The volume for an entire year?

Mr. UNTERMYER. Yes.

Mr. STURGIS. We will do our best to furnish it to you Mr. Untermyer. I think it is barely possible.

Mr. UNTERMYER. Would it be practicable, if you can not give us that information, to furnish us a statement of the volume of business for the year after the amalgamation?

Mr. STURGIS. I could not give you any figures from my recollection as to the volume of business. I have not prepared myself upon it.

Mr. UNTERMYER. The committee has asked by letter to your counsel for such a statement.

Mr. STURGIS. It was not submitted to me.

Mr. UNTERMYER. You will secure it?

Mr. STURGIS. I will see, to the best of my ability, that it is done.

Mr. UNTERMYER. Have you any record of the number of securities that were listed at that time?

Mr. STURGIS. The stock exchange books will show that; Mr. Ely's office.

Mr. UNTERMYER. You can give us that, can you?

Mr. STURGIS. I think so, from the books.

Mr. UNTERMYER. From the books; a list showing the number of securities that were then on the list and the aggregate amount represented by the listed securities at that time?

Mr. STURGIS. I think that could be done.

Mr. UNTERMYER. What proportion, generally, would you say that the number of securities that were on the list at that time bears to the number on the list now?

Mr. STURGIS. The present number is infinitely greater. I would not like to hazard a guess upon the subject.

Mr. UNTERMYER. Would you say that it was 100 times as many?

Mr. STURGIS. No; I would not dare to say that. I would say that it was 50 times as many.

Mr. UNTERMYER. And would you say that the volume of business—that is, the par value of the securities represented by those that are on the list now as compared with those on the list then—is also 50 times as great?

Mr. STURGIS. Yes.

Mr. UNTERMYER. Fully?

Mr. STURGIS. Yes; fully that.

Mr. UNTERMYER. And the data you will furnish us later?

Mr. STURGIS. Yes.

Mr. UNTERMYER. What could you say as to the comparative number of shares dealt in now, as against 1869?

Mr. STURGIS. As an average?

Mr. UNTERMEYER. Yes.

Mr. STURGIS. It is larger, on the average.

Mr. UNTERMYER. How many times larger you could not say?

Mr. STURGIS. No; it would be difficult. I would rather have the secretary's office communicate those facts to you.

Mr. UNTERMYER. Why is it, then, Mr. Sturgis, that with this large addition to the number of securities on the list and to the volume of business represented by them, and the capitalization represented by them—the volume of business done on the exchange—there has been no increase in the membership permitted?

Mr. STURGIS. I will answer that question by saying that there has never been a time when the business of the public has not been well attended to by the brokers, and there has been an ample number of brokers to transact the business; and as a proof that there have been enough brokers the memberships of the exchange have been steadily going down in price for the last few months, owing to the inability of members to make a living there.

Mr. UNTERMYER. That is temporary only?

Mr. STURGIS. I hope so.

Mr. UNTERMYER. What is a seat worth to-day?

Mr. STURGIS. \$55,000, about.

Mr. UNTERMYER. And it has been worth how much?

Mr. STURGIS. \$95,000 was the highest price.

Mr. UNTERMYER. Is it not your opinion that the present price of a seat is simply due to temporary conditions, or do you think that the business of the exchange is decreasing all the time?

Mr. STURGIS. I think the business of the exchange has decreased owing to the general conditions at the time.

Mr. UNTERMYER. Temporarily?

Mr. STURGIS. I hope so.

Mr. UNTERMYER. So that what is happening to-day does not represent anything like an average condition or a normal condition?

Mr. STURGIS. Seats are somewhat lower than the average, Mr. Untermyer. They generally sell in the neighborhood perhaps of \$60,000 to \$65,000.

Mr. UNTERMYER. What does a seat represent in the way of property other than the right to deal on the exchange?

Mr. STURGIS. It represents an undivided interest in the assets of the exchange, its real estate, and it also entitles the holder to the

gratuity fund, which is paid to his relatives in the event of his death, of \$10,000.

Mr. UNTERMYER. It represents \$10,000 in what we may call insurance?

Mr. STURGIS. Yes.

Mr. UNTERMYER. The rest of it represents the right to membership and the proportionate interest in whatever property the exchange has?

Mr. STURGIS. Practically.

Mr. UNTERMYER. What is the property of the exchange?

Mr. STURGIS. They own their building; they own the entire stock of the New York Quotation Co.—that is the instrument over which the quotations are sent out.

Mr. UNTERMYER. Does the exchange send out those quotations?

Mr. STURGIS. The exchange delivers those quotations to the operators upon the floor, who send them out.

Mr. UNTERMYER. Does it charge for that?

Mr. STURGIS. It charges each member for that.

Mr. UNTERMYER. What is the charge?

Mr. STURGIS. \$20 per month for the use of the ticker.

Mr. UNTERMYER. That is \$240 per year for each member—for 1,100 members?

Mr. STURGIS. A great many members have no tickers.

Mr. UNTERMYER. What proportion of the membership is supplied on these terms?

Mr. STURGIS. All the members who desire it.

Mr. UNTERMYER. How many are supplied, in fact?

Mr. STURGIS. I should think, to estimate it, possibly 400 out of the 1,100.

Mr. UNTERMYER. And they pay \$240 a year each?

Mr. STURGIS. That is correct.

Mr. UNTERMYER. Is your entire membership what may be called an active membership, of men engaged in the business of buying and selling shares for others?

Mr. STURGIS. No; we have men who operate in stocks for their own account—a certain number.

Mr. UNTERMYER. How many of those are there?

Mr. STURGIS. A man may be a commission broker to-day and he may be, as you well know, an operator a month from now, Mr. Untermeyer.

Mr. UNTERMYER. Have you not men like, for instance, John D. Rockefeller and William Rockefeller?

Mr. STURGIS. They are both members of the exchange.

Mr. UNTERMYER. Are they operators, or why do they retain a membership in the exchange worth from \$58,000 to \$90,000?

Mr. STURGIS. Partially, I presume, on account of the commissions that they succeeded in saving by being members of the exchange and partly because they have a certain loyalty, perhaps, to the exchange.

Mr. UNTERMYER. A man who is a member of the exchange, then, can deal in securities on entirely different terms from a man who is not, can he?

Mr. STURGIS. Correct.

Mr. UNTERMYER. Is he required to pay any commission whatever if he does not want to?

Mr. STURGIS. If he operates for himself on the floor of the exchange, he is not obliged to pay a commission.

Mr. UNTERMYER. I see among your members four gentlemen who are members of the Gould family, each of whom has a membership—Edwin Gould, Frank J. Gould, George J. Gould, and Mr. Howard Gould. Does the reason you have stated for maintaining memberships of the value you have stated, the reason you have already assigned with respect to all nonmembers, apply to them?

Mr. STURGIS. They never gave me their reasons for buying a membership.

Mr. UNTERMYER. Can you tell us why these gentlemen should be maintaining without interest, without return, memberships that would yield at different times from \$58,000 to \$90,000 apiece?

Mr. STURGIS. I would like to repeat my answer with reference to Mr. John D. Rockefeller and Mr. William Rockefeller.

Mr. UNTERMYER. If the membership of the stock exchange were increased, materially increased, and every responsible man who wanted to deal in stocks and bonds listed on the stock exchange were given the liberty to deal in them, would that materially affect the value of these memberships?

Mr. STURGIS. I think it would. It would materially reduce the credit as it exists between the members of the exchange at the same time.

Mr. UNTERMYER. Suppose the exchange had reserved to it the right to pass upon the responsibility and the character of applicants, but not to restrict the membership, would that reduce materially the value of seats?

Mr. STURGIS. Mr. Untermyer, the exchange is willing to increase its membership the moment there is a demand for it. If the demand for memberships becomes so great that our memberships sell at an abnormal price, and the committee thinks it right to increase the memberships, they will undoubtedly do so.

Mr. UNTERMYER. Do you not consider \$90,000 an abnormal price for a seat?

Mr. STURGIS. No; because that increases the value of the agreement between the members as the price of the seats increases.

Mr. UNTERMYER. How was it that the exchange could support 1,100 members in 1869, when there was but a small proportion of the present business, and yet there has been practically no increase in the number of members since?

Mr. STURGIS. The answer to that is that they made but a poor living. Many of those men, when I was a young man, in 1869, down in the Street, were perfectly satisfied if they made \$3,000 a year.

Mr. UNTERMYER. You say that this membership privilege, and the money that it is worth, is a guaranty for the performance of obligations among the members themselves?

Mr. STURGIS. It protects them.

Mr. UNTERMYER. Where a member fails, owing his customers money, the obligations to the exchange members are preferred as against the proceeds of his seat, are they not?

Mr. STURGIS. That is so.

Mr. UNTERMYER. Over any claims of the customers?

Mr. STURGIS. Yes.

Mr. UNTERMYER. Has it or not often happened in the experience of the exchange that members have failed who have pledged their customers' stock for far more than was owing on it, and the customers have lost their equity in the stock? It has been a very common occurrence, has it not?

Mr. STURGIS. I should not consider it a common occurrence. I would not say that it has not occurred.

Mr. UNTERMYER. Has it not occurred 50 times or more?

Mr. STURGIS. In 40 years?

Mr. UNTERMYER. Oh, no; in the last 10 years.

Mr. STURGIS. I should not think it had.

Mr. UNTERMYER. How many such occurrences do you recall?

Mr. STURGIS. Very few.

Mr. UNTERMYER. Within the last two or three years have there not been a dozen or more such failures?

Mr. STURGIS. There have been several.

Mr. UNTERMYER. Have there not been more than a dozen within the last few years?

Mr. STURGIS. I am not in very active business, Mr. Untermyer, and I can not tell you whether there have been a dozen or whether there have been eight; but there have been several.

Mr. UNTERMYER. Do you recall whether or not, in all those instances, customers who had securities pledged with these members of the exchange lost their securities?

Mr. STURGIS. Where the firm became a bankrupt firm?

Mr. UNTERMYER. Yes.

Mr. STURGIS. They lost a portion of them, unquestionably.

Mr. UNTERMYER. They lost their equity in them?

Mr. STURGIS. To some extent. Not necessarily all of the equity.

Mr. UNTERMYER. Do you think it just, in such cases, that the members of the exchange who are creditors of those bankrupt concerns should alone have recourse to the value of the seat to pay them in full, whilst customers who have been defrauded of their stock by members get nothing?

Mr. STURGIS. I regard it as absolutely just, because when the candidate buys the membership he signs the constitution of the exchange and understands just what he is doing. Furthermore, the floor of the exchange is open to any member of the exchange, and you have to take the contract that is offered to you and have to make the sales that you can. Therefore you can not select among the members a good contract. You must take the contract that comes to you. The result is that you may get a very weak contract, or you may get the best one. You can not tell. It is an open market. Therefore that protection that one member has as against another. There is the salable value of his membership, which is of great importance to the members of the exchange.

Mr. UNTERMYER. Why should they not take their chances just as the customer does, and in case of a failure why should they not share in the estate with the defrauded customer?

Mr. STURGIS. The customer can select where he chooses to go and do business. He need not go to the weakest house. If he wants to be sure that his money is well protected, he can go to a strong one.

Mr. UNTERMYER. The exchange also has the same right to determine as to its membership?

Mr. STURGIS. I do not quite understand your question.

Mr. UNTERMYER. They need not admit irresponsible members, need they?

Mr. STURGIS. Certainly not.

Mr. UNTERMYER. They have a right to examine the books of the members whenever they please, have they not?

Mr. STURGIS. The law committee has a right, which is not often exercised—

Mr. UNTERMYER. That is not the question.

Mr. STURGIS (continuing). In the event of their having a suspicion of a member, they have the right to examine his books.

Mr. UNTERMYER. That is not the question. The question is whether the exchange authorities have not the absolute right to examine a member's books whenever and as often as they please.

Mr. STURGIS. They have that right.

Mr. UNTERMYER. So that they have better facilities for finding out whether a member is solvent and responsible for his obligations than the customer with whom he deals?

Mr. STURGIS. But a person—

Mr. UNTERMYER. Will you not answer my question?

Mr. STURGIS. I will not verbally, because I can not make my meaning clear.

Mr. UNTERMYER. I think you can answer my question.

By request, the stenographer repeated the pending question, as follows:

So that they have better facilities for finding out whether a member is solvent and responsible for his obligations than the customer with whom he deals?

Mr. STURGIS. To that I will answer yes; but I would like to say that a man may be, perhaps, absolutely solvent at the time he joins the exchange and misfortune may overtake him quickly. He may make mistakes in his business; he may become insolvent through defalcation. Those things are matters that arise and which the exchange has to examine into. They come like a thief in the night. You can not be sure that a man who is solvent to-day may not have some calamity overtake him and be insolvent to-morrow.

