

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 18

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., Tuesday, January 7, 1913.

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

Present: Messrs. Pujo (chairman), Heald, Stephens, Hayes, and Guernsey.

Present also: Samuel Untermyer, Esq., of New York City, counsel for the committee, and G. Carroll Todd, Esq., assistant counsel for the committee.

The CHAIRMAN. The committee will now come to order and the testimony will be resumed.

Mr. UNTERMYER. Mr. Chairman, before resuming the testimony of Mr. Henry I want to read to the committee some data that was produced by Messrs. Morgan & Co. pursuant to Mr. Morgan's agreement on the witness stand—

The CHAIRMAN. Proceed.

Mr. UNTERMYER (continuing). As it tends to correct some of the testimony given by him.

Among the data asked was the total amount of deposits on hand with J. P. Morgan & Co. and with their Philadelphia house, Drexel & Co., which is composed of the same members as the New York house, and is a part of the same house.

The deposits with the New York bank on January 1, 1912, were \$103,177,603.49, and with the Philadelphia house of Drexel & Co. were \$43,532,889.66.

On November 1, 1912, the deposits with the New York house of J. P. Morgan & Co. were \$113,345,500 and with the Philadelphia branch of Drexel & Co., \$49,146,319.65, making something upward of \$162,000,000 of deposit accounts of J. P. Morgan & Co. in their two houses.

There have also been furnished the committee the letters written by Messrs. Stillman and George F. Baker in connection with their interest in the Equitable Life Insurance Co. I will read them to the committee:

EXHIBIT No. 157.

23 WALL STREET, *March 14, 1911.*

DEAR MR. STILLMAN: Referring to our conversation of to-day, I understand that my father has the right at any time to call upon you to take one-quarter

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of the Equitable stock purchased by him from Mr. Ryan at the terms on which it was bought by him, viz, cost and 5 per cent interest.

Your confirmation at the foot will be entirely sufficient.

Yours, very sincerely,

J. P. MORGAN, JR.

JAMES STILLMAN, Esq.,
National City Bank.

DEAR MR. MORGAN: I hereby confirm your understanding. I had the impression that the rate of interest *since* the date of the Ryan purchase was to be 4 per cent, but whether that or 5 per cent I leave entirely to your father or yourself to decide without further conference with me.

Yours, sincerely,

JAS. STILLMAN,
By J. A. STILLMAN, *Attorney.*

EXHIBIT No. 158.

23 WALL STREET, *April 21, 1911.*

DEAR MR. BAKER: Referring to our various conversations on this subject, I understand that my father has the right at any time to call upon you to take one-quarter of the Equitable life stock purchased by him from Mr. Ryan at the terms on which it was bought by him, viz., cost and 5 per cent interest.

Your confirmation at the foot will be entirely sufficient.

Yours, very sincerely,

J. P. MORGAN, JR.

GEORGE F. BAKER, Esq.
First National Bank.

I hereby confirm the above.

GEO. F. BAKER.

There are some other data with respect to fiscal agencies which are rather too lengthy to read, and they will go into the record.

The papers referred to are all appended to the proceedings of this day, marked Exhibits 154 to 159, inclusive.

TESTIMONY OF MR. G. G. HENBY—Continued.

Mr. UNTERMYER. After entering into this agreement with Doheny & Canfield, which you have produced here, did you or your firm of William Salomon & Co. make any agreement with Hallgarten & Co. or Lewisohn Bros., or either of them, in writing?

Mr. HENRY. We wrote a letter to Lewisohn Bros. Whether we did to Hallgarten or not I could not say. I think we did, and the letter was sent back for certain changes. After that I do not think we ever confirmed that in writing with them.

Mr. UNTERMYER. You were subpoenaed to produce all the documents bearing on this transaction. Have you looked to ascertain whether you have any agreement, by letter or otherwise, with the gentlemen or firms with whom you were associated in this enterprise?

Mr. HENRY. Mr. Lewisohn produced that himself, Mr. Untermyer. You have already the documents that relate to our contract with them, as I understand it.

Mr. UNTERMYER. The letter written to Messrs. Lewisohn, giving them a participation, is the only writing that there was between you, was it?

Mr. HENRY. I do not know which participation you refer to, Mr. Untermyer. There were two.

Mr. UNTERMYER. In the California Petroleum Co.

Mr. HENRY. There was one in the syndicate and one in the original banking group. Messrs. Lewisohn Bros. got two letters from us, one to participate in the original banking group and the other to participate in the syndicate.

Mr. UNTERMYER. Those two letters constitute the only writings between you?

Mr. HENRY. Yes.

Mr. UNTERMYER. There was no formal contract?

Mr. HENRY. No; nothing except the exchange of letters.

Mr. UNTERMYER. With respect to the participation of Hallgarten & Co., was there any writing whatever?

Mr. HENRY. My impression about that is that we wrote a letter to them, and because of certain changes in their firm that were taking place at that time they held the letter over until after a certain time.

Mr. UNTERMYER. There has been no letter—

Mr. HENRY. To participate, no; I think not. I am testifying from memory there, but I do not think our files have any record of any contract between ourselves and Hallgarten. It was all done as a matter of word of mouth—orally.

Mr. UNTERMYER. What was the arrangement, then, with respect to the participation of these other firms in this California Petroleum transaction?

Mr. HENRY. It was handled in this way: We made the contract with Doheny & Canfield.

Mr. UNTERMYER. What was their participation? What interest did they acquire?

Mr. HENRY. There was one firm whose name has not been mentioned that had a participation of 12½ per cent.

Mr. UNTERMYER. Who was that?

Mr. HENRY. I do not want to say.

Mr. UNTERMYER. Why should you refuse to state who your partners were in this enterprise?

Mr. HENRY. Because we told them at the time that their names would not appear publicly.

Mr. UNTERMYER. What is that?

Mr. HENRY. Because we told them at the time that their names would not appear publicly in the transaction. It is a matter of more or less common knowledge, I think, as to who the house was, but their name was not to appear publicly, and I do not feel at liberty to disclose it.

Mr. UNTERMYER. If it is a matter of common knowledge and they were your partners in this enterprise, have you any reason for not stating who your partners were, other than that you had told them that you would not disclose their names?

Mr. HENRY. No; I have no other reason. We are not ashamed of them, and I do not think they are ashamed of us.

Mr. UNTERMYER. Then there is no reason why you should not tell us?

Mr. HENRY. Except that it is a matter—and it is a very common matter, as you know, in Wall Street, Mr. Untermyer—where certain people have assumed public responsibility for a deal and others have not; others having a silent participation in the transaction, where their name does not appear. That was this case.

Mr. UNTERMYER. They were willing to take a profit, but they were not willing to assume responsibility for the integrity and merits of the enterprise? Is that what you mean?

Mr. HENRY. I did not imply that; no. They did not know very much about it. They took an interest from us, because we told them it was a good thing. They were glad to take it, and wanted more, as a matter of fact.

Mr. UNTERMYER. Is that a corporation or a partnership?

Mr. HENRY. It is a partnership.

Mr. UNTERMYER. Have you asked their permission to disclose their names, since this transaction has come before the committee?

Mr. HENRY. I have not.

Mr. UNTERMYER. Have you any reason to believe that they would withhold their consent to your making the disclosure?

Mr. HENRY. I do not think so. I have no reason to suppose they would.

Mr. UNTERMYER. We will pass that for a moment. We will come back to that again, later.

What participation did Lewisohn Bros. and Hallgarten & Co. have in the transaction?

Mr. HENRY. After taking out $12\frac{1}{2}$ per cent for this firm I have just spoken of, Hallgarten & Co. and Lewisohn Bros. and ourselves divided the balance of the stock, which gave us each an interest of $29\frac{1}{8}$ per cent in it. Then we charged Lewisohn Bros., and we also charged the other house that had the $12\frac{1}{2}$ per cent, 10 per cent of their profits, because of our originating the business. We made Hallgarten no such charge, because they assumed the management of the syndicate with us.

Mr. UNTERMYER. On the other hand, did Lewisohn Bros. make a charge for managing the stock exchange end of the thing?

Mr. HENRY. No, sir; nothing except the ordinary minimum commission.

Mr. UNTERMYER. They charged commissions?

Mr. HENRY. You have to do that, according to the rules of the New York Stock Exchange.

Mr. UNTERMYER. That is not what I asked you. The fact is that Lewisohn Bros. did charge for their services in looking after the stock exchange end of the transaction?

Mr. HENRY. They charged the minimum commission—I think one thirty-second of 1 per cent.

Mr. UNTERMYER. You mean the minimum commission chargeable in transactions between stock-exchange houses?

Mr. HENRY. Yes.

Mr. UNTERMYER. And you were all stock-exchange houses?

Mr. HENRY. I think so; yes, sir. I do not know whether the other two are members of the exchange or not; really I do not know whether Hallgarten & Co. are members of the exchange or not. I think they are.

Mr. UNTERMYER. Having entered into this arrangement for the acquisition of this \$10,000,000 of preferred stock and \$7,500,000, I think it was—

Mr. HENRY. Approximately.

Mr. UNTERMYER. Of common stock in the California Petroleum Co., what did you gentlemen next do with respect to marketing the securities that you had so bought?

Mr. HENRY. Well, there were a good many operations that took place all simultaneously. I might take them up in logical order, although they do not necessarily rank that way chronologically. The first thing we did was to form two syndicates, or rather one in this country, and sell to a foreign syndicate a certain amount of stock. We formed a syndicate in this country to take \$5,000,000 of preferred and \$2,500,000 of common for \$5,000,000 plus the accrued dividend on the preferred stock, and we also sold to a London syndicate the same amount, \$5,000,000 of preferred and \$2,500,000 of common, for \$5,000,000 plus the accrued dividend on the preferred.

Mr. UNTERMYER. Having formed those two syndicates, that left you and your associates with a cash profit and a stock profit on the transaction from the original purchase of how much up to this point?

Mr. HENRY. \$1,784,338 in cash.

Mr. UNTERMYER. And how much stock?

Mr. HENRY. Twenty-five thousand seven hundred and twenty-nine shares of common stock.

Mr. UNTERMYER. That is 2,000,000—

Mr. HENRY. \$2,572,846.

Mr. UNTERMYER. Did you and your associates also become members of these subsyndicates, or either of them?

Mr. HENRY. We did, in the New York syndicate.

Mr. UNTERMYER. And that syndicate was made up of how many people—the New York syndicate of \$5,000,000 preferred and \$2,500,000 common stock for \$5,000,000?

Mr. HENRY. There were 103 participants in that syndicate.

Mr. UNTERMYER. One hundred and three?

Mr. HENRY. Not counting ourselves; 104 counting ourselves.

Mr. UNTERMYER. How many of them were corporations?

Mr. HENRY. There were three corporations, and there may have been some incorporated firms. A great many banking firms, as you know, are incorporated. Whether some of these firms as we know them, dealers in securities, are incorporated or not I do not know, but I take it you mean how many institutions. There were three institutions.

Mr. UNTERMYER. There were three banking institutions?

Mr. HENRY. There were three banking institutions.

Mr. UNTERMYER. In the city of New York?

Mr. HENRY. No, sir.

Mr. UNTERMYER. There were none of them in the city of New York?

Mr. HENRY. There were two in New York and one outside.

Mr. UNTERMYER. Were there officers of national banks in the syndicate?

Mr. HENRY. There were.

Mr. UNTERMYER. How many officers of national banks were there in this \$5,000,000 syndicate?