Mr. UNTERMYER. That being so, why should not his associates on the exchange who have the right to examine into his affairs be at least put on an equal footing with the customer with whom he deals, who has not the right to examine his affairs, and share the estate equally instead of the preference being given to exchange members?

Mr. STURGIS. Because he has become a member of the exchange of his own volition and has agreed to abide by its laws. He need not become a member if he does not wish to do so.

Mr. UNTERMYER. What has that to do with his customer who has been defrauded? Why should not he be protected?

Mr. STURGIS. He is protected—

Mr. UNTERMYER. Why should he not be protected in the distribution of the estate to the same extent as the fellow member who is also a creditor? Why should the fellow member take the whole estate, if you please, in preference to every defrauded customer?

Mr. STURGIS. Because that is the understanding entered into by the members when they become members.

Mr. UNTERMYER. The customer is not a party to that understanding, is he?

Mr. STURGIS. He need not be a customer.

Mr. UNTERMYER. He need not trade, do you mean?

Mr. STURGIS. If he does not wish to do so.

Mr. UNTERMYER. Is that your answer?

Mr. STURGIS. That is my answer.

Mr. UNTERMYER. Do you not think the fact that a man is a member of the New York Stock Exchange is some assurance, or holds out some sort of assurance, to the customer and the public that he is responsible?

Mr. STURGIS. Truly.

Mr. UNTERMYER. It does?

Mr. STURGIS. Yes, sir.

Mr. UNTERMYER. Do you not regard it as in the nature of an invitation to people who want to buy and sell stocks, to buy and sell them through that person who is a member of the exchange?

Mr. STURGIS. I regard it as an opportunity for them to avail of.

Mr. UNTERMYER. And yet you think it is just that, when calamity overtakes a member of the exchange, his fellow members should be preferred creditors to the entire amount of the value of his seat, which may be his whole estate, to the exclusion of the people who have trusted him because he was a member?

Mr. STURGIS. I think it is just, because that is the agreement that was entered into between them.

Mr. UNTERMYER. You recognize, do you not, Mr. Sturgis, that the customer is not a party to that agreement?

Mr. STURGIS. That is precisely why I think the members should stand by their agreement between one another.

Mr. UNTERMYER. To the injury of the customer? Mr. Sturgis, you heard me, just before the recess, read from a letter to Mr. Gary, giving the names of a dozen brokerage houses that had failed within the last few years?

Mr. STURGIS. Yes; I heard that letter read.

Mr. UNTERMYER. Will you look at the list in that letter, it being a list of a dozen houses, and tell me whether those constitute a part of the number of bankruptcies of members of the New York Stock Exchange since 1909?

Mr. STURGIS (after examining list). I could not say as to the dates, exactly, but these are all members of the exchange who did become insolvent.

Mr. UNTERMYER. Will you be kind enough to furnish the committee, or have the secretary of the exchange furnish the committee, with a list of the failures of exchange members during the past 10 years?

Mr. STURGIS. With great pleasure.

Mr. UNTERMYER. Has there ever been a public legislative investigation of the New York Stock Exchange? I am speaking now of a legislative investigation. I will come to the other later.

Mr. STURGIS. The only investigation I am aware of is the so-called Hughes investigation.

Mr. UNTERMYER. That was not a legislative investigation.

Mr. STURGIS. Then I know of no other.

Mr. UNTERMYER. Do you not recall that an effort was made to secure a legislative investigation? In fact, numerous efforts were made, over a period of years?

Mr. STURGIS. No, sir; I do not.

Mr. UNTERMYER. In 1909 Gov. Hughes appointed a commission, did he not?

Mr. STURGIS. He did.

Mr. UNTERMYER. Was or was not that done after the legislature was adjourned, and not pursuant to any legislative power?

Mr. STURGIS. I could not answer that question without looking back at the records.

Mr. UNTERMYER. Do you not recall that that was simply Gov. Hughes's voluntary act, and that the commission thus appointed by him was a voluntary commission without any power to subpoena witnesses or to take testimony?

Mr. STURGIS. I could not answer that question.

Mr. MILBURN. I think that is a correct statement of it.

Mr. UNTERMYER. That is correct?

Mr. STURGIS. I should say it is correct. I am not positive.

Mr. UNTERMYER. You remember it had no appropriation, do you not?

Mr. STURGIS. I remember that.

Mr. UNTERMYER. It had no means of paying any of its expenses?

Mr. STURGIS. Yes. You mean it had no means provided?

Mr. UNTERMYER. Were there any means provided?

Mr. STURGIS. I always understood that the expenses of the committee were subsequently paid.

Mr. UNTERMYER. Paid by whom?

Mr. STURGIS. I could not tell you.

Mr. UNTERMYER. Were they paid by the New York Stock Exchange?

Mr. STURGIS. They were not.

Mr. UNTERMYER. You do not know how the amount was raised?

Mr. STURGIS. I do not.

Mr. UNTERMYER. The committee had no power to, and did not, put any witnesses under oath, did it?

Mr. STURGIS. There was no witness under oath when I was present before them.

Mr. UNTERMYER. And you never heard of any?

Mr. STURGIS. I never heard of any; no.

Mr. UNTERMYER. That committee was headed by quite a distinguished gentleman, Horace White, was it not?

Mr. STURGIS. It was.

Mr. UNTERMYER. And the members of the committee were men in high standing in the community?

Mr. STURGIS. Exceptionally so.

Mr. UNTERMYER. But they were there in an unofficial capacity?

Mr. STURGIS. I understood that they had their appointments from Gov. Hughes.

Mr. UNTERMYER. The proceedings of that commission, other than its report, were never made public, were they?

Mr. STURGIS. I understood Mr. Horace White to say to me that he had rendered his report directly to Gov. Hughes.

Mr. UNTERMYER. But the proceedings were never made public, were they?

Mr. STURGIS. Not the detailed proceedings, from day to day.

Mr. UNTERMYER. No; nor any of the proceedings other than the report itself?

Mr. STURGIS. I think not.

Mr. UNTERMYER. Whatever information was given to that commission was voluntarily supplied, was it not?

Mr. STURGIS. In so far as the stock exchange was concerned, my answer to that is as follows: These gentlemen very courteously told us what they wanted to know, and we offered them—

Mr. UNTERMYER. But will you not tell us whether it was voluntarily supplied, Mr. Sturgis? That is a very simple question, is it not?

Mr. STURGIS. They asked for the information. Is that voluntary?

Mr. UNTERMYER. Yes; and you supplied it, knowing you were under no legal obligation to do so?

Mr. STURGIS. Put it that way, then.

Mr. UNTERMYER. Was this information asked in the form of written questions?

Mr. STURGIS. It was.

Mr. UNTERMYER. Did your governing committee, in council, consider those questions?

Mr. STURGIS. The law committee considered those questions.

Mr. UNTERMYER. The law committee had those questions before them for some weeks, did they not?

Mr. STURGIS. At different intervals. There were three different sets of questions.

Mr. UNTERMYER. Yes; I know there were.

Mr. STURGIS. May I go on?

Mr. UNTERMYER. Yes.

Mr. STURGIS. Those questions were deliberated upon by the law committee, and careful answers were prepared under the advice of counsel. Mr. Ledyard was with us during much of that work. He approved of the answers. They were then sent to Mr. White, and we then appeared as a body—the law committee.

Mr. UNTERMYER. We are now speaking of the questions and the answers?

Mr. STURGIS. We are speaking of the questions and the answers.

Mr. UNTERMYER. When these answers had been compiled by the law committee in conference, and after they had been submitted to counsel, they were signed, were they not, by the then members of the governing committee?

Mr. STURGIS. The law committee.

Mr. UNTERMYER. The law committee. Do you remember who constituted the law committee at that time?

Mr. STURGIS. Yes. I was chairman of the law committee then, as now. There was Mr. Francis Eames, who is since deceased; Mr. John Atterbury, who is since deceased; Mr. Pomeroy and Mr. Rudolph Keppler.

Mr. UNTERMYER. Those answers were never made public?

Mr. STURGIS. We filed a copy of them with you.

Mr. UNTERMYER. They were never made public?

Mr. STURGIS. They were never made public in the sense of being published; but they were always public on the members of the stock exchange. Printed copies of them were at the Secretary's office. They were public to the extent that any member of the exchange could go there and see them.

Mr. UNTERMYER. Were they ever made public in the sense of having been given to the public?

Mr. STURGIS. They were not published through the public press; no.

Mr. UNTERMYER. A few days ago one or two of them were published, were they not?

Mr. STURGIS. I am not familiar with that.

Mr. UNTERMYER. Have you not seen the publication since these proceedings were resumed?

Mr. STURGIS. I have not.

Mr. UNTERMYER. Do you know who gave those out to the public?

Mr. STURGIS. I do not.

Mr. UNTERMYER. At my request you furnished me a copy of them, did you not?

Mr. STURGIS. Yes.

Mr. UNTERMYER. Have you a copy there?

Mr. STURGIS. I have a copy here.

Mr. UNTERMYER. Will you please look at page 39?

Mr. STURGIS. I have it.

Mr. UNTERMYER. Please tell me what is meant by this phrase:

We—

Referring to the law committee, who signed the answers—

have alluded to the timidity and the unscrupulousness of certain parties as aiding in the locking up of currency, thereby causing extreme rates or fluctuations.

What did you mean by "the unscrupulousness of certain parties in locking up currency"?

Mr. STURGIS. During the panic of 1907 a great many of the banks and a great many of the trust companies throughout the country, anxious to protect their deposits, locked up in their vaults large amounts of currency to protect those deposits, greatly in excess of the legal requirement. We deem that an unscrupulous act. It protects through selfishness or timidity, and it takes just that amount of currency from public circulation, where it belongs. That is what we meant by it.

Mr. UNTERMYER. That was not what you meant by "timidity," was it?

Mr. STURGIS. Timidity on the part of the banks for fear they would not be able to meet their deposits. That is the timidity.

Mr. UNTERMYER. But where was the unscrupulousness?

Mr. STURGIS. It is unscrupulous to take, at times of great panic, and lock up currency that is needed by others.

Mr. UNTERMYER. The stock exchange has in connection with its operations what is called a clearing house for securities, has it not?

Mr. STURGIS. It has.

Mr. UNTERMYER. I think that was described by one of the witnesses last June. Was it not? Mr. Taylor reminds me, however, that

we did not take that up. We were referred to Mr. Doremus as the man who knew most about it. He is not here, is he?

Mr. STURGIS. Mr. Doremus is quite ill, I am sorry to say.

Mr. UNTERMYER. So I understood. You are fairly familiar with that matter, are you not?

Mr. STURGIS. Not very, Mr. Untermeyer. I am not sufficiently active in that matter.

Mr. UNTERMYER. Is Mr. Keppler more familiar with it?

Mr. STURGIS. We have a representative here who——

Mr. UNTERMYER. Who is familiar with it?

Mr. STURGIS. Mr. Milburn.

Mr. MILBURN. You asked for some one.

Mr. UNTERMYER. Whom have you got?

Mr. MILBURN. Mr. Streit.

Mr. UNTERMYER. Is he here?

Mr. MILBURN. He is here.

Mr. UNTERMYER. Very well; we will call him.

Mr. MILBURN. He is a member of the committee.

Mr. STURGIS. He will give you much better and more lucid information than I can.

Mr. UNTERMYER. Very well; we will pass that. Is there any rule of the stock exchange that interferes with the act of a member in re-hypothecating securities for a larger sum than the amount owing to that member on those securities?

Mr. STURGIS. Securities that are paid for in full——

Mr. UNTERMYER. No; I am not speaking of that. I am speaking of securities that are held by the stock exchange member for a certain debt.

Mr. STURGIS. I am going on to answer your question if you will allow me to.

Mr. UNTERMYER. The trouble about that is this: You want to get away to-day, do you not?

Mr. STURGIS. Mr. Untermeyer, I will stay as long as you want me to. It is not that. But I could not make a very lucid answer unless I began as I was about to, if you will permit me.

Mr. UNTERMYER. Well, go on.

Mr. STURGIS. Where a stock exchange house takes securities that are paid for in full and makes any use of them, that is fraud, and we treat them with great severity; and it is also, under the State law, naturally punishable. A security may be lodged with a broker in a market which is dull, where the advances upon it are perhaps 50 or even 60 per cent of the face, or perhaps only 20 or 30. In a violently fluctuating market, like that which has overtaken us in the last two days, with Union Pacific stock falling 20 points, the conditions change so rapidly that it is not impossible that sometimes more money is borrowed upon a security than is strictly justified. But it is practically an impossibility to segregate the securities sufficiently to be always sure where you stand.

Mr. UNTERMYER. That is an argument in favor of doing it. My question was as to whether it was done, not as to the argument on the subject at all. I will ask you the question again in this form——

Mr. STURGIS. Please ask it.

Mr. UNTERMYER. Is not a stock exchange member permitted to hypothecate the securities of a customer that are in his hands, on

which there is money owing that member, for a sum larger than is owing to the member?

Mr. STURGIS. Mr. Untermeyer, the stock exchange takes no cognizance of that. That is a bargain between the member and the banker to whom he goes to do his business.

Mr. UNTERMYER. Suppose there is no bargain; does the stock exchange prohibit a broker—a member—from rehypothecating securities, lodged with him for a debt, for an amount larger than the debt?

Mr. STURGIS. The stock exchange prohibits anything which is fraudulent in its nature.

Mr. UNTERMYER. No. That is not the point at all. I think you understand the custom as well any anybody. Do you not know it is the uniform custom of brokers who hold stock exchange securities of a customer as collateral to hypothecate them regardless of the amount owing to the broker?

Mr. STURGIS. I think it is very rarely done; and if it is done, it is done against the requirements of business. But the exchange as a body has no rule applicable to that condition.

Mr. UNTERMYER. It has no rule prohibiting it at all?

Mr. STURGIS. It has no rule applying to it at all.

Mr. UNTERMYER. It has no rule prohibiting it?

Mr. STURGIS. Not to my knowledge.

Mr. UNTERMYER. You have been very active in stock exchange business for years, have you not, until lately?

Mr. STURGIS. Yes, sir.

Mr. UNTERMYER. Your firms of Wilkes-Sturgis and Strong-Sturgis were very large operators for customers on the stock exchange?

Mr. STURGIS. True.

Mr. UNTERMYER. You were one of the largest houses in the Street, were you not?

Mr. STURGIS. I think so.

Mr. UNTERMYER. You know, then, the custom pertaining to lending on customers' securities, do you not?

Mr. STURGIS. I do.

Mr. UNTERMYER. You know, do you not, that when a broker makes his loans he splits up his collateral into numerous loans, so as to get a variety of securities in each loan, regardless of whom they belong to?

Mr. STURGIS. That is quite true.

Mr. UNTERMYER. And regardless of the amount that is owing to him on them? Is not that true?

Mr. STURGIS. Yes; up to a certain point it is.

Mr. UNTERMYER. It is true to the extent that he borrows whatever he can get on them?

Mr. STURGIS. On a generalization of the facts: yes.

Mr. UNTERMYER. No; is not that true when we come down to the specific facts, Mr. Sturgis?

Mr. STURGIS. No; because—wait a minute. A firm like mine, where an account is practically paid for—I say “practically”—so that there is a very small equity in the securities, takes those securities and puts them to one side, and they are not allowed to be used.

Mr. UNTERMYER. We are not speaking of securities that are practically paid for.

Mr. STURGIS. You said "partially paid for."

Mr. UNTERMYER. Just a moment. Even as to securities that are practically paid for—fully paid for—you know, do you not, that in almost every failure you have had it has been found that the broker had been using these securities as collateral?

Mr. STURGIS. Quite true.

Mr. UNTERMYER. So that where the securities are paid for entirely and the broker uses them as collateral he violates the rule of the exchange, does he not?

Mr. STURGIS. Where the securities are paid for entirely and he uses them as collateral? Yes; the law of the exchange and the law of the land.

Mr. UNTERMYER. Yes; of course. That is a fraud under the law of the land?

Mr. STURGIS. Surely. And furthermore, if he commits that breach of our rule we expel him and declare him forever ineligible to come back.

Mr. UNTERMYER. Please point to that rule, except under the general designation of "fraud."

Mr. STURGIS. No. We have a very much more comprehensive rule than that.

Mr. UNTERMYER. Let us have that rule which applies to securities that have been fully paid for, that are merely deposited for safe-keeping with members.

Mr. STURGIS. I will read you first the following article.

Mr. UNTERMYER. Which rule is it?

Mr. STURGIS. It is the second section on the twenty-eighth page of the seventeenth article of the constitution:

A member who shall be adjudged by a two-thirds vote of all the existing members of the governing committee to be guilty of fraud or of fraudulent acts shall be expelled, and the president shall so declare.

Mr. UNTERMYER. Yes.

Mr. STURGIS. That is one. Now, there is another.

Mr. UNTERMYER. That is general fraud?

Mr. STURGIS. Yes.

Mr. UNTERMYER. He is punishable under the law of the land, is he not?

Mr. STURGIS. If you will turn to page 71 you will find a section against—

Mr. UNTERMYER. Which section?

Mr. STURGIS. This is a section which is not so important as the one which I wish to read later.

Mr. UNTERMYER. Which section do you refer to now?

Mr. STURGIS. The first section on the seventy-first page. That is another disciplinary section.

Mr. UNTERMYER. Will you read it?

Mr. STURGIS. Yes.

Mr. UNTERMYER. Tell me, please, how it is made applicable to the question we are discussing?

Mr. STURGIS. I thought you were asking me about the discipline of the exchange.

Mr. UNTERMYER. No, sir; I am not. I am asking you to point to any rule which specifically in terms prevents the use by a member of the securities of his customers that have been fully paid for.

Mr. STURGIS. The eighth section, on page 30, which reads:

The governing committee may, by a vote of a majority of all its existing members, suspend from the exchange for a period not exceeding one year any member who may be adjudged guilty of any act which may be determined by said committee to be detrimental to the interest or welfare of the exchange.

Mr. UNTERMYER. Have you now read everything you can find which specifically prohibits the use by a member of securities of his customer that have been fully paid for and are merely deposited there for safe-keeping? The question is, Have you read everything that there is in the rules on that subject?

Mr. STURGIS. I might find something more.

Mr. UNTERMYER. Have you read everything that you can recall?

Mr. STURGIS. Everything that I can think of.

Mr. UNTERMYER. If you find anything more, will you call our attention to it?

Mr. STURGIS. With great pleasure.

Mr. UNTERMYER. That being all, there is not in the rules, is there, any regulation specifically and in terms prohibiting the use of the securities of a customer that are deposited with a member?

Mr. STURGIS. Not that I recall, Mr. Untermyer.

Mr. UNTERMYER. Now, let us return to the question of the rehypothecation of securities that have been partly paid for by the customer, on which he owes the broker a substantial sum, or a substantial proportion of his purchase. As to those do you not know, Mr. Sturgis, that it is the custom of brokers to borrow on those securities just as freely as though they were their own, without regard to the amount that happens to be owing to them on them?

Mr. STURGIS. I prefer to speak only for my firm. As far as that is concerned, we have an understanding with our clients that we can use their securities to meet their necessities.

Mr. UNTERMYER. To meet whose necessities?

Mr. STURGIS. The customers'.

Mr. UNTERMYER. Yes; but suppose there are no necessities of the customer. Suppose he has paid, we will say, one-half of what is owing on his securities.

Mr. STURGIS. Then his necessities are one-half.

Mr. UNTERMYER. Then you understand you have a right to borrow 80 per cent of the value of those securities?

Mr. STURGIS. It depends somewhat upon the price of the securities, and somewhat upon the agreement with the customer.

Mr. UNTERMYER. Never mind about the agreement. Suppose that customer has paid 50 per cent of the value of his securities, do you understand that you can borrow 80 per cent on them?

Mr. STURGIS. I can borrow 50 per cent plus the 20 per cent that I have to put up at the bank.

Mr. UNTERMYER. Do you not know it is the general custom among the brokers—

Mr. STURGIS. It is similar to that which I have just described.

Mr. UNTERMYER. Do you not know that the general custom is to borrow on those securities, held in that way, without regard to the amount that is owing by the customer?

Mr. STURGIS. No; I do not know that to be the general custom.

Mr. UNTERMYER. Then, as I understand you, every time you borrow from a bank on a customer's security you take into account how much he owes you, do you?

Mr. STURGIS. Practically. We can not always do it on a fluctuating market.

Mr. UNTERMYER. But you try to?

Mr. STURGIS. I try to.

Mr. UNTERMYER. I am not speaking of you alone. I am speaking of the custom in the exchange.

Mr. STURGIS. I can not speak for all the members of the exchange, Mr. Untermyer, and it is impossible for me to know what every member of the exchange is doing.

Mr. UNTERMYER. Do you not know that a large proportion of the membership of the New York Stock Exchange to-day is doing business to some extent on its customers' capital?

Mr. STURGIS. I do not think so.

Mr. UNTERMYER. Suppose they have securities that average 50 per cent paid—do you understand what I mean?

Mr. STURGIS. Yes.

Mr. UNTERMYER. Do you not know that they are able to borrow, as a rule, up to about 80 per cent?

Mr. STURGIS. But they do not do it.

Mr. UNTERMYER. Will you not answer me? They are able to borrow 80 per cent, are they not?

Mr. STURGIS. No; not on a great many securities—not over 60.

Mr. UNTERMYER. On a general average of the listed securities?

Mr. STURGIS. I should say 60 per cent.

Mr. UNTERMYER. Do you not know the margin required is only 20 per cent?

Mr. STURGIS. I do; but it depends upon the collateral security.

Mr. UNTERMYER. I am speaking of the class of securities generally dealt in on the exchange.

Mr. STURGIS. So am I. That is the reason I say 60 per cent is a fair average.

Mr. UNTERMYER. Of the general securities?

Mr. STURGIS. Of the general securities dealt in on the exchange.

Mr. UNTERMYER. And you do not know as a fact, do you, that the banks of the city to-day, in their collateral loans, have not an average margin of anything like 30 per cent?

Mr. STURGIS. I know that many banks lend on 25 per cent margin, and some banks lend on 20, and some trust companies will not lend on less than 30, and some not on less than 40. It depends on the kind of security that you offer them.

Mr. UNTERMYER. But the great lenders of money in the city of New York—

Mr. STURGIS. They range between 20 and 30 per cent.

Mr. UNTERMYER. They will be about 20 per cent?

Mr. STURGIS. No, sir; more than that.

Mr. UNTERMYER. One of the witnesses this morning stated that the margin was 20 per cent.

Mr. STURGIS. That is the very minimum, and he was mistaken. That is not the customary margin.

Mr. UNTERMYER. Mr. Griesel was mistaken?

Mr. STURGIS. Mr. Griesel was mistaken. That is the minimum, not the average.

Mr. UNTERMYER. He is the leading lender of money on the stock exchange, is he not?

Mr. STURGIS. He lends a great deal of money on the stock exchange.

Mr. UNTERMYER. And you think your knowledge of that custom among brokers is more intimate than his?

Mr. STURGIS. In the borrowing of money; yes.

Mr. UNTERMYER. It is more intimate than his?

Mr. STURGIS. In the borrowing of money.

Mr. UNTERMYER. Since you are very familiar with the custom among the members of the exchange in the borrowing of money, do you not know that in the borrowing of money by a broker he makes up his loans by splitting the collaterals of his customers, without regard to their ownership, into different loans?

Mr. STURGIS. Very frequently; yes.

Mr. UNTERMYER. But he has to do that to meet the requirements of the lending bank?

Mr. STURGIS. Not always.

Mr. UNTERMYER. But he does, as a rule?

Mr. STURGIS. Frequently; yes.

Mr. UNTERMYER. And when he splits up his securities in that way, taking some from one customer and some from another, and borrows on them on a margin of 20 per cent or 25 per cent, do you not know that he frequently has in that list of securities, in those loans, securities of customers that have paid 50 per cent on their debt?

Mr. STURGIS. I can not tell what the customs are of all the different brokers in Wall Street.

Mr. UNTERMYER. You have just said you understood the loaning business better than Mr. Griesel.

Mr. STURGIS. I know it does occur.

Mr. UNTERMYER. It does occur?

Mr. STURGIS. It does occur.

Mr. UNTERMYER. And as the result of that custom it does happen—it has happened, has it not—that in all these failures, as you say, when they have occurred, the customer loses his collateral?

Mr. STURGIS. It has happened.

Mr. UNTERMYER. It has happened in every failure, has it not?

Mr. STURGIS. Not all the collateral, because there is almost always some division to the creditors.

Mr. UNTERMYER. Have you ever known of any in which he has been able to rescue any of his collateral, no matter how much he has paid on it?

Mr. STURGIS. He has been able to rescue part of it, yes; in many instances.

Mr. UNTERMYER. Is it not generally mixed up in loans with other people's collateral?

Mr. STURGIS. Not always.

Mr. UNTERMYER. Generally it is?

Mr. STURGIS. Sometimes it is in the broker's box.

Mr. UNTERMYER. You have known of brokers failing with stock exchange collateral in their box, have you?

Mr. STURGIS. Indeed, I have.

Mr. UNTERMYER. What firm is that? I would like to know the name of it?

Mr. STURGIS. In the panic of 1873—

Mr. UNTERMYER. Let us come a little further down.

Mr. STURGIS. No; I want to give you an instance. In the panic of 1873 42 stock exchange houses stopped that day. Many of them stopped absolutely solvent, their boxes full of securities, because they could not get certification at their banks.