Mr. HENRY. There were 15 officers of 7 national banks, of which 4 were in the city of New York and 3 outside, and they had a total interest—

Mr. UNTERMYER. You mean four banks were in the city and three outside?

Mr. HENRY. Yes, sir

Mr. UNTERMYER. In what cities were the other banks?

Mr. HENRY. They were in Chicago and Detroit, I think; two in Chicago and one in Detroit, as I remember it.

Mr. UNTERMYER. Were there any officers of banks or trust companies in New York City other than national banks; and if so, how many officers of other banks and trust companies were members of that syndicate?

Mr. HENRY. Just in New York City?

Mr. UNTERMYER. Yes.

Mr. HENRY. I have not got it separated here. There were six officers in four trust companies.

Mr. UNTERMYER. Six officers in four trust companies altogether?

Mr. HENRY. Yes; of which three trust companies were in New York and one outside, one in Chicago. There were three officers of State banks outside of New York.

Mr. UNTERMYER. What were the total participations or syndicate underwritings of the three banking institutions in New York City?

Mr. HENRY. I did not say there were three banking institutions in New York.

Mr. UNTERMYER. I think you said there were two in New York and one outside, did you not?

Mr. HENRY. Yes, sir.

Mr. UNTERMYER. What was the total participation of those three institutions?

Mr. HENRY. The two in New York had \$550,000.

Mr. UNTERMYER. Did one of them have \$500,000?

Mr. HENRY. Yes; one of them had \$500,000.

Mr. UNTERMYER. And the one outside had how much participation in the syndicate?

Mr. HENRY. I am testifying from memory, Mr. Untermyer. I believe it was \$50,000.

Mr. UNTERMYER. What participations did the trust companies in New York have?

Mr. HENRY. There was only one trust company, which had a participation of \$50,000.

Mr. UNTERMYER. Did the officers of that trust company have a participation?

Mr. HENRY. No, sir.

Mr. UNTERMYER. What banks—were there banks in New York that had a participation?

Mr. HENRY. No banks at all.

Mr. UNTERMYER. How about the participation of the national bank that was outside of New York City, and the other banks and trust companies outside? What did they amount to?

Mr. HENRY. I did not say that any bank outside of New York City had a participation.

Mr. UNTERMYER. I thought you said one banking institution outside of New York had a participation.

Mr. HENRY. It is not a bank; it is a corporation; it is an institution.

Mr. UNTERMYER. It is a security company attached to a bank in Chicago?

Mr. HENRY. I did not say it was in Chicago.

Mr. UNTERMYER. I ask you.

Mr. HENRY. No; it is not in Chicago.

Mr. UNTERMYER. Well, it is a security company attached to a bank, I think you said, in Detroit.

Mr. HENRY. No; I did not say Detroit.

Mr. UNTERMYER. Regardless of where it is, is it a security company attached to a bank after the fashion of the First Security and the First National?

Mr. HENRY. I know really very little about the relations between this corporation and the bank to which, as you guess, it is attached. It has some kind of connection, but I do not know much about it. I really do not know enough about it to testify.

Mr. UNTERMYER. Well, you know the name of it, do you not?

Mr. HENRY. Yes; I know the name of it.

Mr. UNTERMYER. Is it a security company?

Mr. HENRY. I do not know just what you mean by a security company.

Mr. UNTERMYER. Has it the name of Security company?

Mr. HENRY. No; it has not.

Mr. UNTERMYER. It has not?

Mr. HENRY. No.

Mr. UNTERMYER. Have you stated all the participations of banking institutions in this syndicate—that is, the amounts?

Mr. HENRY. I think so.

Mr. UNTERMYER. And what do they amount to in all, banking participations, of banking institutions in this syndicate?

Mr. HENRY. You mean just the institutions themselves?

Mr. UNTERMYER. Yes. I am not speaking of the officers now.

Mr. HENRY. I understand. \$600,000.

Mr. UNTERMYER. What?

Mr. HENRY. \$600,000.

Mr. UNTERMYER. Give me the aggregate number of officers of banking institutions to whom you gave participations in this syndicate.

Mr. HENRY. Twenty-four.

Mr. UNTERMYER. Twenty-four bank officers?

Mr. HENRY. Yes, sir.

Mr. UNTERMYER. Of whom how many were in the city of New York?

Mr. HENRY. I have not got that here. I can guess at that if you want.

Mr. UNTERMYER. No; I think we would rather not have you guess. You know who they are, do you not?

Mr. HENRY. I know who they are.

Mr. UNTERMYER. Yes. Suppose you just tell us how many are in New York connected with New York banks, that were also members of the syndicate.

Mr. HENRY. I have not got that list with me here. I have not the list of the syndicate here.

Mr. UNTERMYER. Were there banking officers and officers of trust companies to whom your firm gave participation in this syndicate whose banks or banking institutions were not underwriters?

Mr. HENRY. Will you repeat that question?

The question was repeated by the stenographer as above recorded.

Mr. HENRY. They were; yes, sir.

Mr. UNTERMYER. Have you any means of separating the number of bank officers to whom you gave participations, whose banks and banking institutions were not underwriters, and the number of banking officers whose institutions were underwriters?

Mr. HENRY. I have not any way of doing that accurately here; no.

Mr. UNTERMYER. I will ask you again to tell the committee the number of officers of banks in the city of New York who were underwriters in this syndicate?

Mr. HENRY. I have not the information here that will enable me to answer that question, Mr. Untermyer.

Mr. UNTERMYER. Will you read the question again?

The question was read by the stenographer as above recorded.

Mr. HENRY. I have only got a total here covering New York and outside. I am not seeking to keep back anything; I am just not able to state accurately. I should guess possibly there were 24, two-thirds inside the city and one-third outside.

Mr. UNTERMYER. Sixteen in New York and the others in Chicago and Detroit.

Mr. HENRY. That is my idea, and elsewhere.

Mr. UNTERMYER. What other cities?

Mr. HENRY. Milwaukee.

Mr. UNTERMYER. You will furnish us that information, will you not?

Mr. HENRY. You mean the exact number?

Mr. UNTERMYER. Yes; the exact number.

Mr. HENRY. I see no objection to that.

Mr. UNTERMYER. Will you furnish it to-morrow? Will you send it to the committee?

Mr. HENRY. I think I can furnish it to-day if you want it.

Mr. UNTERMYER. Yes; if you will. Where will you get the data from which to furnish it to-day?

Mr. HENRY. Telephone to my office.

Mr. UNTERMYER. What was the total amount of underwriting participations that your firm gave to these bank officers?

Mr. HENRY. \$535,000.

Mr. UNTERMYER. Divided between the 24 officers?

Mr. HENRY. Yes.

Mr. UNTERMYER. What was the largest amount to any one of them?

Mr. HENRY. \$50,000. I think.

Mr. UNTERMYER. Was that to a New York officer?

Mr. HENRY. Yes.

Mr. UNTERMYER. To a man who is an officer of a New York national bank?

Mr. HENRY. Yes.

Mr. UNTERMYER. Was that participation given to the officer of the institution in New York that underwrote \$500,000?

Mr. HENRY. No, sir.

Mr. UNTERMYER. Was it given to an officer of an institution that did any of the underwriting?

Mr. HENRY. No, sir; that institution did not do any underwriting.

Mr. UNTERMYER. The officer did not?

Mr. HENRY. No.

Mr. UNTERMYER. Was that a national bank?

Mr. HENRY. That is a national bank.

Mr. UNTERMYER. And one of our largest national banks, is it not?

Mr. HENRY. Well, large is a relative term, Mr. Untermyer.

Mr. UNTERMYER. Well, was it a national bank with resources of over \$100,000,000?

Mr. HENRY. I do not know what their resources are.

Mr. UNTERMYER. Can you give us any idea?

Mr. HENRY. It is a big bank. All the Wall Street banks are big banks.

Mr. UNTERMYER. It was a Wall Street bank, was it?

Mr. HENRY. It was a Wall Street bank.

Mr. UNTERMYER. A Wall Street bank that loans on collateral?

Mr. HENRY. Surely it loans on collateral.

Mr. UNTERMYER. It loans money on the stock exchange?

Mr. HENRY. I do not know whether it does or not.

Mr. UNTERMYER. You do not know whether this bank is a lender on the stock exchange?

Mr. HENRY. I do not know whether it is directly.

Mr. UNTERMYER. Sir?

Mr. HENRY. I do not know whether it loans money directly on the stock exchange.

Mr. UNTERMYER. You know the business of lending money on the stock exchange, do you not?

Mr. HENRY. Something about it.

Mr. UNTERMYER. You know that the large lenders of money among the banks on the stock exchange are numerous?

Mr. HENRY. A great many, I understand, loan privately over the telephone.

Mr. UNTERMYER. They loan to stock brokers over the telephone and on the board?

Mr. HENRY. Yes.

Mr. UNTERMYER. You do not know whether this bank is a lender on the stock exchange?

Mr. HENRY. It loans lots of money; I do not know whether it loans its money on the board or privately over the telephone.

Mr. UNTERMYER. You do not know but what it loans it at the loan stand on the stock exchange?

Mr. HENRY. No.

Mr. UNTERMYER. Then, as I understand it, you allowed participation in this underwriting syndicate to banking institutions and officers of banks together, amounting to about \$1,100,000 of the \$10,000,000, the total underwriting?

Mr. HENRY. I should say \$1,085,000.

Mr. UNTERMYER. Is it a usual thing, Mr. Henry, in transactions of this kind, to give participations to officers of national banks and trust companies in New York and elsewhere?

Mr. HENRY. I think so. We have on our syndicate list—this list was made up in our office from our regular syndicate lists, just as all of our syndicates are made up, and we have on our lists officers and directors of all kinds of financial institutions. They are usually prominent and influential people whom one wants to have associated with him in matters of this kind.

Mr. UNTERMYER. When you say you have on your syndicate list the names of certain officers of national banks, do you mean by that that you keep a list of men to whom you offer participation in your syndicates?

Mr. HENRY. We keep three such lists in our office.

Mr. UNTERMYER. How do you divide them?

Mr. HENRY. How do you mean?

Mr. UNTERMYER. You say there are three such lists. Do you mean some for a small issue and some for a larger issue?

Mr. HENRY. Yes; divided partly as to size and partly as to the character of the business.

Mr. UNTERMYER. And on all those lists you have the names of officers of the national banks and other banking institutions as people to whom you offer participations in your syndicates?

Mr. HENRY. I think that bank officers and trust company men and so on are on all these lists. I am not sure, but I think so.

Mr. UNTERMYER. You also have the banks and trust companies themselves on the lists?

Mr. HENRY. Yes.

Mr. UNTERMYER. So that it is not unusual, is it, in forming your syndicates, to give participation to a national bank, or to give participations to the officers of that bank?

Mr. HENRY. Sometimes they are in on the same syndicates and sometimes in different syndicates.

Mr. UNTERMYER. But it is not unusual to give the officers and the banks participations?

Mr. HENRY. No; not unusual.

Mr. UNTERMYER. And you do not think there is anything improper in it?

Mr. HENRY. If we did, we would not do it.

Mr. UNTERMYER. I say you do not think so?

Mr. HENRY. No.

Mr. UNTERMYER. But you do not want to disclose the names of the banks or officers concerned in the transaction, do you?

Mr. HENRY. I do not think it is honorable, Mr. Untermyer, for me to give up the names of our participants.

Mr. UNTERMYER. Then, I say, you do not want to do it.