Mr. UNTERMYER. Now, let us come down to modern times. Tell me of any brokerage house since 1890—which is 22 years ago—that has ever failed where it has been found that the broker had stock exchange collateral in his box.

Mr. STURGIS. If you will let me, when I get back to New York, refer to the list of bankrupt concerns I will send you some. I can not say offhand, but I will send you instances.

Mr. UNTERMYER. But it is not the rule, is it?

Mr. STURGIS. Oh, no; of course it is not the rule.

Mr. UNTERMYER. The rule is the other way?

Mr. STURGIS. A man goes to the end of his string.

Mr. UNTERMYER. Certainly; that is perfectly natural.

Mr. STURGIS. That is perfectly natural.

Mr. UNTERMYER. He hopes on until the last, does he not, and he puts up everything he has got and he puts up everything his customers have got, hoping to save them both; is not that right?

Mr. STURGIS. That is too sweeping.

Mr. UNTERMYER. It is not much too sweeping, is it?

Mr. STURGIS. That is too sweeping.

Mr. UNTERMYER. These collaterals being separated as they are into different loans, regardless of the ownership of the stock, it makes it impossible, does it not, for any one customer to go and rescue his collateral without taking up the whole loan, including other people's collateral?

Mr. STURGIS. Generally speaking, yes.

Mr. UNTERMYER. Yes. Now, let us see. Is there not, in your judgment, a way of preventing that sort of injury to customers?

Mr. STURGIS. Mr. Untermyer, we have given a great deal of thought to that subject.

Mr. UNTERMYER. Do you not see a way?

Mr. STURGIS. I have not yet found one.

Mr. UNTERMYER. Let us see if we can suggest a way, and let us have your judgment upon it, because it is a serious injury, is it not?

Mr. STURGIS. It is an injury, undoubtedly.

Mr. UNTERMYER. Yes; and I suppose the exchange would like to prevent it if it could?

Mr. STURGIS. We would always be glad to find any remedy.

Mr. UNTERMYER. Suppose the broker were required to put opposite each collateral on the envelope in which the collateral is put—the loan envelope, as they call it—the amount for which he holds that collateral, so that the bank to which he applies would only lend on the basis of what is owing to the broker. Would not that cure the situation and protect the customer?

Mr. STURGIS. I think it would.

Mr. UNTERMYER. Provided it were understood that the bank would have the right to rely on the broker's representation?

Mr. STURGIS. I think that is a very charming theory, but it would not work in practice.

Mr. UNTERMYER. Let us see why it would not work. Tell me why.

Mr. STURGIS. I do not think you would have clerks enough in your office to keep those figures.

Mr. UNTERMYER. In whose office?

Mr. STURGIS. In anybody's office who is now doing a big stock exchange business.

Mr. UNTERMYER. In whose office—the broker's office?

Mr. STURGIS. In any broker's office doing a large business.

Mr. UNTERMYER. Let us see about that. Suppose Mr. Smith has a thousand shares of Steel in your office. It is worth \$70,000, and he owes you only \$30,000 on it. Your books show that, do they not?

Mr. STURGIS. Yes.

Mr. UNTERMYER. When you borrow on that Steel stock, could you not put on the envelope opposite the collateral "\$30,000"?

Mr. STURGIS. Mr. Untermyer—

Mr. UNTERMYER. Could you not do that?

Mr. STURGIS. No.

Mr. UNTERMYER. You could not?

Mr. STURGIS. My cashier makes up the loan. The bookkeepers are in a totally different department, nearly a city block away. Every loan that goes through that office can not possibly be carried back to the bookkeeper's desk, checked off, brought back again, and business transacted; not a bit of it.

Mr. UNTERMYER. You think it would take more clerks, do you?

Mr. STURGIS. It would take double the force.

Mr. UNTERMYER. Even if it did take double the force in order to protect the customer, would that be an insuperable objection?

Mr. STURGIS. No; it would not be an insuperable objection, but it would be a great expense.

Mr. UNTERMYER. You mean the broker would make less money, but the customer would be more safe?

Mr. STURGIS. It would hamper business.

Mr. UNTERMYER. Is that the only objection you have to that suggestion?

Mr. STURGIS. That is the most pertinent one.

Mr. UNTERMYER. Have you any that are impertinent?

Mr. STURGIS. Yes; because the market fluctuates so violently frequently that such figures are only good for a brief period of time.

Mr. UNTERMYER. What have the fluctuations of the market to do with the requirement that on the envelope delivered to the bank with the security for the loan the broker is to put the amount that the customer owes him?

Mr. STURGIS. Yes; but that customer may owe me \$20,000 or \$30,000 more at 3 o'clock than he owed me at 12 o'clock.

Mr. UNTERMYER. Yes.

Mr. STURGIS. And then I have got to correct the envelope.

Mr. UNTERMYER. Then you have got to change your loan?

Mr. STURGIS. No; those loans run for 2 or 3 months; 12 months sometimes.

Mr. UNTERMYER. You are taking those securities out and putting them in every day?

Mr. STURGIS. No; not on all time loans.

Mr. UNTERMYER. On the general run you are?

Mr. STURGIS. On call loans, no.

Mr. UNTERMYER. On time loans?

Mr. STURGIS. On time loans to some extent.

Mr. UNTERMYER. You are taking your securities out and putting others back in there every day?

Mr. STURGIS. Very infrequently.

Mr. UNTERMYER. Whenever a customer changes his deals you take out the securities and put others back?

Mr. STURGIS. On time loans.

Mr. UNTERMYER. Is it any more difficult to arrange the figures on that envelope than it is to take the securities out and change the loan in that way?

Mr. STURGIS. No: because the balance on the ledger is fluctuating all the time with the market.

Mr. UNTERMYER. That is only a little more trouble--very little--is it not?

Mr. STURGIS. No.

Mr. UNTERMYER. It is more trouble, of course.

Mr. STURGIS. No; it is more protection. We want the protection.

Mr. UNTERMYER. How about the customer's protection?

Mr. STURGIS. The customer is protected. If he chooses to go and put a handsome margin there, there it remains.

Mr. UNTERMYER. But suppose he puts the margin there; the broker still uses his securities—

Mr. STURGIS. Yes.

Mr. UNTERMYER (continuing). Without regard to his margin?

Mr. STURGIS. Not at all.

Mr. UNTERMYER. Does he not? He takes those securities and bunches those with a lot of securities of other customers and divides them into loans. You have told us that.

Mr. STURGIS. Yes.

Mr. UNTERMYER. So that the amount of margin that that customer has on these securities has nothing to do with the loan in which they are placed?

Mr. STURGIS. The amount due to the banking house has a great deal to do with the face of the loan.

Mr. UNTERMYER. We are not speaking of the face of loan. The amount of money he owes this broker on those securities has no relation, has it, to the use that the broker makes of those securities in splitting them up into different loans?

Mr. STURGIS. No: but you asked me about the figures on the envelope.

Mr. UNTERMYER. That was not the question.

Mr. STURGIS. You asked me whether the figures could be altered on the envelope.

Mr. UNTERMYER. You said that if the man had a handsome margin it could stay there.

Mr. STURGIS. I answered your question on that.

Mr. UNTERMYER. Now, I ask you if the margin, the amount of it, has anything to do with the way that his securities are dealt with?

Mr. STURGIS. I have already answered that it does not.

Mr. UNTERMYER. Therefore a man with a handsome margin on his securities is under the same danger of being swept away if his broker fails as a man with a small margin?

Mr. STURGIS. Yes.

Mr. UNTERMYER. I want to ask you now a few questions about this ticker service. What is the name of the company that the stock exchange owns?

Mr. STURGIS. The New York Quotation Co.

Mr. UNTERMYER. And that is the company from which this revenue is derived, from the rents to your people?

Mr. STURGIS. The machine which we rent to our members.

Mr. UNTERMYER. Is that the only business the stock exchange does?

Mr. STURGIS. That is the only business the stock exchange does, except that they have telephones.

Mr. UNTERMYER. What is that?

Mr. STURGIS. They have telephonic communication to the offices of different members.

Mr. UNTERMYER. You rent out that service also?

Mr. STURGIS. Yes.

Mr. UNTERMYER. What do you charge for it?

Mr. STURGIS. I am not on that committee; I could not tell you. It is some small charge.

Mr. UNTERMYER. You own your building?

Mr. STURGIS. Yes.

Mr. UNTERMYER. Do you rent offices in the building?

Mr. STURGIS. None. I beg your pardon, I must correct that. We have one office rented to the Western Union Telegraph Co.

Mr. UNTERMYER. In your various answers to the Hughes commission you stated, did you not, repeatedly, that the stock exchange does no business?

Mr. STURGIS. Yes.

Mr. UNTERMYER. What?

Mr. STURGIS. Yes; we have stated that.

Mr. UNTERMYER. Do you not want to qualify that to the extent that the stock exchange as such does no business other than to rent out the privileges of its quotation service and to rent its telephone service?

Mr. STURGIS. But that is only to its own members.

Mr. UNTERMYER. I say, it does do business of that kind with its own members?

Mr. STURGIS. That is not regarded as business. It is a privilege that goes with the membership in the exchange.

Mr. UNTERMYER. It is a privilege that yields you quite a substantial return?

Mr. STURGIS. Quite true; but I want to interject in there that no one not a member of the exchange uses that instrument.

Mr. UNTERMYER. That has been the subject of complaint, has it not?

Mr. STURGIS. Possibly.

Mr. UNTERMYER. Let us see what justification there is for that complaint. This quotation service, is that a service of the ticker in the offices of members of the exchange?

Mr. STURGIS. Correct.

Mr. UNTERMYER. And is that supplied from the floor of the exchange?

Mr. STURGIS. Those quotations are gathered on the floor of the exchange by experts.

Mr. UNTERMYER. Employees of the exchange?

Mr. STURGIS. Employees of the ticker company.

Mr. UNTERMYER. That is the exchange?

Mr. STURGIS. They own the stock.

Mr. UNTERMYER. You mean the exchange owns the stock of the ticker company?

Mr. STURGIS. The exchange owns all the stock of the ticker company?

Mr. UNTERMYER. So that they are in effect the employees of the exchange?

Mr. STURGIS. Inferentially; yes, sir. Those quotations are sent to a common office which is on the lower part of Broadway, which is rented by the ticker company, and from there they are disseminated to the various brokers below Chambers Street.

Mr. UNTERMYER. You do not allow the ticker to go above Chambers Street?

Mr. STURGIS. We have the ticker above Chambers Street, but no office.

Mr. MILBURN. They are directly the employees of the exchange, and not indirectly.

Mr. UNTERMYER. Yes. They are not employees of the ticker company, but directly employees of the exchange?

Mr. STURGIS. I was not certain about that. Mr. Milburn corrects me.

Mr. UNTERMYER. It is substantially the same thing?

Mr. STURGIS. Quite right, sir.

Mr. UNTERMYER. In addition to supplying this ticker service to your members through the quotation company, do you supply the quotations to the Western Union Telegraph Co.?

Mr. STURGIS. Yes; we sell our quotations to the Western Union Telegraph Co.

Mr. UNTERMYER. You sell them to them?

Mr. STURGIS. Yes.

Mr. UNTERMYER. The Western Union Telegraph Co., as I think appeared in the early hearings, is a lessee of the Golden Stock Ticker Co., is it not?

Mr. STURGIS. Our counsel will say. I think they are the owners of the Golden Stock, are they not?

Mr. MILBURN. I think they are practically the owners.

Mr. UNTERMYER. You supply those quotations for distribution all over the country?

Mr. STURGIS. Our contract with the Golden Stock, according to my recollection—

Mr. UNTERMYER. That means the Western Union?

Mr. STURGIS (continuing). That means the Western Union—is confined to the State of New York, and they are not allowed to furnish that ticker to any member of the Stock Exchange below Chambers Street.

Mr. UNTERMYER. You mean you reserve for the quotation company the exclusive right below Chambers Street?

Mr. STURGIS. Below Chambers Street, for the members of the Stock Exchange. Above Chambers Street they use the Western Union.

Mr. UNTERMYER. And the Western Union uses that service all through the United States, does it not?

Mr. STURGIS. I think it does. I am not familiar with that.

Mr. UNTERMYER. And that is a very valuable privilege?

Mr. STURGIS. I should suppose so.

Mr. UNTERMYER. You get largely paid for it?

Mr. STURGIS. Oh, yes.

Mr. UNTERMYER. That is an additional source of business?

Mr. STURGIS. It is not business, exactly.

Mr. UNTERMYER. You do not think it is business?

Mr. STURGIS. No, sir.

Mr. UNTERMYER. Is it philanthropy, or what would you call it?

Mr. STURGIS. I should call it a source of revenue.