Mr. HENRY. No.

Mr. UNTERMYER. Have you asked their permission?

Mr. HENRY. No.

Mr. UNTERMYER. You have known that question would be presented to you?

Mr. HENRY. Yes.

Mr. UNTERMYER. And have been so informed?

Mr. HENRY. Yes.

Mr. UNTERMYER. And if there is nothing dishonorable or improper in the fact of officers of national banks participating in the syndicate

in securities that are to be listed on the exchange, and on which banks are to loan money, why do you hesitate to state their names?

Mr. HENRY. Because the relations between the banker and his client, while they are not perhaps perfect privileged relations, such as those that exist between a lawyer and his client or the doctor and his patient, are nevertheless confidential, and it is recognized by all honorable and decent business men that they should not tell the names of their customers unless compelled to do so.

Mr. UNTERMYER. Would that apply to a national bank?

Mr. HENRY. Yes, sir.

Mr. UNTERMYER. You do not think there is anything private about their affairs, do you—the syndicates in which they participate?

Mr. HENRY. I think it is a distinctly private matter between ourselves and the officers of a national bank which is a member of one of our syndicates.

Mr. UNTERMYER. What about the bank itself? Do you think its participation in the syndicate should be regarded as a secret?

Mr. HENRY. So far as we are concerned, it is one of our customers.

Mr. UNTERMYER. I say, do you think it is to be regarded as a secret?

Mr. HENRY. It is not for me to tell it.

Mr. UNTERMYER. Do you think you should regard it as a secret?

Mr. HENRY. So far as my customer is concerned.

Mr. UNTERMYER. So far as the national bank is concerned?

Mr. HENRY. If the bank is one of my customers; yes; I think we ought to keep quiet about it, of course.

Mr. UNTERMYER. You think you should not disclose the fact or the name of a national bank that is a participant in one of your syndicates?

Mr. HENRY. I certainly do.

Mr. UNTERMYER. You think you should maintain secrecy with respect to the officers of the national bank which takes a participation in a syndicate for the marketing of stock on the stock exchange on which his bank may be called on to lend money?

Mr. HENRY. I certainly do.

Mr. UNTERMYER. Now, let us get a little further with this transaction and see what its final result was. You say you formed this \$5,000,000 syndicate—\$5,000,000 of preferred stock and \$2,500,000 of common stock—for \$5,000,000?

Mr. HENRY. Plus the accrued interest.

Mr. UNTERMYER. Well, \$5,000,000 and interest on the preferred stock?

Mr. HENRY. Yes.

Mr. UNTERMYER. The accruing dividend?

Mr. HENRY. Yes.

Mr. UNTERMYER. Who marketed those securities in that subsidiary of \$5,000,000? Were they marketed?

Mr. HENRY. They were all marketed before the syndicate was formed, practically.

Mr. UNTERMYER. I did not ask you that. Were those securities marketed?

Mr. HENRY. Yes. They were marketed.

Mr. UNTERMYER. How?

Mr. HENRY. By Salomon & Co., Hallgarten & Co., and Lewisohn Bros.

Mr. UNTERMYER. You say you sold that \$5,000,000 of preferred stock and \$2,500,000 of common stock before you formed that syndicate?

Mr. HENRY. No; but before we confirmed the syndicate participations practically all the syndicate stock was sold.

Mr. UNTERMYER. As I understand you, before you notified your syndicate underwriters that they could have participation in the syndicate, you had already disposed of the syndicate stock for them, had you not?

Mr. HENRY. No, sir; not before we notified them they could have a participation. What we did was to offer them a participation, and before we got in their replies in most cases the stock was all sold.

Mr. UNTERMYER. Then, as I understand you, before they agreed to take—

Mr. HENRY. Yes; that is it.

Mr. UNTERMYER. Before they agreed to take stock in your syndicate you had already sold it at a profit?

Mr. HENRY. That is it.

Mr. UNTERMYER. And at how large a profit?

Mr. HENRY. Well, it worked out—

Mr. UNTERMYER. Eleven points, did it not?

Mr. HENRY. No; about nine and a fraction—9.8 per cent.

Mr. UNTERMYER. That was the profit you realized on that syndicate before the people to whom you offered participation had accepted it?

Mr. HENRY. Well, the whole profit.

Mr. UNTERMYER. How much did that amount to, \$450,000?

Mr. HENRY. In that neighborhood, yes; nearly \$500,000.

Mr. UNTERMYER. Nearly \$500,000 profit. And these bank officers then had a fixed profit of over \$50,000 before they were called on to accept their allotments?

Mr. HENRY. Approximately \$50,000?

Mr. UNTERMYER. So that in effect what they got was a present, was it not?

Mr. HENRY. It was this time.

Mr. UNTERMYER. Yes; it was a present.

Mr. HENRY. They do not always go that way.

Mr. UNTERMYER. No; I would like my questions answered, if you will answer them.

Mr. HENRY. I beg your pardon.

Mr. UNTERMYER. Do you think it a proper thing to put bank officers in the position or have them put themselves in a position in which they get a large profit on a transaction where they have not even got a legal commitment?

Mr. HENRY. They were perfectly ready to take it.

Mr. UNTERMYER. I did not ask you that. Won't you answer that question?

Mr. HENRY. I think it was in this case, because they did not know whether they had to make the commitment or not. They did not know we were going to sell the stock so quickly.

Mr. UNTERMYER. Let us see about that. I understood you to say before they were called upon to say whether they would take a participation or would not you had already realized this profit? Is not that right?

Mr. HENRY. I—

Mr. UNTERMYER. Won't you answer that question?

Mr. HENRY. I can not answer it unless you will allow me to explain exactly how it was. I said this: Before we got replies from a great many of them we had already sold most of the stock. I can not make a hard and fast statement that we had sold it all, but we sold it all before we heard from many of them.

Mr. UNTERMYER. Don't you know that it was what you have said?

Mr. HENRY. No; I do not think I ever did say that.

Mr. UNTERMYER. Very well.

Mr. HENRY. I want to be very specific about this, because I do not want to give a wrong impression here, that is all.

Mr. UNTERMYER. Then you do not understand that you told us that before you had any of the commitments from the syndicate underwriters you had already realized your profit?

Mr. HENRY. Practically all of it, so we did; but I think I always said practically. If I did not, I want to put it in now, because I do not know the exact date we received these letters in reply from the last underwriters. When you send out a lot of syndicate letters you will get a lot of replies, and some men will answer more quickly than others. Some man may have sent in his reply the very same day, and in that case before we sold the stock he was committed. Those who did not reply were not committed, because the stock had been sold before we got their reply.

Mr. UNTERMYER. Have you here the notice you sent out advising the syndicate underwriters that the syndicate stock had been sold?

Mr. HENRY. Yes.

Mr. UNTERMYER. Will you please produce it. Will you at the same time produce the notice of allotment to the underwriters?

Mr. HENRY. Yes. [Producing papers.] That is September 21; that is the letter we sent out offering participation; and that is the letter of September 24 stating the agreement; and this is the letter of October 21 sending the checks for the profits.

Mr. UNTERMYER. Will you please mark these the letters of September 21 and 24, 1912, and of October 21, 1912?

The letters referred to were thereupon marked, respectively, Exhibits Nos. 160, 161, and 162.

Mr. UNTERMYER. The syndicate underwriters never paid anything, did they?

Mr. HENRY. No, sir.

Mr. UNTERMYER. They did not put up a cent?

Mr. HENRY. They never put up a cent.

Mr. UNTERMYER. No. And they never had possession of any stock, did they?

Mr. HENRY. No, sir. That is, the individuals did not. The syndicate did.

Mr. UNTERMYER. You mean the syndicate managers, Salomon & Co., did?

Mr. HENRY. No; I mean that we kept a record of the syndicate books in our office, and we delivered the stock to the syndicate and sold it out for the syndicate. They were never asked to put up any money, but the stock went through the syndicate's account.

Mr. UNTERMYER. Did you ever deliver to any of the syndicate participants any of the certificates of stock?

Mr. HENRY. No, sir.

Mr. UNTERMYER. Those were all sold by you, were they not?

Mr. HENRY. Yes. They were sold the same day that they were bought. They went right through the books in one day.

Mr. UNTERMYER. You mean, the same day that they were bought by this \$5,000,000 syndicate, they were sold again?

Mr. HENRY. They were all sold on the day they were sold to the syndicate so that they went out of the syndicate account the same day that they went into the syndicate account.

Mr. UNTERMYER. But the market certificates of the stock remained with you?

Mr. HENRY. I do not know that I quite follow that, as to just what you mean, Mr. Untermyer.

Mr. UNTERMYER. The syndicate underwriters never received any of the certificates of stock?

Mr. HENRY. No; because the stock had already been sold.

Mr. UNTERMYER. I understand. It was sold the same day that it was bought. It was sold to another syndicate.

Mr. HENRY. Please do not confuse this, Mr. Untermyer. When you have a new security, you know you have a certain delivery day.

Mr. UNTERMYER. I understand that.

Mr. HENRY (continuing). And I think our delivery day was October 2. I can look that up and find out just what it was. I think, however, that it was October 2.

On October 2 we debited the syndicate account with that purchase and credited them with the various sales that were made for the syndicate account. We did not retain any stock. It was sold to the customers and delivered to those who bought it.

Mr. UNTERMYER. This stock was sold to another syndicate, was it not?

Mr. HENRY. No, sir.

Mr. UNTERMYER. It was not? They did not sell it to another syndicate?

Mr. HENRY. No, sir.

Mr. UNTERMYER. It was sold to individual people?

Mr. HENRY. It was sold to individual customers.

Mr. UNTERMYER. Some of whom were members of the syndicate and some of whom were not?

Mr. HENRY. Yes. Some of the syndicate subscribers were very angry because they did not have an opportunity to buy.

Mr. UNTERMYER. Did you understand the question? Some of the people to whom you sold were members of the syndicate?

Mr. HENRY. A very few of them; yes.

Mr. UNTERMYER. Did any of the bank officers become purchasers of any of that stock?

Mr. HENRY. Not that I remember.

Mr. UNTERMYER. All they did was to take their profits from it?

Mr. HENRY. That was all.

Mr. UNTERMYER. None of them ever saw the stock, did they?

Mr. HENRY. You mean none of them ever saw the certificates?

Mr. UNTERMYER. Yes.

Mr. HENRY. I do not think so.

Mr. UNTERMYER. And none of them ever put up any money?

Mr. HENRY. Nor ever put up any money; none of the syndicate did; not only the bank officers, but none of the whole syndicate.

Mr. UNTERMYER (interposing). Yes; I understand. What became of the European syndicate?

Mr. HENRY. I do not know very much about that. We sold the preferred and common stock to them, and they paid for it. That is really about all we know of it. They applied for listing the stock in Paris, and they have got it on the Bourse now in Paris. They have got a syndicate that is going over there now, as far as I know.

Mr. UNTERMYER. But you are not interested in that?

Mr. HENRY. We are not interested in that.

Mr. UNTERMYER. Having now bought this \$10,000,000 of preferred and \$7,500,000 of common for eight million odd dollars, and having sold it to the two syndicates in the way you have described, did you engage with Messrs. Lewisohn Bros. and Hallgarten & Co. in a market operation in this stock on the New York Stock Exchange?

Mr. HENRY. No; we have sold—

Mr. UNTERMYER. I say, did you engage in such an operation, Mr. Henry?

Mr. HENRY. Will you not let me tell it in my own way, Mr. Untermyer? I can give a much fairer picture of it if you will allow me to do so.

Mr. UNTERMYER. If it does not take too long. It is a very simple question—to know whether you engaged in a market operation or did not.

Mr. HENRY. After we had sold our own stock—we sold all of our own stock before the stock was listed. I want to make that very plain, because the testimony given here in this same case before did not give it right—

Mr. UNTERMYER. Now, Mr. Henry, you are not answering my question. We might go on all day in this way. I will ask you to answer my question.

Did you engage with Lewisohn Bros. and Hallgarten & Co. in a market operation in the California Petroleum stock at about this time?

Mr. HENRY. After the stock was listed on the stock exchange—because we made no market in it up to that time—after the stock was listed on the stock exchange we made a market in the stock, and we have ever since—

Mr. UNTERMYER. When was it listed?

Mr. HENRY. It was listed on Saturday, the 5th of October.

Mr. UNTERMYER. Who prepared the application for listing?

Mr. HENRY. The vice president and the treasurer of the company, in conjunction with the statistician of our office, whose help was engaged because he knew the machinery to go through and they did not.

Mr. UNTERMYER. Between the 5th of October, when the stock was listed on the exchange, and the end of October, who conducted that

market operation on behalf of your firm and Hallgarten and Lewisohn Bros.?

Mr. HENRY. Lewisohn Bros.

Mr. UNTERMYER. For the joint account?

Mr. HENRY. For the account of the original banking group.

Mr. UNTERMYER. Was it for the joint account of those three houses, or was it not? That was the question.

Mr. HENRY. No; because the other house that had an interest of $12\frac{1}{2}$ per cent was still in it.

Mr. UNTERMYER. It was for the joint account of the four?

Mr. HENRY. The original purchasing group; yes, sir.

Mr. UNTERMYER. What stock did Lewisohn Bros. have to market?

Mr. HENRY. They did not have any stock to market.

Mr. UNTERMYER. They had none of your stock, had they?

Mr. HENRY. All the syndicate stock was sold, and all of ours had been sold.

Mr. UNTERMYER. It had all been sold?

Mr. HENRY. Every share of the stock had been sold before the stock was listed.

Mr. UNTERMYER. Whose stock were they buying and selling for this joint account?

Mr. HENRY. They were buying and selling stock that people offered to sell or offered to buy on the stock exchange.

Mr. UNTERMYER. What was the purpose of this market operation engaged in by you four gentlemen, or your four houses, with respect to the stock, when none of you owned any stock?

Mr. HENRY. It was in order to make a market for the stock.

Mr. UNTERMYER. Do you mean that it was done in order to make an apparent activity in it?

Mr. HENRY. Not in order to make an apparent activity in it, but to have somebody there always to buy if anybody wanted to sell it, and somebody there always to sell if anybody wanted to buy it.

Mr. UNTERMYER. Do you not know, Mr. Henry, that the market operator, Lewisohn Bros., were doing the buying and selling themselves every day?

Mr. HENRY. Surely.

Mr. UNTERMYER. In other words, they were putting in orders to buy and orders to sell?

Mr. HENRY. Certainly.

Mr. UNTERMYER. Every morning?

Mr. HENRY. Certainly.

Mr. UNTERMYER. And you were a party to that?

Mr. HENRY. They were acting under our general direction.

Mr. UNTERMYER. Every morning they would give orders to certain brokers to buy and orders to certain brokers to sell?

Mr. HENRY. They would put in selling orders on a scale up and buying orders on a scale down.

Mr. UNTERMYER. Yes.

Mr. HENRY. That is done to steady the price of the stock.

Mr. UNTERMYER. You think so? It is done to make an appearance of activity in the stock, is it not?

Mr. HENRY. No, sir; it is done to steady the price of the stock.

Mr. UNTERMYER. Why should you, for instance, give orders to half a dozen brokers or more to buy a given amount of stock and orders

at the same time to sell stock, with the idea that you would not at the end of the day have any stock either bought or sold?

Mr. HENRY. Will you let me answer that in my own way?

Mr. UNTERMYER. Yes.

Mr. HENRY. When a new stock is put on the exchange, on any great exchange like the New York Stock Exchange, there is one thing that is very necessary and that is that its price shall be steadied. When you have no active market in a stock, when you are building up an active market in a new stock, the first thing a banking house does, what it wants to do, and what it must do, whether it makes a profit or a loss out of it, is to steady the price of the stock. If people come in to buy six or seven thousand shares of stock, and there is not much around, if they do not sell the stock it will be bid away up and have a big advance. On the other hand, if somebody comes in to sell six or seven thousand shares and there are no large buying orders in there the price of the stock is going to be a great deal lower than it would be otherwise. If you put in buying orders on a scale down and selling orders on a scale up the effect of that is to steady the price of the stock. Its fluctuation is not as violent or as wide as it would be otherwise.

Mr. UNTERMYER. You are a believer, then, in manipulation, Mr. Henry?

Mr. HENRY. I do not know anything about manipulation.

Mr. UNTERMYER. Is not the process you have just described the process of manipulation?

Mr. HENRY. I do not think so.

Mr. UNTERMYER. You say you do not know anything about it?

Mr. HENRY. I do not think the process I have just described is what is usually termed manipulation.

Mr. UNTERMYER. If a banking house wants to protect a new stock, why does it not simply buy that stock from outsiders who offer it instead of trading in it by buying and selling itself?

Mr. HENRY. Because you can not make only one side of a market. You have to make both sides of the market.

Mr. UNTERMYER. And why can it not buy that stock and sell it, when it is acquired, instead of putting in orders every day—buying orders on a scale and selling orders on a scale—for the purpose of creating an apparent activity in that stock that does not exist?

Mr. HENRY. It does not do anything of the kind, Mr. Untermyer.

Mr. UNTERMYER. Do you not know, Mr. Henry, that when you are trying to make a market for a stock in that way, by putting in buying and selling orders by different brokers for the same house, that you are creating a fictitious appearance of activity?

Mr. HENRY. You would be if they were at the same price.

Mr. UNTERMYER. But even if there is a difference of one-eighth in the price?

Mr. HENRY. Not an eighth. If you put in a scale of selling orders above a price and a scale of buying orders below a price, I see no manipulation about that.

Mr. UNTERMYER. You see no manipulation in that at all?

Mr. HENRY. No, sir.

Mr. UNTERMYER. What do you understand manipulation to be? What is your idea of manipulation?

Mr. HENRY. I suppose it might be defined as matching orders.

Mr. UNTERMYER. Do you not understand, Mr. Henry, that matching orders and manipulation are different things?

Mr. HENRY. I know very little about manipulation. I have no personal experience, Mr. Untermyer.

Mr. UNTERMYER. But that is because you do not think this is manipulation that you have been doing?

Mr. HENRY. I do not know what term you want to use. What we have been doing is to steady the price. It is not manipulation.

Mr. UNTERMYER. Let us see about that. How many shares were dealt in during the month of October by Lewisohn Bros. under this joint arrangement?

Mr. HENRY. I could not tell you; but it is a great many.

Mr. UNTERMYER. We have here a statement that during those I think 19 or 20 days of October Lewisohn Bros., under this joint arrangement, purchased 149,600 shares and sold 172,900 shares, and I understand you to say in that connection that they started without any shares?

Mr. HENRY. Yes; we did not have any stock when we—

Mr. UNTERMYER (interposing). According to that they were short; your syndicate operations in this operation were short about 23,000 shares, were they not?

Mr. HENRY. No; because we got some stock from Mr. Doheny and Mr. Canfield later on.

Mr. UNTERMYER. Do you know whether you made any money in this market operation?

Mr. HENRY. I think we lost money in it.

Mr. UNTERMYER. You think you lost?

Mr. HENRY. Yes.

Mr. UNTERMYER. You expected to lose money, did you not?

Mr. HENRY. We did.

Mr. UNTERMYER. You were in it to lose money?

Mr. HENRY. Yes.

Mr. UNTERMYER. And you were willing to lose money in order to make this appearance of activity in the market?

Mr. HENRY. Not to make any fictitious appearance of activity.

Mr. UNTERMYER. You think it was real?

Mr. HENRY. We were willing to lose money to give the stock a real market. That is what we have done.

Mr. UNTERMYER. What is the difference between a real market and a fictitious market?

Mr. HENRY. A great deal of difference.

Mr. UNTERMYER. Explain it.

Mr. HENRY. A real market means that if a man has stock to sell he can go and sell it and find a buyer who will buy it and pay money for it, that that if he wants to buy he can go and buy it and find a seller who will sell it and deliver it to him, and he will be able to give a check and become the owner of it. That is what I mean by a real market. That is what has existed in California petroleum ever since it has been on the board.

Mr. UNTERMYER. Suppose this real market has been created at fictitious prices for the stock; that is, by increasing the price of the stock over and above what it would be in a free market where there was no manipulation?

Mr. HENRY. If you come to talk about fictitious prices, Mr. Untermyer, the only thing I am willing to admit is that all these prices have been fictitiously low on California petroleum.

Mr. UNTERMYER. Never mind about that. We are not discussing the merits of the property at all, but we are discussing the stock market operations in the property.

Mr. HENRY. I know, but—

Mr. UNTERMYER (interposing). At what price did the stock start?

Mr. HENRY. We sold all the syndicate stock at 40 and all of our own stock—we sold 21,185 shares at 40 and 3,043 shares at 45. Forty-five was the top price that we got for any of our own stock.

Mr. UNTERMYER. Having sold your stock at 40 and 45—

Mr. HENRY. I would like to make a point of that, there—

Mr. UNTERMYER. Will you not let me finish my question?

Mr. HENRY (continuing). Because that has gone in the record wrong.

Mr. UNTERMYER. I beg your pardon. What is it that you desire to say?

Mr. HENRY. I have seen it in every newspaper in New York that we sold out the stock at 70, which is not the case.

Mr. UNTERMYER. Well, just wait a minute.

Mr. HENRY. It is not fair to us in this examination that a statement should be put out that is not so.

Mr. UNTERMYER. I am perfectly willing, Mr. Henry, that you should make any statement that you want to make on the subject. Have you stated all that you want to say about it?

Mr. HENRY. Thank you. That is all at the moment.

Mr. UNTERMYER. Having sold your stock in the way you have stated, you went into the market and bought and sold stock around 70?

Mr. HENRY. We did not do any selling to speak of around 70.

Mr. UNTERMYER. Did you not put in buying and selling orders around 70?

Mr. HENRY. We mostly got landed with the stock—

Mr. UNTERMYER. Will you not answer my question? Do you not know that Messrs. Lewisohn Bros. were operating in the stock around 70 under buying and selling orders?

Mr. HENRY. They were operating in it at every price.

Mr. UNTERMYER. And they were operating in it around 70, were they not?

Mr. HENRY. Yes; they were operating in it around 70 and, I think, at 72. I do not remember when it sold at 72.

Mr. UNTERMYER. How high did the stock go under this process of buying and selling orders?

Mr. HENRY. Under what process of buying and selling orders?

Mr. UNTERMYER. How high did the stock go?

Mr. HENRY. I think the highest price at which the stock was sold was 72 and a fraction.

Mr. UNTERMYER. When did the stock reach this highest price?

Mr. HENRY. I do not remember that. It was shortly after it went on the board.

Mr. UNTERMYER. In the month of October?

Mr. HENRY. Oh, yes.

Mr. UNTERMYER. At what is it selling now?

Mr. HENRY. About 50.