Mr. UNTERMYER. A source of revenue, but not business?

Mr. STURGIS. Certainly. If you cut coupons off of your bonds it is not business, but it is a source of revenue, all the same.

Mr. UNTERMYER. Yes; but in this case are you not in the business of employing experts to collect these quotations, and of employing operators to send these quotations over your quotation service?

Mr. STURGIS. Over ours?

Mr. UNTERMYER. Over the Western Union's?

Mr. STURGIS. We give them to the Western Union.

Mr. UNTERMYER. They go to the Western Union from your operators?

Mr. STURGIS. I must say that I am not familiar with that part of the work of the exchange.

Mr. UNTERMYER. You collect them through your experts and send them through your operators, and you do not think that is business, although you get paid for it.

Mr. STURGIS. We do not transmit them.

Mr. UNTERMYER. I can not make it out how you can say that that is not business. I wish you would tell us how you make it out that that is not doing business. Mr. Milburn, I see, is smiling. If he can explain that, I will give him a chance to do it.

The CHAIRMAN. We will proceed. That is a matter of law.

Mr. UNTERMYER. Is not that doing business? How do you make it out that that is not doing business?

The CHAIRMAN. It makes no difference whether he said that it was doing business or not.

The question was read by the stenographer.

Mr. UNTERMYER. Will you not tell us how you make that out?

Mr. STURGIS. Mr. Untermeyer, the only answer I can make is that I should consider that a rental of a privilege. I should not consider it business.

Mr. UNTERMYER. That is done in connection with all this service that your exchange has to perform?

Mr. STURGIS. The exchange performs the service for its own ticker company, and not for the Western Union.

Mr. UNTERMYER. It performs the service also of delivering the quotations to the Western Union, does it not?

Mr. STURGIS. I told you that I did not know what process was employed for that.

Mr. UNTERMYER. You have made it a condition in your exchange, have you not, of allowing the Western Union, a public interstate corporation, to distribute these quotations, that they shall not give that service, or furnish that service, to anybody unless your exchange first approves of it?

Mr. STURGIS. That is the contract with the Western Union now.

Mr. UNTERMYER. And that applies everywhere?

Mr. STURGIS. In New York State.

Mr. UNTERMYER. Does it not apply all over the United States?

Mr. STURGIS. Not to my recollection.

Mr. UNTERMYER. I will read this:

Second. The telegraph company shall have the right to transmit said reports to members of the New York Stock Exchange at their offices north of Chambers Street, in New York City, and shall also have the right to serve said report to each director of the telegraph company who is a member of the stock exchange on one ticker in the office of any one such director south of Chambers Street; but said telegraph company shall not serve said report to any member of the stock exchange except as herein provided.

The telegraph company shall also have the right to serve said report to all persons, firms, corporations, and organizations in New York City and elsewhere, wherever the telegraph company may desire to serve—

Mr. STURGIS. Yes. I told you I was not certain about it, but I thought that it was in New York State.

Mr. UNTERMYER (continuing reading):

Except to organizations and exchanges in the city of New York competing with the New York Stock Exchange; and the telegraph company will not contract to furnish tickers, and will not furnish tickers to any person, firm, corporation, or organization in New York City not already having these instruments, until the application of such person, firm, corporation, or organization shall have been submitted to and approved by at least three members of the committee of arrangements of the stock exchange.

After having had your memory refreshed by reference to the agreement, is it, or not, your recollection now that the Western Union Telegraph Co. has the privilege from the exchange, subject to the approval as to the person whom they serve, to give this service everywhere?

Mr. STURGIS. It reads so, sir. But that contract is terminable on a 24-hours' notice.

Mr. UNTERMYER. Has it been terminated?

Mr. STURGIS. It has not.

Mr. UNTERMYER. How many years has it been in existence?

Mr. STURGIS. I could not tell you. The date will show you, there.

Mr. UNTERMYER. It is dated in 1900; August, 1900.

Mr. STURGIS. It has been modified since then, has it not?

Mr. UNTERMYER. Not to my knowledge. Has it been modified, Mr. Taylor? It has been given to me as the contract. So that it has been in existence for 12 years?

Mr. STURGIS. I presume so.

Mr. UNTERMYER. What has the fact that it is terminable within 24 hours to do with the question?

Mr. STURGIS. It has this to do with it, that if there is an abuse of it under that contract we have the power to terminate the contract.

Mr. UNTERMYER. We are not speaking of abuses now. We are trying to get at the character of the arrangements by which the quota-

tions from the New York Stock Exchange are distributed throughout the country.

Mr. STURGIS. It speaks for itself.

Mr. UNTERMYER. The fact is, is it not, that the Western Union Telegraph Co. can not deliver that service throughout the country in interstate commerce except with the approval of the New York Stock Exchange?

Mr. STURGIS. That is true at the present time.

Mr. UNTERMYER. Now, I would like to take up with you this question of the manipulation of stock on the stock exchange. Are you familiar with the subject?

Mr. STURGIS. I am not.

Mr. UNTERMYER. Do you know what manipulation is?

Mr. STURGIS. The stock exchange has——

Mr. UNTERMYER. Pardon me. The question is, do you know what it is? That is the question.

Mr. STURGIS. From hearsay evidence, yes.

Mr. UNTERMYER. Only by hearsay evidence?

Mr. STURGIS. Only by hearsay evidence.

Mr. UNTERMYER. But you know what I mean when I speak of manipulation, do you not?

Mr. STURGIS. I know what the so-called manipulation——

Mr. UNTERMYER. I say you know what I mean?

Mr. STURGIS. Yes.

Mr. UNTERMYER. There are certain forms of manipulation of which you approve?

Mr. STURGIS. Will you permit me to read the answer by this committee to the Hughes commission?

Mr. UNTERMYER. No. I will examine you on that later. Those answers were made, were they not, as you have stated, by the governing committee in conference, without any opportunity of examination by anybody?

Mr. STURGIS. They were made by the law committee after consulting with Mr. Ledyard.

Mr. UNTERMYER. After consulting with counsel?

Mr. STURGIS. Yes.

Mr. UNTERMYER. That is a very different thing from testing them. We want to test the accuracy of them.

By request, the stenographer repeated the question as follows:

Mr. UNTERMYER. There are certain forms of manipulation of which you approve?

Mr. UNTERMYER. Are there not?

Mr. STURGIS. I would like to answer your question in this way: The stock exchange does not recognize manipulation, and I do not know of it of my own knowledge. I am not prepared to be an expert on questions of manipulation. If you want to ask anything on that subject, I would rather have you call somebody who is in active business.

Mr. UNTERMYER. Who do you think could explain to us the processes of manipulation on the stock exchange?

Mr. STURGIS. I really do not know. I have not been on the floor of the exchange in two years.

Mr. UNTERMYER. But you are the chairman of the law committee and one of the governors of the exchange?

Mr. STURGIS. Yes.

Mr. UNTERMYER. And you have been 40 years there and can not tell us who there is who could give us that information?

Mr. STURGIS. I am not in active business, as I told you just a little while ago.

Mr. UNTERMYER. Did you hear these tables read yesterday, of dealings on the New York Stock Exchange?

Mr. STURGIS. I did.

Mr. UNTERMYER. Did they surprise you?

Mr. STURGIS. Those are acts of individuals. The exchange has nothing to do with them.

Mr. UNTERMYER. That is nowhere near an answer to my question.

Mr. STURGIS. That is the only answer I can make. The stock exchange neither buys nor sells.

Mr. UNTERMYER. Did that exhibit surprise you?

Mr. STURGIS. In some instances, yes.

Mr. UNTERMYER. Had you known before that the whole capital of a great corporation was sold and bought on the exchange one and a half times over in the course of a single day?

Mr. STURGIS. I did not.

Mr. UNTERMYER. In 1906 were you not active on the stock exchange?

Mr. STURGIS. No, sir.

Mr. UNTERMYER. You were not?

Mr. STURGIS. No, sir. I have not been active in my business for some six or seven years.

Mr. UNTERMYER. Is there anybody present whom we could examine on this question of manipulation?

Mr. STURGIS. I do not know. You, Mr. Untermeyer, know the members of the exchange pretty well yourself. I should think you could—

Mr. UNTERMYER. What do you mean by that?

Mr. STURGIS. You have a wide acquaintance in Wall Street.

Mr. UNTERMYER. Yes.

Mr. STURGIS. Some of the men there, perhaps very close friends of yours, very intelligent men—

Mr. UNTERMYER. Will you name anybody who understands this subject, so that we can call him?

Mr. STURGIS. No. As I have said, I have no knowledge of it; and it would be invidious for me to name anyone.

Mr. UNTERMYER. You do not mean by your suggestion a moment ago that I was a man who dealt on the stock exchange or traded there?

Mr. STURGIS. No; I was not personal.

Mr. UNTERMYER. Let me read to you from an answer that was signed by you as one of the governors of the stock exchange, from page 26 of this book. [Reading:]

There is a class of business, however, which is legitimate upon the exchange, and may be described briefly as follows: If a member, in good faith, gives to a broker an order to buy a certain amount of stock, and the said member gives to another broker, in equally good faith and with no collusion between the two

parties, an order to sell a certain amount of the same stock, and those two orders are executed upon the floor of the exchange and commissions paid, and every requirement of the law met, such a transaction is not illegitimate.

You made that answer, did you not?

Mr. STURGIS. Yes.

Mr. UNTERMYER. After considerable deliberation.

Mr. STURGIS. Quite true.

Mr. UNTERMYER. With your associations?

Mr. STURGIS. Quite true.

Mr. UNTERMYER. And under the advice of counsel?

Mr. STURGIS. Quite true.

Mr. UNTERMYER. Do you adhere to that statement?

Mr. STURGIS. I adhere to that statement.

Mr. UNTERMYER. Then, if I understand you, if a member of the exchange gives an order to one broker to buy and to another broker to sell the same stock at the same time——

Mr. STURGIS. An outside party?

Mr. UNTERMYER. No; a member of the exchange.

Mr. STURGIS. Yes.

Mr. UNTERMYER. If a member of the exchange gives to one broker an order to buy 1,000 shares of stock and an order to sell 1,000 shares of the same stock, and both those orders are executed——

Mr. STURGIS. By different brokers?

Mr. UNTERMYER. By different brokers.

Mr. STURGIS. And a commission paid?

Mr. UNTERMYER. And a commission paid—which seems to be important.

Mr. STURGIS. Very.

Mr. UNTERMYER. That you consider a perfectly legitimate transaction?

Mr. STURGIS. That is not illegitimate.

Mr. UNTERMYER. You think it is legitimate?

Mr. STURGIS. I do; providing, as I said here in this article, there is no knowledge and that the orders are given in equally good faith, with no collusion between the two parties.

Mr. UNTERMYER. What is the purpose of the broker who gives an order to buy and an order to sell the same amount of the same stock at the same time, not letting the buying broker know what the selling broker is to do?

Mr. STURGIS. He may have two customers.

Mr. UNTERMYER. Suppose he has not got two customers?

Mr. STURGIS. That is a supposition that I do not care to go into.

Mr. UNTERMYER. But you know that is the rule, do you not?

Mr. STURGIS. What rule?

Mr. UNTERMYER. That when those buying and selling orders are given in that way, they are given for the purpose of manipulating stocks to a higher or lower level of prices?

Mr. STURGIS. No. They are sometimes given purely to make the market active in dull times.

Mr. UNTERMYER. They are given to make the market active?

Mr. STURGIS. Sometimes.

Mr. UNTERMYER. What would be the purpose of a broker giving an order to sell 1,000 shares of stock and an order to buy 1,000 shares

of stock at the same time, and paying commissions on both orders, just in order to make the market active? What could be the purpose?

Mr. STURGIS. Just that.

Mr. UNTERMYER. What interest has he in making the market active?

Mr. STURGIS. His clients may have large interests in those stocks.

Mr. UNTERMYER. It is for the purpose of either increasing or reducing prices. is it not?

Mr. STURGIS. Not necessarily.

Mr. UNTERMYER. It is not for the purpose of keeping them at the same price, is it?

Mr. STURGIS. It is for the purpose of making the market active.

Mr. UNTERMYER. For the purpose of making it seem active?

Mr. STURGIS. For the purpose of making it seem active, if you prefer it that way.

Mr. UNTERMYER. When it is not active at all?

Mr. STURGIS. Possibly.

Mr. UNTERMYER. Do you think that is legitimate?

Mr. STURGIS. I do.

Mr. UNTERMYER. You do?

Mr. STURGIS. Yes.

Mr. UNTERMYER. What is his purpose in making it appear that the market in that stock is active when it is not active?

Mr. STURGIS. If you could increase the value of a very large asset by spending a very small amount of money to advertise it, perhaps you would do it.

Mr. UNTERMYER. Then you think it is just paying commissions in order to get a higher level of prices?