Mr. UNTERMYER. 50?

Mr. HENRY. I think so.

Mr. UNTERMYER. Meantime the public came in very largely, between 50 and 70, did it not?

Mr. HENRY. I suppose so.

Mr. UNTERMYER. Are you still maintaining this stock-exchange pool through Lewisohn?

Mr. HENRY. What stock-exchange pool?

Mr. UNTERMYER. Are you still maintaining this joint operation on the stock exchange?

Mr. HENRY. We are buying and selling it every day for the account of the original banking group.

Mr. UNTERMYER. Every day?

Mr. HENRY. Yes, sir.

Mr. UNTERMYER. And you are putting in buying and selling orders?

Mr. HENRY. Yes, sir. . We are doing our best to——

Mr. UNTERMYER. What are your buying and selling orders now?

Mr. HENRY. I could not tell you that. I do not handle that personally.

Mr. UNTERMYER. I thought you consulted every day about it?

Mr. HENRY. No; not every day.

Mr. UNTERMYER. But you frequently consult about it?

Mr. HENRY. Not in this stage of the situation. Their general instructions are to steady the market of the stock and to put in buying orders below the price and selling orders above it.

Mr. UNTERMYER. What is the scale? What is the difference between the buying and selling orders from day to day?

Mr. HENRY. That depends entirely on the market situation.

Mr. UNTERMYER. Well, what was the scale yesterday, for instance?

Mr. HENRY. I do not know. I was down here yesterday.

Mr. UNTERMYER. What was the scale the last time you knew the graded scale on which they would be put in?

Mr. HENRY. A scale like that, Mr. Untermyer, will change half a dozen times a day, depending upon the activity of the market. Sometimes we do it on one-eighth and sometimes on points and sometimes on half points. The amount you will take at different prices down and the amount you will take at different prices up depends on the breadth and activity of the rest of the market.

Mr. UNTERMYER. It depends on the activity of the market in that particular stock, does it not?

Mr. HENRY. Not so much upon that as upon the general market. In introducing a new stock, the point you are working at all the time is to have the stock move in accordance with the rest of the market. If the rest of the market goes up, you want your stock to go up, and if the rest of the market goes down, you want your stock to go down.

Mr. UNTERMYER. You want your stock to go with the rest of the market?

Mr. HENRY. Yes. You always want it to be a little better than the rest of the market.

Mr. UNTERMYER. And to put it up or down with the rest of the market?

Mr. HENRY. You want it to move naturally.

Mr. UNTERMYER. Do you call that moving naturally?

Mr. HENRY. Yes.

Mr. UNTERMYER. When you put it up or down?

Mr. HENRY. You do not put it up or down.

Mr. UNTERMYER. Who do you give these orders to let it go with the rest of the market, except to put it up or down with the rest of the market?

Mr. HENRY. Because if the rest of the market goes up, you do not want your stock to lag behind; and if the rest of the market goes down, you do not want your stock to stand up as a target, regardless of the rest of the market.

Mr. UNTERMYER. Why not?

Mr. HENRY. Because it is important on the market, when a stock is not thoroughly digested, and especially when it is not strictly an investment stock, but is a semispeculative stock, that we try to avoid having it held up artificially. We do not want to do anything artificial. If we were to hold it up artificially, that would make a target of it.

Mr. UNTERMYER. So that you do not consider this operation you have described as having any artificial effect on the market?

Mr. HENRY. No, sir.

Mr. UNTERMYER. Not at all?

Mr. HENRY. I think they neutralize—

Mr. UNTERMYER (interposing). You think the market on that stock would be quite the same—the natural market—if you did not operate in it at all?

Mr. HENRY. I will not say that. I think the stock has a much better market and a wider market to-day, because we have been operating in it, than it would have if we had not been operating in it.

Mr. UNTERMYER. That is not the question.

Mr. HENRY. And all that has gone to the benefit of the men who own the stock.

Mr. UNTERMYER. Will you not answer my questions, Mr. Henry?

Mr. HENRY. I will try to do so; certainly.

Mr. UNTERMYER. My question is whether you believe that it is not an artificial interference with the market for you to be operating in this stock exchange syndicate?

Mr. HENRY. No, sir; I do not think it is.

Mr. UNTERMYER. You do not?

Mr. HENRY. No, sir.

Mr. UNTERMYER. You feel that the market in California petroleum would be exactly the same if you and your associates did not maintain this daily operation?

Mr. HENRY. No, I do not. I think it would be very different.

Mr. UNTERMYER. Then, if it would be different, do you not realize, Mr. Henry, that this is an artificial interference with the natural course of the market?

Mr. HENRY. No, sir; I do not.

Mr. UNTERMYER. You do not? Then I do not think I want to ask you any more about that.

To what extent was your firm a participant in the \$5,000,000 syndicate?

Mr. HENRY. I do not recollect. We did not have very much. I think it was about a quarter of a million that we kept in it.

Mr. UNTERMYER. And your associates; did they have much?

Mr. HENRY. No; not very much; and none of them had as much as they wanted.

Mr. UNTERMYER. You formed the syndicate, did you not?

Mr. HENRY. Yes.

Mr. UNTERMYER. And you could take as much as you wanted, could you not?

Mr. HENRY. We could if we——

Mr. UNTERMYER. I say, you could take as much as you wanted, could you not?

Mr. HENRY. If we had decided originally that we would do that.

Mr. UNTERMYER. You volunteered the statement a moment ago that none of you had as much as you wanted.

Mr. HENRY. Yes.

Mr. UNTERMYER. You had \$2,500,000 of the stock that did not cost you anything, did you not?

Mr. HENRY. Of the common stock, you mean?

Mr. UNTERMYER. Yes.

Mr. HENRY. Yes; approximately \$2,500,000.

Mr. UNTERMYER. That was the speculative stock, was it not—the common stock?

Mr. HENRY. Yes.

Mr. UNTERMYER. That is the stock in which this market was made, largely?

Mr. HENRY. Yes.

Mr. UNTERMYER. And, having \$2,500,000 of the common stock that had cost you nothing, and making up this syndicate yourself, with the right to give yourselves as much as you wanted, do I understand you to say that you did not get as much as you wanted?

Mr. HENRY. Yes; because everybody that we offered it to, practically, accepted; so that we were left with less than we hoped we would have.

Mr. UNTERMYER. That is true of your associates, too, is it?

Mr. HENRY. I think so. I think it was true of all of them.

Mr. UNTERMYER. That being so, and the stock being so much sought after, why did you sell your \$2,500,000 worth so low, instead of waiting for it to go up?

Mr. HENRY. Because we did not want to do that.

Mr. UNTERMYER. That is all you have to say about it, is it? Have you completed your answer?

Mr. HENRY. To this particular question?

Mr. UNTERMYER. Yes.

Mr. HENRY. I would like to add this to it: That we did not want the stock to go up as quickly or as violently as it did. We were doing all we could to keep it down. We wanted to have the stock thoroughly digested between 40 and 50. The market took it out of our hands, however, and ran it up to 70 in spite of us. That is the real situation.

Mr. UNTERMYER. Let us see about that. This was a property that was wholly unknown when it went on the stock exchange, was it not?

Mr. HENRY. I do not know what you mean by "unknown." I do not think it was.

Mr. UNTERMYER. Was it not, Mr. Henry, an unknown property in the East?

Mr. HENRY. Not wholly, no; not among the people who know Our operations in this stock went back to just about a year ago. It was a year ago last December—

Mr. UNTERMYER. Will you not answer my question, Mr. Henry?

Mr. HENRY. I am trying to do so.

Mr. UNTERMYER. This California Petroleum Co. was organized in September, 1912, was it not?

Mr. HENRY. Yes.

Mr. UNTERMYER. That was a new name, was it not?

Mr. HENRY. It was a new name.

Mr. UNTERMYER. That is what I asked you.

Mr. HENRY. Yes.

Mr. UNTERMYER. The speculators in the Street had never heard of it before, had they?

Mr. HENRY. The speculators in the Street?

Mr. UNTERMYER. Yes.

Mr. HENRY. No; I do not think so.

Mr. UNTERMYER. And the people in the oil business did not know the name "California Petroleum Co.," did they?

Mr. HENRY. They knew all about the properties, yes, that the California Petroleum Co. owned.

Mr. UNTERMYER. The operations in this stock during the month of October were largely on behalf of the room traders and speculators, were they not?

Mr. HENRY. I do not know, really, who contributed most of these transactions.

Mr. UNTERMYER. How many stockholders are there to-day on the stock list?

Mr. HENRY. Of these two companies?

Mr. UNTERMYER. No; of the California Petroleum Co.

Mr. HENRY. I think I have that here.

Mr. UNTERMYER. Let me know. How many stockholders are there to-day?

Mr. HENRY. I do not think I have got that here, after all. Just a moment. I may have it here, too.

Mr. DE GERSDORFF. We can supply that, Mr. Untermyer.

Mr. UNTERMYER. I would like to know.

Mr. HENRY. I have not got it. I am sorry. I could very readily get that as of—

Mr. UNTERMYER. You have no recollection of the matter, have you?

Mr. HENRY. There were a great many hundred.

Mr. UNTERMYER. That is very indefinite. I am speaking of the California Petroleum Co., you understand.

Mr. HENRY. Yes.

Mr. UNTERMYER. Have you seen the stock list lately?

Mr. HENRY. No, sir; I have not.

Mr. UNTERMYER. Are there as many as 200 stockholders?

Mr. HENRY. I should say there were nearer 2,000.

Mr. UNTERMYER. But you can not give us the information any more definitely?

Mr. HENRY. I can give you the exact number as of, I think it was, the 14th of December, when the books were closed for the dividend.

Mr. UNTERMYER. That is near enough. How many were there then?

Mr. HENRY. I can get it for you.

Mr. UNTERMYER. Oh. You have not got it in your mind?

Mr. HENRY. No. That was the day we closed the books, and the trust company will have a record of that.

Mr. UNTERMYER. Do you know how much stock was sold between 50 and 70?

Mr. HENRY. I can tell you how much we sold.

Mr. UNTERMYER. Do you mean through Lewisohn Bros.?

Mr. HENRY. I mean through our banking group.

Mr. UNTERMYER. No, no. I mean on the exchange, how much was sold?

Mr. HENRY. No; I have not got that.

Mr. UNTERMYER. Between those figures?

Mr. HENRY. I could not give you that. I think you have that, Mr. Untermyer.

Mr. UNTERMYER. No.

Mr. HENRY. Did not Mr. Lewisohn put that in evidence?

Mr. UNTERMYER. I do not think so.

Mr. HENRY. It would be between about 62½ and 70. I think it went on the exchange about 62½ or 64, or somewhere around there.

Mr. UNTERMYER. The committee desires to know the names of national banks and officers of national banks who participated in this syndicate operation of the California Petroleum Co.

Mr. HENRY. Mr. Untermyer, I very greatly regret that I do not feel at liberty to give the committee that information.

Mr. UNTERMYER. You decline to do so?

Mr. HENRY. Yes, sir; I respectfully decline to do so.

The CHAIRMAN. I will state, as chairman of the committee, that it becomes my duty to inform you, Mr. Henry, that your declination to answer this question, which the committee considers within its jurisdiction under the resolution referring this inquiry to it, will be reported to the general committee as a contempt of the authority of the House, for such action as the entire committee and the House may see fit to take in the premises, if you persist in your declination.

Mr. HENRY. Yes, sir; I realize that, Mr. Chairman.