Mr. STURGIS. Not a higher level necessarily, but to get activity. Perhaps it is a new enterprise desirous of advertising to bring it before—what you might call before the community.

Mr. UNTERMYER. For the purpose of inducing them to buy?

Mr. STURGIS. Not necessarily. Perhaps giving them an opportunity to sell. It works both ways.

Mr. UNTERMYER. But for the purpose of inducing them to deal?

Mr. STURGIS. It is to make the market active.

Mr. UNTERMYER. To make it appear active?

Mr. STURGIS. Yes; to make it appear active, if you prefer to put it that way.

Mr. UNTERMYER. When it is not active. That you consider is a legitimate thing?

Mr. STURGIS. I think I have so stated.

Mr. UNTERMYER. That was what you meant, was it, by this phrase I have read?

Mr. STURGIS. That is what this article reads.

Mr. UNTERMYER. Let us analyze that for a moment to see what the effect of it is. The effect of it is, is it not, to either get a higher or lower level of prices in that security?

Mr. STURGIS. Mr. Untermyer—

Mr. UNTERMYER. Is not that what is the effect of it?

Mr. STURGIS. That is entirely the act of an individual. I can not testify to that. I do not know what the intentions of individuals are.

Mr. UNTERMYER. That is what it is done for, is it not?

Mr. STURGIS. I can not answer that question.

Mr. UNTERMYER. But when you were active in the brokerage business is it not a fact that you frequently acted for pools or syndicates—

Mr. STURGIS. My personal business is not under investigation.

Mr. UNTERMYER. Wait a minute. You frequently acted for pools and syndicates that wanted to make an active market and get a higher level of prices for given securities, did you not?

Mr. STURGIS. You refer to my personal business?

Mr. UNTERMYER. I refer to the business of your firm.

Mr. STURGIS. I must respectfully say that I am not at liberty to answer such a question.

Mr. UNTERMYER. Do you say that you do not understand that? I want to know whether it is not a fact that that was a class of business done, not only by your house, but by practically every house in New York?

Mr. STURGIS. I am not prepared to say whether it was or was not.

Mr. UNTERMYER. You have acted for pools and syndicates, have you not?

Mr. STURGIS. My own personal business I am not here to discuss, I think.

Mr. UNTERMYER. I can see no objection to that question, Mr. Milburn.

Mr. MILBURN. Why go into his personal business?

Mr. UNTERMYER. I am not going to ask him as to any particular transaction. I am only asking him for his experience.

The CHAIRMAN. He is asking for his expert knowledge. Put the question on that alone. It can be illustrated by his own business.

Mr. UNTERMYER. I can see no possible objection to my question.

Mr. MILBURN. All that Mr. Sturgis is objecting to is to speaking of his own personal business in which he was engaged. He can give you the information.

Mr. UNTERMYER. I am not asking, you understand, Mr. Sturgis, for any particular piece of business conducted by your firm. I am simply asking for the general trend of business within your experience.

I ask you whether it is not within your experience that transactions of that kind have been very common?

Mr. STURGIS. I would rather rely upon my answer as made in that book which you have before you.

Mr. UNTERMYER. Your answer made in the book is not of any consequence here, Mr. Sturgis, because there are a great many answers made in that book that we are going to discuss with you, if we have time. They were made in conference with counsel, framing them with you. I want your answers on the witness stand.

Now, will you not tell us whether or not when you were active in business it was not then, as it is now, a common experience for pools and syndicates to manipulate the prices of stock for the purpose of getting a higher level, or a lower level sometimes—sometimes to manipulate them for a higher level and sometimes to manipulate them for a lower level of prices?

Mr. STURGIS. You mean to exclude my own interests and affairs from your question?

Mr. UNTERMYER. You may exclude your own business affairs and give us your general experience. We do not care whether you include your own business affairs or exclude them.

Mr. STURGIS. So far as my own personal affairs are concerned I have no testimony to offer. As far as general hearsay evidence is concerned I should say, in answer to your question, that it was.

Mr. UNTERMYER. But is not that confirmed?

Mr. STURGIS. It is hearsay evidence.

Mr. UNTERMYER. But is not that hearsay evidence confirmed by your personal experience?

Mr. STURGIS. It is not.

Mr. UNTERMYER. That leads me to ask you again: Have you not conducted such transactions?

Mr. STURGIS. Again I say that I do not think my personal interests are under discussion.

Mr. UNTERMYER. I can not see any possible objection to that question. Do you, Mr. Chairman?

The CHAIRMAN. It seems to me the witness's attitude is that of an expert, from long experience in the Street, and he could be asked as to the effect of certain transactions or certain actions in the Street. Whether that came to him from his own personal experience or from his observation of the business of other people, it is perfectly competent coming from him as an expert.

Mr. MILBURN. I understand that he has testified in that regard in saying that from all that he has heard, and the experience that he has had there, such things have been done. That is what he has answered. That is exactly what he has said.

Mr. UNTERMYER. If he says that, very well, then. That is all we want.

Mr. STURGIS. That is what I have said.

Mr. UNTERMYER. I understood you just to say that it was only hearsay evidence.

Mr. MILBURN. It is true of all expert testimony—

Mr. UNTERMYER. That is all we care about, then.

You consider that sort of an operation legitimate, do you?

Mr. STURGIS. I think I have answered that question.

Mr. UNTERMYER. Will you not answer it again?

Mr. STURGIS. So far as my answer is concerned in the book—

Mr. UNTERMYER. No; Mr. Sturgis, please do not—

Mr. STURGIS. Yes.

Mr. UNTERMYER. Very well; that is an answer. How do you justify as legitimate the transactions of a pool or syndicate in giving out buying and selling orders to brokers for the purpose of lifting the price of the stock or of depressing it?

Mr. STURGIS. Those are the acts of individuals. I can not be responsible for what thousands of people throughout this country do.

Mr. UNTERMYER. Do you seek to justify it?

Mr. STURGIS. It depends entirely upon circumstances. I have already said that under certain conditions—orders given out, commissions paid, no collusion whatsoever, the broker who buys not having the slightest idea where the order comes from that the broker executes to sell—it is not an illegitimate transaction.

Mr. UNTERMYER. Do you not realize, Mr. Sturgis, that it brings the public in, who do not know that these sales and purchases are given

out from the same source? Do you not know that it brings the public in on that higher level of prices?

Mr. STURGIS. Suppose the public happened to have that stock?

Mr. UNTERMYER. Suppose the public have not got the stock, but want to buy the stock, and you create this high level of prices in that way. Do you think you can justify that?

Mr. STURGIS. You just now asked me if it did not depress prices?

Mr. UNTERMYER. I am speaking now of the case in which the operation is resorted to to raise prices.

Mr. STURGIS. I think I have answered your question.

Mr. UNTERMYER. You know the operation is sometimes resorted to to depress prices and sometimes to raise prices, do you not?

Mr. STURGIS. I think I have answered your question very fully.

Mr. UNTERMYER. Will you not answer?

Mr. STURGIS. I have answered.

Mr. UNTERMYER. That is the fact, is it not?

Mr. STURGIS. I said I did not consider it illegitimate.

Mr. UNTERMYER. But you know the operation is sometimes resorted to to depress prices, do you not?

Mr. STURGIS. I would rather not testify to hearsay evidence.

Mr. UNTERMYER. Will you not please answer the question?

Mr. STURGIS. I should prefer not to answer.

Mr. UNTERMYER. I should prefer not to put any questions to you that you would prefer not to answer, but I have a duty to perform and so have you. My duty is to put questions and your duty is to answer them. Will you be good enough to answer that question? Is not the operation at times resorted to to depress prices and at other times to lift prices?

Mr. STURGIS. Yes. I can consistently answer that.

Mr. UNTERMYER. What is the purpose of an operation of that kind to depress prices?

Mr. STURGIS. I could not answer that. I never myself had any knowledge about it.

Mr. UNTERMYER. Do you not know the purpose is to enable the people who are conducting the operation to buy the stocks cheaply?

Mr. STURGIS. No; I do not know that.

Mr. UNTERMYER. Do you not know that the purpose is sometimes to enable them to sell the stock short and then to buy it in at the lower level of prices?

Mr. STURGIS. No; I do not know that.

Mr. UNTERMYER. Do you know whether it is or not?

Mr. STURGIS. I told you that I have heard something on that subject from hearsay, but it is a matter of which I have no personal knowledge.

Mr. UNTERMYER. You approve of those transactions, do you?

Mr. STURGIS. I approve of transactions that pay their proper commissions and are properly transacted. You are asking me a moral question and I am answering you a stock exchange question.

Mr. UNTERMYER. What is the difference?

Mr. STURGIS. They are very different things.

Mr. UNTERMYER. I thought so. There is no relation between a moral question, then, and a stock exchange question?

Mr. STURGIS. Sometimes.

Mr. UNTERMYER. Sometimes. I see. Mr. Sturgis, what has the fact that commissions are paid to do with the effect of such a transaction on the outside public? How does that make it any worse or any better? Whether the operator who wants to depress prices gives these buying and selling orders, or the operator who wants to get a higher level of prices gives these orders, what has the fact that he pays commissions both ways to do with the morale of the thing?

Mr. STURGIS. The stock exchange demands that the commissions shall be paid. That is the answer to that.

Mr. UNTERMYER. But as long as the commissions are paid the morale of the thing does not concern them? Is that it?

Mr. STURGIS. It is the individual action. I can not tell who is buying or who is selling. It may be different people; it may be the same person. It may be a broker; it may be an outsider; it may be a man who can not be reached; it may be somebody in Europe. The stock exchange insists upon its law being obeyed and a commission paid and the business properly executed and carried out to its conclusion.

Mr. UNTERMYER. Then it closes its eyes to the character of the transaction as long as the commission is paid?

Mr. STURGIS. It does not know anything about it. The stock exchange as a body knows nothing about it.

Mr. UNTERMYER. Yes; but if, for instance, a broker sells stock and takes less commission than 12½ cents a share from the other broker, the stock exchange pretty rapidly knows about that, does it not?

Mr. STURGIS. If we can find it out; yes.

Mr. UNTERMYER. And you expel them, do you not?

Mr. STURGIS. If we can.

Mr. UNTERMYER. Every time you get a chance you expel them, do you not?

Mr. STURGIS. Yes, sir. We have no law——

Mr. UNTERMYER. For splitting commissions?

Mr. STURGIS. But the stock exchange takes not cognizance of people who are nonmembers of the exchange.

Mr. UNTERMYER. We are speaking of pools and syndicates for the rise and the fall of stocks that are operated by stock-exchange members. You understand that, do you not, Mr. Sturgis?

Mr. STURGIS. Yes.

Mr. UNTERMYER. All my questions relate to that. You understood that, did you not?

Mr. STURGIS. No; I thought you were referring to the public generally.

Mr. UNTERMYER. I am referring to pools that are operated by stock exchange members, and the public generally are gathered in in the operation. Did you not understand that?

Mr. STURGIS. No; I did not understand that.

Mr. UNTERMYER. What has the public generally got to do with the operation of a pool or a syndicate on the stock exchange except once in a while to get in or once in a while to get out? Will you tell me that?

Mr. STURGIS. It is frequently manipulated by persons outside of the stock exchange, according to your own view of it. You say these orders are sent in there by nonmembers.

Mr. UNTERMYER. No; in all my questions I have referred to pools that were being conducted by stock exchange members giving out

orders through other houses, giving out buying orders to a dozen brokers, we will say, and selling orders to a dozen brokers. That is the character of the transaction that you are familiar with, is it not?

Mr. STURGIS. I know it is done. I have said so.

Mr. UNTERMYER. What has the fact that the commissions are paid on such a transaction to do with its legitimacy?

Mr. STURGIS. If the commissions are paid, it is not illegitimate.

Mr. UNTERMYER. I see. How does that make it any better, as a matter of fair dealing, so far as concerns the outside public?

Mr. STURGIS. Mr. Untermyer, there you are asking the motives of men. I am not able to answer questions of that kind.

Mr. UNTERMYER. But you are a member of the governing committee, are you not?

Mr. STURGIS. Truly.

Mr. UNTERMYER. And do you not think the motives of your own members in rigging a market up or rigging a market down are matters of concern to the governing committee?

Mr. STURGIS. We do not know it. These transactions take place on the floor of the exchange. How can the members of the governing committee follow every transaction and know whether it is a question of what you call manipulation or not?

Mr. UNTERMYER. Suppose the capital stock is sold 40 times over in a year.

Mr. STURGIS. If we find anything that is wrong, as quickly as we can we punish it.

Mr. UNTERMYER. Then you would punish manipulation, would you?

Mr. STURGIS. If it is of a heinous nature.

Mr. UNTERMYER. What do you mean by "a heinous nature"? Where the commission is not paid?

Mr. STURGIS. No; where it endangers the welfare of the exchange.

Mr. UNTERMYER. What do you mean by that?

Mr. STURGIS. If a man is operating in securities beyond his means to take care of them—beyond his capital—

Mr. UNTERMYER. Then it is not manipulation to which you object; it is the excessive operations?

Mr. STURGIS. Danger of insolvency, frequently.

Mr. UNTERMYER. Danger of insolvency; but as long as he is able to manipulate, you do not concern yourselves?

Mr. STURGIS. As long as the orders are legitimate and the commissions are paid.

Mr. UNTERMYER. Is there anything else you would like to say on this subject of manipulation?

Mr. STURGIS. No; thank you.

Mr. UNTERMYER. Has the stock exchange enacted a regulation that prohibits brokers on the curb from dealing with the members of the Consolidated Stock Exchange?

Mr. STURGIS. Not to my knowledge.

Mr. UNTERMYER. They have a regulation, have they not, which—

Mr. STURGIS. The curb people?

Mr. UNTERMYER. Yes; the curb. Have you had any connection with the negotiations that have been carried on by the curb?

Mr. STURGIS. I think I have seen Mr. Mendel, the secretary of the curb, perhaps three times or four.

Mr. UNTERMYER. The New York Stock Exchange brokers are permitted to deal on the curb, are they not?

Mr. STURGIS. We take no cognizance of the curb. We do not forbid or sanction. They do as they like about that.

Mr. UNTERMYER. Do you not know that they are not permitted—

Mr. STURGIS. I do not know of any member of the exchange who is a member of the curb.

Mr. UNTERMYER. We are not speaking of members of the curb. I am referring to dealings by stock exchange brokers on the curb. What I want to know is whether or not there are any securities listed on the curb that are dealt in on the New York Stock Exchange.

Mr. STURGIS. Not to my knowledge.

Mr. UNTERMYER. Is it not a fact that the Curb Association is not allowed to list any securities there that are dealt in and listed on the New York Stock Exchange?

Mr. STURGIS. I do not know what their powers are, but I know they never do it.

Mr. UNTERMYER. Do you know why they never do it?

Mr. STURGIS. No; I could not answer that question.

Mr. UNTERMYER. Do you not know?

Mr. STURGIS. No.

Mr. UNTERMYER. Do you not know that it is because of your regulation that forbids any of your members dealing on any exchange where the securities are dealt in that are listed on your exchange?

Mr. STURGIS. Ah! But the curb has never been, so to speak, recognized by the stock exchange.

Mr. UNTERMYER. Has it not?

Mr. STURGIS. As an exchange, no; it has no housings.

Mr. UNTERMYER. Was not the following section of the constitution and by-laws of the curb market inserted as a result of negotiations with your committee?

Mr. STURGIS. Will you please read it?

Mr. UNTERMYER. Yes; section 2 of article 12:

Any person who shall be connected directly, or indirectly, or by a partner, with any association, corporation, or exchange other than the New York Stock Exchange of the city of New York, which permits dealings in any securities or property admitted to dealing in any department of the New York Stock Exchange shall be ineligible for membership.

Mr. STURGIS. On the curb?

Mr. UNTERMYER. Yes.

Mr. STURGIS. Mr. Untermyer, to the best of my recollection, the stock exchange had nothing to do with the framing of that.

Mr. UNTERMYER. Why should the curb have prevented any of its members from dealing with any member of the Consolidated Stock Exchange in any security that was listed on the New York Stock Exchange?

Mr. STURGIS. I was not even aware that they had, until you just read it to me.

Mr. UNTERMYER. You know, do you not, why the curb can not get out of the street into a building?

Mr. STURGIS. No; I do not.

Mr. UNTERMYER. Do you not know that it is because of your regulation of 1909, which forbids any of your members dealing with any

association—or having any connection, direct or indirect, with any association—that deals in securities?

Mr. STURGIS. That deals in our securities—the securities of the New York Stock Exchange?

Mr. UNTERMYER. No; that deals in any securities?

Mr. STURGIS. The members of the New York Stock Exchange do deal on the curb, through brokers.

Mr. UNTERMYER. Yes; but the question is why the curb does not get in out of the rain into a building.

Mr. STURGIS. I misinterpreted your question.

Mr. UNTERMYER. Is it not because of that regulation?

Mr. STURGIS. I could not say positively whether it is or not—whether that bears upon it or not. I really have not given the matter attention.

Mr. UNTERMYER. Give it a little attention just now, will you?

Mr. STURGIS. I will; I will go home and give it attention.

Mr. UNTERMYER. No, no; do not go home. We want you here.

Mr. STURGIS. Thank you.

Mr. UNTERMYER. Just read over that [handing paper to witness] and then tell me whether that is not the reason why the curb association can not go into a building instead of staying out on Broad Street.

Mr. STURGIS. This resolution is headed “Consolidated Stock Exchange.” It reads:

Resolved. That any connection, direct or indirect, by means of public or private telephone, telegraph wire, or any electrical or other contrivance or device, or any pneumatic tube—

Mr. UNTERMYER. Do not read it all over.

Mr. STURGIS. I thought you asked me to read it.

Mr. UNTERMYER. Not aloud; read it to yourself.

The CHAIRMAN. It is in the record.

Mr. UNTERMYER. In connection with that, after having read it, will you please look at section 4 of article 17 of your constitution, which reads as follows:

Any member who shall be connected, directly or by a partner or otherwise, with any organization in the city of New York which permits dealings in any securities or other property admitted to dealing in any department of this exchange shall be liable to suspension—

And so forth?

Mr. STURGIS. Yes.

Mr. UNTERMYER. Do you see that?

Mr. STURGIS. That says he is liable to suspension.

Mr. UNTERMYER. That prohibits the curb, does it not, from dealing in any securities that are dealt in on the New York Stock Exchange?

Mr. STURGIS. No. The language is:

Any member who shall be connected, directly or by a partner or otherwise, with any organization in the city of New York which permits dealings in any securities or other property admitted to dealing in any department of this exchange.

Mr. UNTERMYER. Yes.

Mr. STURGIS. It prevents our own members from becoming members of an institution where these same stocks are dealt in. But the curb does not deal in our stocks.

Mr. UNTERMYER. But why?

Mr. STURGIS. That is their reason. I do not know why.

Mr. UNTERMYER. Do you not know that that is because your members could not deal on the curb or give them any business if they did deal in your stocks?

Mr. STURGIS. Certainly they would be very foolish to deal in our stocks.

Mr. UNTERMYER. Why would they be foolish?

Mr. STURGIS. Because the stock exchange does now furnish them with a very large amount of their business in the stocks that are not listed on the exchange.

Mr. UNTERMYER. I understand; and therefore they are not allowed to deal in your stocks?

Mr. STURGIS. That is their rule, not ours.

Mr. UNTERMYER. Now, about their getting in under a roof; have there been conferences—numerous conferences—between representatives of the curb association and the stock exchange?

Mr. STURGIS. On that subject?

Mr. UNTERMYER. On the subject of the relations between the two exchanges.

Mr. STURGIS. I told you that I thought I had had three that I recollect only.

Mr. UNTERMYER. Three conferences?

Mr. STURGIS. Three in which I personally participated.

Mr. UNTERMYER. Has the subject of the curb association getting quarters been discussed?

Mr. STURGIS. I think it was, once.

Mr. UNTERMYER. With you?

Mr. STURGIS. I think it was with the law committee; yes; on one occasion.

Mr. UNTERMYER. Who discussed it on behalf of the curb?

Mr. STURGIS. Mr. Mendel, I believe.

Mr. UNTERMYER. Did they not want to hire a place?

Mr. STURGIS. No; they did not particularly insist upon it.

Mr. UNTERMYER. But did they not say they would like to get in under a cover during the bad season?

Mr. STURGIS. On one occasion; and then they changed their minds and said they preferred not to.

Mr. UNTERMYER. Before they changed their minds, what did you say to them about it?

Mr. STURGIS. My recollection is not very clear.

Mr. UNTERMYER. But, generally, what was the decision of the law committee?

Mr. STURGIS. I think the decision was that they could do as they liked.

Mr. UNTERMYER. With what consequences?

Mr. STURGIS. Ah! That is their business, not ours.

Mr. UNTERMYER. I see. But what was said as to what would happen if they should take quarters?

Mr. STURGIS. They had the constitution of the exchange before them.

Mr. UNTERMYER. But what was said as to that?

Mr. STURGIS. I do not remember what was said.

Mr. UNTERMYER. What would happen if they took quarters?

Mr. STURGIS. If they dealt in our securities?

Mr. UNTERMYER. No. What would happen if they did not deal in your securities, but took quarters?

Mr. STURGIS. I think we should keep on sending our orders in there.

Mr. UNTERMYER. Did you say so to them?

Mr. STURGIS. Yes; as far as—

Mr. UNTERMYER. Then why do you not do that with the Consolidated Exchange?

Mr. STURGIS. May I give you, briefly, the history of the difficulty with the Consolidated Exchange?

Mr. UNTERMYER. Yes; I think it is only just that you should be allowed to do so.

Mr. STURGIS. The Consolidated Stock Exchange has always been a competitor for business, sometimes under very trying conditions and sometimes under circumstances that were very painful to both sides. There was a great deal of ill feeling and a great deal of quarreling, and I must say I think there was some disloyalty, perhaps, on the part of members of the Consolidated and, perhaps, on the part of some members of the regular exchange. That feeling became aggravated. The Consolidated Stock Exchange has two tickers of the Western Union on its floor, upon which, very largely, its daily fluctuations are based. When we made our contract with the Western Union an injunction prevented the taking out of those tickers, and they there remain, in a rival organization. It did not tend to promote a very kindly feeling to think they were using what we regarded as our property, against our wishes; and that aggravated the ill feeling, which continued to grow. I am not familiar with what occurred in 1909 when that resolution was passed, but it reached a point where the authorities of the stock exchange said that it was better to have no relations with the active—or, rather, with the members of the Consolidated Exchange that were engaged in the same business. They did not discriminate against those members of the Consolidated Exchange that were not engaged in active business, for instance like the late Mr. H. H. Rogers, who was a member of the Consolidated Exchange and operated very extensively on the floor of the New York Stock Exchange; and of course his orders were gladly received. There were others also.

Mr. UNTERMYER. He was a big trader, was he not?

Mr. STURGIS. Yes; and there were small traders, too, who did their business in that way. But when they went into the brokerage business and entered into direct competition with the members of the stock exchange the governing committee thought it was time to pass this resolution.

That is the history of it, as far as I recollect it.

Mr. UNTERMYER. They offered to pay, did they not, for the use of the ticker?

Mr. STURGIS. The ticker was not our ticker. It was the Western Union's ticker.

Mr. UNTERMYER. Yes; and they offered to pay the Western Union for it, did they not?

Mr. STURGIS. I presume they were willing to pay the Western Union for it.

Mr. UNTERMYER. Why should you object to their renting a ticker from the Western Union?

Mr. STURGIS. Would you want your materials, so to speak, in trade handed over to somebody else to make capital of?

Mr. UNTERMYER. But do you not think information of that kind, affecting the whole country as to the price of securities, is rather public property than mere private property?

Mr. STURGIS. Our courts so held, and decided in their favor.

Mr. UNTERMYER. Another thing. They decided in favor of the Consolidated?

Mr. STURGIS. They decided in favor of that injunction.

Mr. UNTERMYER. And you passed this resolution by way of reprisal, did you not?

Mr. STURGIS. The resolution was not passed until just after that.

Mr. UNTERMYER. You did pass it by way of reprisal, did you not?

Mr. STURGIS. I do not think so; but, as I told you, I was not familiar with the cause of the passage of that resolution.

Mr. UNTERMYER. Was not the friction and the hostility further increased by the fact that the Consolidated Exchange only charges one-half as much to buy or sell a share of stock as your exchange?

Mr. STURGIS. Very probably. There were a great many things. As I told you, the friction between the two institutions was constantly increasing.

Mr. UNTERMYER. But that was the main reason; because they did the service for the public for one-half of what you did?

Mr. STURGIS. No; there are a great many more reasons than that.

Mr. UNTERMYER. But they do the service for one-half what you do it for, do they not?

Mr. STURGIS. They do.

Mr. UNTERMYER. And you are trying to destroy them, are you not?

Mr. STURGIS. No. They have a right to go on with their business.

Mr. UNTERMYER. Is not every regulation that you have passed here directed toward destroying them?

Mr. STURGIS. Why should we assist to build up a rival organization?

Mr. UNTERMYER. I did not ask you that. I asked whether you were not trying to destroy them?

Mr. STURGIS. I said to you no, we are not. We are doing nothing with them. We are leaving them alone.

Mr. UNTERMYER. You are leaving them alone?

Mr. STURGIS. Yes, sir.

Mr. UNTERMYER. And forbidding your members from having anything to do with them?