The CHAIRMAN. The committee does not feel that it is asking any question that it has not the right to ask. It has considered the memorandum in your behalf that has been submitted to it, and feels that it is its duty to propound this question, particularly with relation to national-banking institutions and officers taking part in this operation involving securities of corporations doing business between the States.

Mr. HENRY. I understand.

Mr. UNTERMYER. Do you also decline to state the name of the fourth partner in your syndicate?

Mr. HENRY. Yes.

Mr. UNTERMYER (continuing). Who had an interest of 12½ per cent?

Mr. HENRY. Yes; I do, Mr. Untermyer.

Mr. UNTERMYER. Are you a director in this company?

Mr. HENRY. I am.

Mr. UNTERMYER. And a member of the finance committee?

Mr. HENRY. Yes, sir.

Mr. UNTERMYER. And were you such in October, when this stock was put upon the list?

Mr. HENRY. I was.

Mr. UNTERMYER. Are other members of your firm directors?

Mr. HENRY. No, sir; I am the only one from our firm.

Mr. UNTERMYER. When your corporation applied to have this stock listed, were you a member of the finance committee?

Mr. HENRY. I was.

Mr. UNTERMYER. Were you the chairman of that committee?

Mr. HENRY. I do not think we have ever elected a chairman.

Mr. UNTERMYER. Was the application made under your direction?

Mr. HENRY. Not directly. It was made by the company.

Mr. UNTERMYER. But was the application prepared under your direction and that of the statistician of your office?

Mr. HENRY. It was prepared by the vice president and by the treasurer of the company, both of whom were in New York at the time, with such help as they got from our statistician, because he was familiar with the procedure that the listing committee required.

Mr. UNTERMYER. Did you take part in the preparation of the application?

Mr. HENRY. I looked it over after it was finished.

Mr. UNTERMYER. And did you take it to the stock exchange?

Mr. HENRY. I appeared before the committee.

Mr. UNTERMYER. And urged the listing of the security?

Mr. HENRY. I requested it; yes, sir.

Mr. UNTERMYER. You understood, did you not, that when the security was listed it would become available as collateral in stock-exchange loans?

Mr. HENRY. I supposed it would after a reasonable length of time; yes.

Mr. UNTERMYER. Is it not a fact, Mr. Henry, that loans made on the stock exchange are made only on securities that are listed on the stock exchange?

Mr. HENRY. I think that is the rule; but I do not think it is lived up to.

Mr. UNTERMYER. That is the rule at the loan stand, is it not, that it has to be all listed stock-exchange collateral?

Mr. HENRY. I think they often put in things that are not listed. I am not familiar with the regulation about it.

Mr. UNTERMYER. One of your purposes in having the stock listed was to make it available as collateral, was it not?

Mr. HENRY. No, sir; that was not one of our purposes.

Mr. UNTERMYER. It was not?

Mr. HENRY. No, sir.

Mr. UNTERMYER. That had nothing to do with it?

Mr. HENRY. That had nothing to do with our purposes in it.

Mr. UNTERMYER. In order to be readily marketable it had to be listed?

Mr. HENRY. It did not have to be. It was all marketed before it was listed.

Mr. UNTERMYER. No; but in order to be marketable, publicly marketable?

Mr. HENRY. Marketable?

Mr. UNTERMYER. Yes.

Mr. HENRY. It was much better to have it listed; yes. It was much better to have it listed.

Mr. UNTERMYER. Do you know of any stock that is readily, freely marketable that is not a listed stock?

Mr. HENRY. I think I probably could recall instances.

Mr. UNTERMYER. Can you recall any to-day where a stock that is not listed is readily marketable?

Mr. HENRY. I do not think you would wait very long to get Temple Iron Co. stock off your hands, if you had it.

Mr. UNTERMYER. That is not marketable to-day, is it?

Mr. HENRY. I think it is dissolved

Mr. UNTERMYER. Is it marketable? Is there any of it outstanding?

Mr. HENRY. I think it has been dissolved.

Mr. UNTERMYER. Is there any of it outstanding?

Mr. HENRY. I do not know whether there is or not.

Mr. UNTERMYER. Did you ever hear of its being dealt in on the stock exchange?

Mr. HENRY. When it was not listed?

Mr. UNTERMYER. Did you ever hear of its being dealt in publicly and having a free market?

Mr. HENRY. No; but it always commanded a market. The Temple Iron Co.'s stock always commanded a market.

Mr. UNTERMYER. It was not a readily, freely marketable stock, was it?

Mr. HENRY. Anybody that had it could sell it.

Mr. UNTERMYER. Was it freely bought and sold and dealt in?

Mr. HENRY. Anybody that had it could sell it. I think Atlas Portland Cement stock is another instance of stock that was quite actively traded in at one time and was never on the stock exchange.

Mr. UNTERMYER. I am asking you to tell me the name of any stock to-day being dealt in—to-day or this month—that is freely marketable that is not listed. Can you tell me of one, if there is one?

Mr. HENRY. I think the Chicago Elevated Railways, preferred, would probably be a type of that. Whoever would have that stock would be able to sell it all right.

Mr. UNTERMYER. Is that a marketable stock, sold from day to day in New York?

Mr. HENRY. No; I do not think it is.

Mr. UNTERMYER. Do you not know what I am asking you about, Mr. Henry?

Mr. HENRY. You mean is there any stock to-day that has an active market which is not on the exchange?

Mr. UNTERMYER. Yes; that is what I mean.

Mr. HENRY. Its activity comparing over the counter and on the curb with that of stock that is listed on the exchange?

Mr. UNTERMYER. Do you not know what is active stock?

Mr. HENRY. I am trying to see whether I understood you.

Mr. UNTERMYER. I think you do. You know what active stock is, do you not?

Mr. HENRY. There are plenty of stocks on the curb that have an active market.

Mr. UNTERMYER (interposing). They are listed on the curb, are they not?

Mr. HERNY. Some of them are listed on the curb and some of them are not. There is a lot of activity in plenty of stocks which are not on the exchange.

Mr. UNTERMYER. You want the committee to understand, do you, Mr. Henry, that in applying to have this stock listed you and your associates did not have in mind making it actively marketable?

Mr. HERNY. No, sir; I do not want to say anything of the kind, because that is just what we did have in mind.

Mr. UNTERMYER. That is what you did have in mind?

Mr. HERNY. Yes.

Mr. UNTERMYER. That is what we have been trying to find out.

You knew, did you not, Mr. Henry, that if the stock was put upon the regular list it would be quoted on that list, and that those quotations would be carried throughout the country?

Mr. HERNY. Yes, sir.

Mr. UNTERMYER. You knew that the quotations of the listed stock of the New York Stock Exchange are carried in the newspapers, through the mails, and over the telegraphs throughout the United States?

Mr. HERNY. I think so.

Mr. UNTERMYER. That is all.

Mr. HERNY. I would like to read to the committee a memorandum prepared for me by Senator Spooner in regard to my declination to answer the question propounded to me a little while ago. May I read it?

Mr. UNTERMYER. Certainly.

Mr. HERNY. I declined to answer the question, upon the advice of counsel that the committee is without jurisdiction to require the information called for, upon the grounds:

1. That the subject matter is one in respect to which the Congress is without power to legislate.
2. That the question is an unlawful intrusion into the private affairs of a citizen under the fourth and fifth amendments to the Constitution of the United States.
3. Generally, that the committee is not lawfully entitled to compel the information called for.

Mr. UNTERMYER. It is your idea, Mr. Henry, that the participation of national banks and officers of national banks in any syndicate operations affecting securities that are listed on the stock exchange and carried through the mails and over the telegraphs all over the United States is not a competent subject of congressional inquiry?

Mr. HERNY. No, sir; I do not think that that says that, because we have given you, Mr. Untermyer, all the information that it seems to me has any bearing on that point. We have said there were no national banks in; that there were 15 officers of these national banks in it. We have given you all the information of that kind that it seems to me has any bearing on this thing. I very much hope that the committee will not find it necessary to press that question. It seems to me that I have come down here and given you all the information that I can. I have not kept back a thing and have given the complete story of a very interesting and recent operation on the New York Stock Exchange; I have given you our profits; I have given you the terms of our syndicate; I have given you the full ma-

chinery of everything in the way the transaction was handled; and I have given you full information as to the composition of the syndicate in so far as the banks and so on were in it and were not in it; and I very much hope you will not find it necessary to press for the names asked for.

Mr. UNTERMYER. Do you not realize, Mr. Henry, that in the absence of the names of the officers of the national banks who have participated in this syndicate a reflection is left upon other officers of national banks in New York City who may not engage in that sort of enterprise?

Mr. HENRY. I do not.

Mr. UNTERMYER. And that it is only just to them that these names should be given?

Mr. HENRY. I do not know anything about—

Mr. UNTERMYER (continuing). That it is only just that the names should be given of those who had anything to do with that sort of business?

Mr. HENRY. I do not see why there should be any reflection on those who have not gone in, because I do not see any reflection on those who have.

I want to make this statement plainly that we are not ashamed of any of those who participated, and we have no reason to suppose that any one of those men would have the slightest hesitation in giving the information that he was a member of the syndicate.

Mr. UNTERMYER. Then why do you not inquire of them and get their permission to give their names?

Mr. HENRY. Because I do not think it is a proper thing to do.

Mr. UNTERMYER. You have had two weeks' notice that the committee would put this question to you.

Mr. HENRY. I have, but I do not consider that it is a proper thing for me to do.

Mr. UNTERMYER. Have you any other reason for not asking their permission to give their names?

Mr. HENRY. No; I have no other reason except that I do not think it is the proper thing to do.

The CHAIRMAN. I want to state that the committee appreciate the fact that you have testified without evasion and with a desire on your part to furnish such facts as you consider you should furnish, acting under advice of counsel where you have come to a different conclusion, and the committee also wants to express through its chairman that it considers it the duty of every citizen who believes in organized government, when summoned, to come here and furnish to the committee such information as he may have relating to a governmental inquiry. And the committee would regret exceedingly that it would have to take action that it has decided to take and submit your name to the full committee for its determination in turn whether the House should be asked to certify your name to the district attorney, but the committee must exercise its power. Power must be lodged somewhere, and naturally the witness or his counsel can not be the judge of that power.

Mr. HENRY. All right, sir.

Mr. UNTERMYER. Why do you not ask the permission of these gentlemen to furnish their names?

Mr. HENRY. Because I do not think it is a proper thing for us to do.

Mr. UNTERMYER. Even if they are willing?

Mr. HENRY. It is not honorable, and it is not good business.

Mr. UNTERMYER. You say their participation in the syndicate is nothing of which they should be ashamed?

Mr. HENRY. Yes.

Mr. UNTERMYER. Or which they should seek to hide?

Mr. HENRY. Most emphatically.

Mr. UNTERMYER. That being the case, if they agree with you, why do you not inquire and find out whether you can give their names?

Mr. HENRY. If they feel as I do about it they may volunteer to do it. I am not going to ask them.

Mr. UNTERMYER. That is all.

The CHAIRMAN. You will get that information here to-day by telephone so as not to delay the record?

Mr. HENRY. Yes; I will do so, Mr. Chairman.

Mr. UNTERMYER. Your counsel asks me to inquire of you, Mr. Henry, as to what is the business of the California Petroleum Co. Is it a holding company?

Mr. HENRY. The California Petroleum Corporation is the full name of it. It is a holding company.

Mr. UNTERMYER. And it holds the securities of what companies?

Mr. HENRY. The American Petroleum Co. and the American Oil Fields Co.

Mr. UNTERMYER. Does it hold all the securities of those companies?

Mr. HENRY. No; there is a small amount of stock outstanding.

Mr. UNTERMYER. But practically all in both cases?

Mr. HENRY. It owns about 98 per cent of the stock.

Mr. UNTERMYER. The business of the American Petroleum Co. and the American Oil Fields Co. is what?

Mr. HENRY. It is the business of producing and selling oil exclusively in the State of California.

Mr. UNTERMYER. Let us see about that. Which is the producing company and which is the selling company, or are they both producing companies?

Mr. HENRY. They are both producing companies.

Mr. UNTERMYER. Have they refineries?

Mr. HENRY. One of them has a topping plant, what we call a topping plant.

Mr. UNTERMYER. Where is that?

Mr. HENRY. In the Midway field.

Mr. UNTERMYER. In what part of California is that?

Mr. HENRY. It is about a third of the way from Los Angeles to San Francisco.

Mr. UNTERMYER. And does it refine oil there?

Mr. HENRY. It tops its oil.

Mr. UNTERMYER. And after the oil is tapped; that is, divided into distillate and crude oil?

Mr. HENRY. Yes.

Mr. UNTERMYER. What is done with the distillates?

Mr. HENRY. My understanding of that is that all the oil produced by that company is sold to the producers' agency in the State of California.

Mr. UNTERMYER. Well, do you know personally?

Mr. HENRY. The topping plant has been of such a recent date—we only put it up last month—that I do not know how it disposes of the distillate. I know previous to its installation all the oil that both companies produced was sold in California.

Mr. UNTERMYER. But now that it produces distillates, don't you know that the oil company disposes of its distillates?

Mr. HENRY. I do not think it does.

Mr. UNTERMYER. Do you know whether it does or not?

Mr. HENRY. No; but I do not think it does.

Mr. UNTERMYER. Do you know whether it disposes of those distillates all over the United States?

Mr. HENRY. I am sure it does not do that.

Mr. UNTERMYER. Where does it dispose of its distillates?

Mr. HENRY. In the State of California.

Mr. UNTERMYER. To whom?

Mr. HENRY. To one of the big companies.

Mr. UNTERMYER. But to what company?

Mr. HENRY. There are three or four companies, the Union—

Mr. UNTERMYER. To which company does it sell them, since you say you know it?

Mr. HENRY. I think it sells to the producers' agency.

Mr. UNTERMYER. But you do not know?

Mr. HENRY. I do not know, because it has only been started six weeks ago.

Mr. UNTERMYER. Have you any pipe lines?

Mr. HENRY. No; except field lines.

Mr. UNTERMYER. You have pipe lines in the fields?

Mr. HENRY. Just a gathering system to turn it over to the main company.

Mr. UNTERMYER. To what pipe line do you turn over your crude oil as turned over by your gathering lines in that field?

Mr. HENRY. The American Petroleum Co.; all of the oil is sold to the Agency Oil Co., and—

Mr. UNTERMYER. Is that under a written contract?

Mr. HENRY. Under contract for all we produce.

Mr. UNTERMYER. Deliverable at its refineries?

Mr. HENRY. No; they buy it from us in the field.

Mr. UNTERMYER. Are those transactions of record, by written agreements?

Mr. HENRY. Yes.

Mr. UNTERMYER. Have you them?

Mr. HENRY. I have not them here.

Mr. UNTERMYER. But you have them?

Mr. HENRY. I have not them in New York. They are out in California.

Mr. UNTERMYER. Will you furnish them to the committee, rather than to have us rely upon the vague knowledge or impression of yourself?

Mr. HENRY. I can furnish the facts to you.

Mr. UNTERMYER. Can you not furnish the contracts?

Mr. HENRY. I have not got the contracts, Mr. Untermyer.

Mr. UNTERMYER. Can you not get them? You are a director of the company and the head of the finance committee.

Mr. HENRY. I can furnish the facts to you.

Mr. UNTERMYER. No; I am asking you now for the contracts. They will tell us the facts, will they not?

Mr. HENRY. Yes; but there may be a great many other things in the contracts that have nothing to do with your inquiry.

Mr. UNTERMYER. Never mind about that. If your oil is handled under a contract in writing the question is whether you will furnish us that contract?

Mr. HENRY. There may be a great many other things in the contract that our company will not feel it is good business to disclose.

Mr. UNTERMYER. You will not tell us whether or not you will furnish them, or that you can not get them?

Mr. HENRY. I can not tell you I will or will not, because I do not know whether I can get them or not.

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

Mr. HENRY. I would like to talk a little about my stock, but—

Mr. UNTERMYER. No; this is not the place to boom stocks.

Mr. HENRY. It ought not to be the place, Mr. Untermeyer.

Mr. UNTERMYER. That is all.

Mr. HENRY. All right, sir.

Witness excused.

Mr. UNTERMYER. Is Mr. McCormack here?

Mr. McCORMACK. Yes.

TESTIMONY OF MR. McCORMACK.

The witness was sworn by the chairman.

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

Mr. McCORMACK. No, sir.

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

Mr. McCORMACK. No, sir.

Mr. UNTERMYER. What is your business?

Mr. McCORMACK. I am a curb member.

Mr. UNTERMYER. A member of the New York Curb Association?

Mr. McCORMACK. Yes.

Mr. UNTERMYER. You are engaged in business as a stock broker in New York?

Mr. McCORMACK. Yes, sir.

Mr. UNTERMYER. How long have you been so engaged?

Mr. McCORMACK. Sixteen or seventeen years.

Mr. UNTERMYER. Have you held any official position with the New York Curb Association?

Mr. McCORMACK. Yes.

Mr. UNTERMYER. What position?

Mr. McCORMACK. Chairman of the board of representatives.

Mr. UNTERMYER. Chairman of the board of directors?

Mr. McCORMACK. Representatives.

Mr. UNTERMYER. Is that your form of organization, that you have a board of representatives?

Mr. McCORMACK. Yes, sir.

Mr. UNTERMYER. Consisting of how many men?

Mr. McCORMACK. Fifteen.

Mr. UNTERMYER. Has the curb association a constitution and by-laws?

Mr. McCORMACK. Yes, sir.

Mr. UNTERMYER. Will you please produce a copy of them?

Mr. McCORMACK. Yes [producing paper].

Mr. UNTERMYER. When were they enacted?

Mr. McCORMACK. In the month of January, 1911.

Mr. UNTERMYER. I will ask to have that marked in evidence as Exhibit No. 163.

The paper referred to was marked "Exhibit No. 163, January 7, 1913."

Mr. McCORMACK. I would like to correct that. In the month of March, 1911.

Mr. UNTERMYER. Is it an incorporated association?

Mr. McCORMACK. No.

Mr. UNTERMYER. It is a voluntary association?

Mr. McCORMACK. Yes.

Mr. UNTERMYER. What is its membership?

Mr. McCORMACK. Three hundred and sixteen.

Mr. UNTERMYER. Have you securities listed?

Mr. McCORMACK. Yes, sir.

Mr. UNTERMYER. How many securities are on the list?

Mr. McCORMACK. That I could not say offhand, but about a hundred, I should say.

Mr. UNTERMYER. Where are your quarters?

Mr. McCORMACK. 25 Broad Street.

Mr. UNTERMYER. You mean you have an office there, or room?

Mr. McCORMACK. Executive offices.

Mr. UNTERMYER. The executive offices; but where are the transactions conducted?

Mr. McCORMACK. Out on the curb, on the street.

Mr. UNTERMYER. Out on Broad Street?

Mr. McCORMACK. Yes.

Mr. UNTERMYER. What are the membership fees?

Mr. McCORMACK. \$25 per year.

Mr. UNTERMYER. Is there an initiation fee, too?

Mr. McCORMACK. Yes, sir.

Mr. UNTERMYER. Of how much?

Mr. McCORMACK. \$250.

Mr. UNTERMYER. Were you a member of a committee that had any negotiations with the New York Stock Exchange?

Mr. McCORMACK. Yes, sir.

Mr. UNTERMYER. Or any of its committees, with respect to being allowed to do business?

Mr. McCORMACK. Well, not exactly with respect to being allowed to do business. I was a member of a committee that waited upon them and conferred with a committee of theirs to inform them of our intention of organizing to do business.

Mr. UNTERMYER. On what committee did it wait?

Mr. McCORMACK. The law committee.

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

Mr. McCORMACK. Yes.

Mr. UNTERMYER. Who was the chairman of that committee?

Mr. McCORMACK. Mr. Sturgis.

Mr. UNTERMYER. Were there negotiations between the law committee and representatives of your association, with respect to the doing of business by your association and the conditions under which it should be done.

Mr. McCORMACK. There was with regard to doing business, but not, I think, with regard to the conditions under which it should be done.

Mr. UNTERMYER. Who conducted that negotiation on behalf of your association?

Mr. McCORMACK. Mr. Mendels.

Mr. UNTERMYER. Is he dead now?

Mr. McCORMACK. Yes.

Mr. UNTERMYER. Was there correspondence in connection with it?

Mr. McCORMACK. Some.

Mr. UNTERMYER. Sir?

Mr. McCORMACK. Some.

Mr. UNTERMYER. Have you brought the correspondence?

Mr. McCORMACK. Yes.

Mr. UNTERMYER. Will you please produce it.

Witness produced paper.

Mr. UNTERMYER. How long did that negotiation continue between your company and the law committee of the New York Stock Exchange?

Mr. McCORMACK. We waited upon them in December, 1910, and received a reply from them in January, 1911.

Mr. UNTERMYER. Did the negotiations go back into 1909?

Mr. McCORMACK. Those negotiations were conducted by Mr. Mendels as an agent.

Mr. UNTERMYER. As an agent for whom?

Mr. McCORMACK. The curb market, as it was then constituted.

Mr. UNTERMYER. Is this a copy of the letter from Mr. Mendels to Mr. Sturgis at that time?

Mr. McCORMACK. Yes, sir.

Mr. UNTERMYER. And is this the original letter from Mr. Sturgis to Mr. Mendels, in January, 1911?

Mr. McCORMACK. Yes.

Mr. UNTERMYER. I will ask to have those marked in evidence.

The letters referred to were marked, respectively, Exhibits Nos. 164 and 165.

Mr. UNTERMYER. I will read this one of January 6, 1911, to the committee:

E. S. MENDELS, Esq., *Agent*.

DEAR SIR: I beg to state that while the law committee of the stock exchange assumes no authority or supervision over the members of the curb market or their transactions, they are of the opinion that so long as no dealings are had in securities listed at the stock exchange the curb is justified in making all necessary rulings and laws for their protection.

Following this letter, Exhibit No. 165, did you and your associates start this organization?

Mr. McCORMACK. Yes.

Mr. UNTERMYER. You looked upon that as an authority or permission to go ahead, did you?

Mr. McCORMACK. Yes.

Mr. UNTERMYER. Before going ahead did you have any further conferences with the law committee?

Mr. McCORMACK. No, sir.

Mr. UNTERMYER. Has your associates had any dealings in securities listed on the New York Stock Exchange?

Mr. McCORMACK. Not after they were listed.

Mr. UNTERMYER. That is, up to the time of listing you trade in them, do you not?

Mr. McCORMACK. Yes.

Mr. UNTERMYER. And from the date that the stock exchange puts them on the list you cease trading in them?

Mr. McCORMACK. Yes.

Mr. UNTERMYER. Why is that?