Mr. STURGIS. Certainly; we are leaving them alone.

Mr. UNTERMYER. And you are compelling them to leave you alone. are you not?

Mr. STURGIS. It looks that way.

Mr. UNTERMYER. If they were willing to double their charge to the public so that it would be the same as the charge you were making for buying and selling stocks, your troubles would be over, would they not?

Mr. STURGIS. That is a supposititious question. I think if they were to take out their tickers that might have some influence upon

the situation, but I can not say. It is a question of opinion of the members of the governing committee.

Mr. UNTERMYER. If they increased their charges to the public that would have an effect, would it not, with you?

Mr. STURGIS. It would not personally with me, because I do not care much about it, either way.

Mr. UNTERMYER. I mean, with you as a governor of the exchange. I do not mean individually. That would solve it, would it not?

Mr. STURGIS. No; I do not think it would solve it. It would be a healing balm to some extent.

Mr. UNTERMYER. In other words, if they doubled the charge to the public you would regard it as a healing balm?

Mr. STURGIS. I think it would be helpful.

Mr. UNTERMYER. Are you familiar with the process of lending money on the stock exchange?

Mr. STURGIS. I am not; no.

Mr. UNTERMYER. Or with the movement of funds not dependent on the money market on the stock exchange?

Mr. STURGIS. No; I am not. I do not keep posted upon that situation.

Mr. UNTERMYER. What determines the availability of a security as collateral on the stock exchange—its activity?

Mr. STURGIS. No, Mr. Untermyer. Generally speaking, the credit of the corporation itself.

Mr. UNTERMYER. Is it not a fact that the most active securities have been those that never paid a dividend at times?

Mr. STURGIS. That is true.

Mr. UNTERMYER. Mr. McMorrان, one of the members of the committee, would like to know whether the building is owned by the stock exchange, or whether you have organized a corporation that owns it?

Mr. STURGIS. Mr. Untermyer, the New York corporation, the Building Company, as it is called, that owns the Stock Exchange Building, has been in existence since the construction of two exchanges before this.

Mr. UNTERMYER. And what you own is the stock of that corporation?

Mr. STURGIS. We own the stock of the building.

Mr. UNTERMYER. The stock of the building is owned by this voluntary association known as the stock exchange?

Mr. STURGIS. I think you have put it correctly. It is in the treasury of the exchange as an asset.

The CHAIRMAN. As an asset?

Mr. STURGIS. As an asset.

At 4 o'clock p. m. the committee adjourned until to-morrow, Friday, December 13, 1912, at 11 o'clock a. m.

EXHIBIT 69, DECEMBER 11, 1912.

REPORT OF THE COMMITTEE ON INLAND EXCHANGE TO THE CLEARING HOUSE COMMITTEE, NOVEMBER 4, 1912.

To the CLEARING HOUSE COMMITTEE,
New York Clearing House Association.
 NEW YORK, November 4, 1912.

GENTLEMEN: Your subcommittee on inland exchange, appointed in accordance with the terms of the following resolution:

"Whereas there were adopted on the 3d day of April, 1899, rules and regulations of this association regarding collections outside of the city of New York, which, with the exception of special interpretations put upon certain clauses of the same by the clearing house committee, have never been altered or amended. In view of the fact that the volume of collections during the past 13 years has increased very largely, and also the fact that since those rules and regulations were established there have been various methods pursued in the handling of collections by the different clearing house associations throughout the country, it would seem as if the time had arrived when a careful investigation should again be made of this matter: Therefore be it

Resolved, That a special committee of five be appointed by the chairman for the purpose of making a thorough investigation of the subject of inland exchange and collections, and the methods pursued by other clearing house associations, and to report to this committee such changes in the rules or regulations of the New York Clearing House Association as in its judgment may be deemed best; and be it further

Resolved, That this committee be authorized to invite to appear before it managers of other associations and members of this association for the purpose of procuring any necessary information, and that any expenses incurred by the committee shall be borne by the clearing house association," which was adopted by the clearing house committee on April 1, 1912, begs to submit herewith a résumé of its activities, which began as soon as practicable after its appointment and continued without intermission until quite recently.

Your committee approached this investigation with an entirely unprejudiced mind and has maintained an attitude of strict impartiality throughout. It has given careful consideration to the facts it has gathered and feels that it is now in a position to report its conclusions and the findings upon which these conclusions are based.

Under its direction two forms were prepared. A copy of one of these forms was sent to each bank and trust company member of the New York Clearing House Association, the purpose being to place the committee in possession of information with respect to what, if any, changes they felt should be made in our existing rules and regulations affecting the collection of country checks.

In furtherance of your committee's desire to receive as many different points of view as possible on this most important subject, it met frequently at the clearing house during the spring and summer months for the purpose of discussing it in a frank and unbiased way with the president, or such officer as he elected to represent him, of each clearing house institution.

The second form prepared under the committee's supervision was designed for use in conveying to it certain information for statistical purposes, in respect of the amount, source of receipt, disposition, and cost of collection, as well as time consumed in collecting foreign items received by each individual institution, during the month of May, 1912. A copy of this form was handed to each member's representative at the time he appeared before the committee, with a careful explanation of its purpose and confidential nature.

The figures compiled from the data contained in these reports indicate that the gross income of the members of the clearing house association from collection exchange during the year 1911 was—

	\$2, 139, 551. 00
Exchange cost -----	\$1, 176, 162. 00
Proportionate share of postage, rent, stationery, and salaries for 1911 -----	569, 461. 78
Estimated loss of interest on interest-bearing accounts where immediate credit is given for foreign checks, based upon figures submitted by eight of the largest institutions in the clearing house -----	296, 460. 00
	2, 042, 083. 78
Net income -----	97, 467. 22

It should be borne in mind that this net income is the result of handling a volume of business, based on the figures gathered for the year 1911, of, approximately, \$4,859,187,900, and when distributed between the sixty-four active members of the clearing house association represents an annual increment of income to each of only about \$1,500.

The figures gathered by your committee for the month of May, 1912, show:
Daily average amount of foreign checks received..... \$16, 284, 848

As to discretionary and charge points, this volume was distributed as follows:
Discretionary points..... \$11, 404, 363
1/10 points..... 3, 938, 198
1/4 points..... 865, 785

It will be observed from these figures that of our daily volume of out-of-town business for May, 1912, 71 per cent was on the discretionary points, 24 per cent was on the 1/10 points, and only 5 per cent was on the 1/4 points.

The daily average amount of cash items outstanding during the same period was \$68,215,328, indicating that the average time consumed in the collection of our country checks was 4.19 days.

Your committee also procured from the members of the clearing-house association the data with reference to the average daily outstandings of cash items during the year 1911, which amounted to \$67,866,658. Considerable labor was involved to the banks in providing this information, but as a medium for comparison with the same figures for May, 1912, which, as previously stated, totaled \$68,215,328, the committee was enabled to confirm its impressions that the month of May, upon which its principal figures were based, was an excellent average month.

The succeeding table shows the average daily amount, the average time consumed, and the average cost of collecting checks on the discretionary points, and also on a number of the other more important nondiscretionary cities of the United States:

City.	Average amount.	Average time.	Average cost.
		<i>Days.</i>	
Philadelphia.....	\$4, 174, 177	3. 514	2 banks—\$0.340 per M (49 par—13 not reporting).
Boston.....	2, 874, 831	3. 523	4 banks—\$0.069 per M (47 par—13 not reporting).
Baltimore.....	968, 796	3. 243	21 banks—\$0.36 per M (28 par—15 not reporting).
Newark.....	943, 321	4. 047	1 bank—\$0.29 per M (48 par—15 not reporting).
Albany.....	889, 410	4. 117	2 banks—\$0.208 per M (47 par—15 not reporting).
Providence.....	351, 282	4. 188	3 banks—\$0.156 per M (46 par—15 not reporting).
Troy.....	110, 280	3. 935	5 banks—\$0.363 per M (39 par—20 not reporting).
Jersey City.....	370, 781	3. 657	2 banks—\$0.18 per M (46 par—16 not reporting).
Hoboken.....	134, 240	3. 63	1 bank—\$0.01 per M (46 par—17 not reporting).
New York City.....	1, 068, 025	3. 885	No cost (42 par—22 not reporting).
Greater New York.....	847, 883	4. 053	2 banks—\$0.107 per M (40 par—22 not reporting).
Chicago.....	417, 320	4. 739	34 banks—\$0.54 per M (13 par—17 not reporting).
Pittsburgh.....	132, 797	3. 95	24 banks—\$0.768 per M (22 par—18 not reporting).
Cleveland.....	135, 622	4. 341	37 banks—\$0.618 per M (9 par—18 not reporting).
St. Louis.....	109, 470	4. 787	38 banks—\$0.788 per M (8 par—18 not reporting).
Buffalo.....	96, 850	4. 143	20 banks—\$0.616 per M (23 par—21 not reporting).
Cincinnati.....	79, 588	4. 178	41 banks—\$0.631 per M (6 par—17 not reporting).
Washington.....	71, 374	2. 95	37 banks—\$0.60 per M (9 par—18 not reporting).
Hartford.....	57, 872	4. 705	15 banks—\$0.62 per M (32 par—17 not reporting).
Kansas City.....	42, 719	5. 31	38 banks—\$0.91 per M (6 par—20 not reporting).
Minneapolis.....	30, 861	5. 02	40 banks—\$1.14 per M (5 par—19 not reporting).
St. Paul.....	23, 615	4. 923	39 banks—\$1.18 per M (5 par—20 not reporting).
Atlanta.....	25, 229	5. 196	37 banks—\$1.06 per M (6 par—21 not reporting).
New Orleans.....	20, 838	6. 941	32 banks—\$1.16 per M (12 par—20 not reporting).
Omaha.....	19, 309	5. 787	39 banks—\$1.11 per M (6 par—19 not reporting).
Denver.....	19, 786	6. 47	41 banks—\$1.15 per M (4 par—19 not reporting).
Seattle.....	34, 095	8. 928	40 banks—\$1.36 per M (4 par—20 not reporting).
San Francisco.....	50, 745	9. 404	39 banks—\$0.87 per M (6 par—19 not reporting).
Los Angeles.....	27, 967	8. 937	40 banks—\$1.10 per M (4 par—20 not reporting).
1/10 points.....		4. 177	44 banks—\$0.609 per M (20 banks not reporting).
1/4 points.....		7. 000	44 banks—\$1.40 per M (1 par—19 not reporting).

Subsequent to the appointment of this committee on inland exchange by the clearing house committee of the New York Clearing House Association the bankers' associations of New York, New Jersey, Connecticut, and Massachusetts

took similar action. These committees, in due course, communicated to your committee their desire to discuss this subject fully with it. Their requests were gladly granted, and at appointed times your committee has had the pleasure of entertaining the representatives of each of these associations.

In view of the foregoing résumé of the scope and detail of the work of your committee and of the facts thus ascertained, and because your committee is convinced that the operation of the present rules and regulations of the New York Clearing House Association in respect of charges on inland exchange results in barely making good to the banks and trust companies making their exchanges through the clearing house their actual outlay in handling such business, including the amounts of exchange charged on or deducted from return remittances without substantial return for the enormous volume of the business thus undertaken and its risks, your committee feels itself compelled in the interest of the conservative business methods which are required in good banking respectfully to recommend that the main body of the existing rules and regulations of the New York Clearing House Association regarding collections outside of the city of New York shall remain unchanged.

In the judgment of your committee, however, within certain restricted territories, and for reasons which are in each instance peculiar to the areas involved, the rules should be modified with advantage alike to ourselves and to the inland banks and business interests affected by them.

After a careful consideration of all the questions involved it furthermore respectfully recommends that on all items on banks and trust companies in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, and New York which will engage themselves in writing to the manager of the New York clearing house, over the signature of the president, cashier, or treasurer, to remit to the members of the New York Clearing House Association at par in New York funds on the day of receipt the charge shall in all cases be discretionary with the collecting bank.

It is not proposed that the foregoing recommendations shall in any way disturb the relations now existing between our members and the banks located in the present discretionary cities.

In the opinion of your committee this proposed modification of the rule respecting discretionary places so as to include the entire region mentioned, provided the local banks themselves in any community wish it, rather than extending the privilege to a few specially designated cities or towns in that territory, will, if adopted, do much toward relieving the irritation and dissatisfaction which have heretofore existed among many near-by banks not situated in a discretionary city. This proposal affords opportunity to the banks in each locality to determine for themselves and for their customers whether or not they wish to enjoy the benefits and share the burdens of a discretionary or free-collection point.

All of which is respectfully submitted.

JAMES G. CANNON,
WALTER E. FREW,
JOSEPH T. TALBERT,
EDWARD TOWNSEND,
JOHN W. PLATTEN,
Committee on Inland Exchange,