Mr. McCORMACK. Because they are taken into the stock exchange for trading, and the primary market for them is established and maintained there.

Mr. UNTERMYER. So you refrain from dealing in them. It is against your duties to deal in them, is it not?

Mr. McCORMACK. Yes.

Mr. UNTERMYER. That is all.

The CHAIRMAN. The committee will be at recess until 2 o'clock this afternoon.

Thereupon, at 12.45 o'clock p. m., the committee took a recess until 2 o'clock p. m.

AFTER RECESS.

The CHAIRMAN. The committee will come to order and will resume the taking of testimony.

Mr. UNTERMYER. Mr. Chairman, counsel for Mr. Rockefeller has submitted these two affidavits.

The CHAIRMAN. Please read them.

Mr. UNTERMYER (reading):

STATE OF NEW YORK,

City and County of New York:

Walter F. Chappell, being duly sworn, deposes and says:

I am a physician, having my office in the city of New York, at No. 7 East Fifty-fifth Street. I have been in active practice for more than 30 years.

I make a specialty of diseases of the ear and throat. I am professor of clinical laryngology in the College of Physicians and Surgeons, medical department of Columbia University, and am surgeon of the Manhattan Eye, Ear, and Throat Hospital of New York.

During the past 11 years I have been in almost constant attendance upon Mr. William Rockefeller, whose city address is at No. 689 Fifth Avenue, New York.

Mr. Rockefeller has been suffering from a gouty inflammation of the larynx and windpipe, accompanied by swellings on the vocal cords. This has necessitated, at various times, six operations, the last one being of a more serious character. Since this operation Mr. Rockefeller has had intermittent attacks of edema of the larynx, accompanied by some stenosis and spasms. This condition is brought on by talking, excitement, or disturbance of the stomach, and a severe attack would terminate fatally.

Since the last operation Mr. Rockefeller has also been unable to speak above a whisper and can not express himself in that way for more than a few moments with safety. I have advised complete rest of the larynx, or in other words "the silent treatment."

Mr. Rockefeller is in his seventy-second year; and, under my advice he has carefully avoided all excitement or strain since the last operation. It would not only be an act of inhumanity to subject him to the excitement incident to his examination as a witness at this time, but, in my judgment, it would actually endanger his life.

WALTER F. CHAPPELL, M. D.

Subscribed and sworn to before me this 6th day of January, 1913.

[SEAL.]

FREDERICK N. GILBERT,
Notary Public, New York County.

STATE OF NEW YORK.

City and County of New York:

Samuel W. Lambert, being duly sworn, deposes and says:

I am a physician in general practice in the city of New York, having my office at No. 130 East Thirty-fifth Street. I have been continuously in active practice for nearly a quarter of a century. I am now, and since 1904 have been, dean of the College of Physicians and Surgeons, medical department of Columbia University, and I have been professor of therapeutics in the said college since 1903. I have been an attending and consulting physician at the New York Hospital since 1896; and I have been attending physician at St. Luke's Hospital since about 1906.

I have acted as general physician for Mr. William Rockefeller, of No. 689 Fifth Avenue, New York, for about two years last past, having first attended him during an attack of pneumonia.

I have read the affidavit of Dr. Walter F. Chappell, verified on January 6, 1913, and I am familiar with the conditions of Mr. Rockefeller's throat, referred to in the said affidavits, and know that they are therein correctly described.

Mr. Rockefeller has a distinctly pronounced gouty tendency; and a further condition, to which Dr. Chappell does not refer in his affidavit, is the tremor habit or shaking of the head and hands, which has existed ever since I have attended upon Mr. Rockefeller, and is the result of his advanced years and general condition. This shaking of the hand makes it very difficult for him even to sign his name, and impossible for him to write continuously without great effort, for more than a few minutes. In the present highly sensitive and critical condition of his throat, any effort or strain or excitement might produce a condition that would not only imperil Mr. Rockefeller's life, but might very reasonably be expected to cause his sudden death.

SAM'L W. LAMBERT, M. D.

Subscribed and sworn to before me his 6th day of January, 1913.

[SEAL.]

FREDERIC N. GILBERT,
Notary Public, New York County.

The CHAIRMAN. Let the entry be made. The affidavits will be submitted to the committee, and counsel for Mr. Rockefeller will be notified of its action. And in this connection I want to say that that portion of the affidavit of Dr. Chappell, that it would be an act of inhumanity to bring Mr. Rockefeller before the committee, is gratuitous and is aside from the issue. I will state that at the outset the committee concluded that after service or acceptance of service the question of the witnesses's physical condition would be a matter of fact, to be ascertained by the committee through its own agencies and instrumentalities, and by its own expert representatives, should it see fit.

Mr. UNTERMYER. Will Mr. Constantine take the stand?

TESTIMONY OF MR. RICHARD B. CONSTANTINE.

The witness was sworn by the chairman.

Mr. UNTERMYER. What is your occupation, Mr. Constantine?

Mr. CONSTANTINE. Securities.

Mr. UNTERMYER. Where do you live?

Mr. CONSTANTINE. Summit, N. J.

Mr. UNTERMYER. Where is your place of business?

Mr. CONSTANTINE. 74 Broadway.

Mr. UNTERMYER. Do you know Mr. H. W. Tillinghast?

Mr. CONSTANTINE. Yes.

Mr. UNTERMYER. Is he here? Please stand up, Mr. Tillinghast.

Mr. Tillinghast rose.

Mr. CONSTANTINE. Yes.

Mr. UNTERMYER. That is Mr. Tillinghast?

Mr. CONSTANTINE. Yes.

Mr. UNTERMYER. How long have you known him?

Mr. CONSTANTINE. Ten or fifteen years.

Mr. UNTERMYER. What has been his business during that time?

Mr. CONSTANTINE. Insurance.

Mr. UNTERMYER. Has he been connected with any companies?

Mr. CONSTANTINE. Yes; he has been connected with two or three.

Mr. UNTERMYER. With what companies has he been connected?

Mr. CONSTANTINE. The Fidelity & Casualty Co. of New York, the Philadelphia Casualty Co., and the Maryland Casualty Co., to my knowledge.

Mr. UNTERMYER. Did you have a talk with Mr. Tillinghast some time ago; and if so, when, with respect to his having perfected a reference and index system as to loans and applications for loans made by or to any of the clearing house banks and their associated institutions?

Mr. CONSTANTINE. Yes, sir.

Mr. UNTERMYER. When was it?

Mr. CONSTANTINE. About two years ago. A little more, possibly.

Mr. UNTERMYER. Where was it?

Mr. CONSTANTINE. In Philadelphia; at his office in Philadelphia.

Mr. UNTERMYER. Were you calling on him there?

Mr. CONSTANTINE. Yes.

Mr. UNTERMYER. What did he say then as to the existence of a reference and index system that he had prepared, and for whom?

Mr. CONSTANTINE. He said that he had prepared, through the instructions of Mr. Davidson, of Morgan & Co., an index system for the use of the Bankers Trust Co., to tabulate the loans and applications for loans that came in through the various banks with whom they were affiliated.

Mr. UNTERMYER. Did he say who had charge of the system as it had been perfected—what officer of the Bankers Trust Co.?

Mr. CONSTANTINE. The first time he spoke of it he said he was preparing such a system and about completing it. He afterwards said that he had completed it, and he understood that it was to be placed in the hands of Mr. Strong.

Mr. UNTERMYER. Did he tell you what this system would show and what it was intended for?

Mr. CONSTANTINE. Yes.

Mr. UNTERMYER. What did he say on that subject?

Mr. CONSTANTINE. He said it would show all applications for loans, the nature of the loan, and through whom application was

made—through any of the affiliated banks of the Bankers Trust Co.—to or through.

Mr. UNTERMYER. What did he say about it showing all the loans of the banks in the clearing house?

Mr. CONSTANTINE. I do not recall that he said so.

Mr. UNTERMYER. What did he say about showing the loans of affiliated institutions?

Mr. CONSTANTINE. Yes, sir.

Mr. UNTERMYER. Affiliated institutions to what institution?

Mr. CONSTANTINE. Of the Bankers Trust Co.

Mr. UNTERMYER. Did he say whether or not it would include stock exchange loans?

Mr. CONSTANTINE. All loans, as I understood.

Mr. UNTERMYER. What did he say as to whether or not the clearing-house banks reported loans to this central arrangement or agency?

Mr. CONSTANTINE. I do not recall that he said anything about the clearing-house banks. He said that the banks affiliated with the Bankers Trust Co. would report to the Bankers Trust Co. the loans that were made to them—applications for loans.

Mr. UNTERMYER. He told you that he had completed such a system, did he?

Mr. CONSTANTINE. He did.

Mr. UNTERMYER. Did he tell you what he had been paid for it?

Mr. CONSTANTINE. Yes.

Mr. UNTERMYER. What did he say he had been paid for it?

Mr. CONSTANTINE. He said he had been paid \$10,000 for it.

Mr. UNTERMYER. How many times have you talked with him on this subject?

Mr. CONSTANTINE. Twice.

Mr. UNTERMYER. And at what intervals of time?

Mr. CONSTANTINE. It was a matter of weeks; possibly a month or five weeks.

Mr. UNTERMYER. That is all.

Witness excused.

TESTIMONY OF MR. H. W. TILLINGHAST.

The witness was sworn by the chairman.

Mr. UNTERMYER. Where do you reside?

Mr. TILLINGHAST. Devon, Pa.

Mr. UNTERMYER. Did you hear Mr. Constantine's testimony?

Mr. TILLINGHAST. No, sir.

Mr. UNTERMYER. You are a little deaf?

Mr. TILLINGHAST. Yes, sir.

Mr. UNTERMYER. What is your business?

Mr. TILLINGHAST. Insurance adjuster of casualty insurance.

Mr. UNTERMYER. For what company?

Mr. TILLINGHAST. I do it for several companies.

Mr. UNTERMYER. Were you formerly with the Philadelphia Casualty Co.?

Mr. TILLINGHAST. Yes, sir.

Mr. UNTERMYER. And that was merged with the Maryland Casualty Co.?

Mr. TILLINGHAST. No; that went to the Fidelity & Deposit Co. of Baltimore, Md.

Mr. UNTERMYER. Mr. Constantine has testified to a conversation, or to two talks that you had with him about two years ago at your office in Philadelphia. Do you know Mr. Constantine?

Mr. TILLINGHAST. Yes, sir.

Mr. UNTERMYER. How long have you known him?

Mr. TILLINGHAST. I think it is somewhere about eight or ten years. I could not tell you exactly, sir.

Mr. UNTERMYER. Did you have talks with him about two years ago at your office?

Mr. TILLINGHAST. I can not remember having any talk with him at my office at all.

Mr. UNTERMYER. You do not remember whether you did or did not?

Mr. TILLINGHAST. No, sir.

Mr. UNTERMYER. Mr. Constantine said, in effect, that you told him, first, that you were preparing a reference and index system with respect to loans and applications for loans made by and to clearing-house banks or associated or affiliated institutions of the Bankers' Trust Co. Did you have any such talk with him?

Mr. TILLINGHAST. I remember indistinctly some such talk with him, sir.

Mr. UNTERMYER. You remember it indistinctly?

Mr. TILLINGHAST. Indistinctly; yes.

Mr. UNTERMYER. Do you remember telling him that you were preparing such a system which was to go to the Bankers' Trust Co.?

Mr. TILLINGHAST. As nearly as I can remember it, sir, it was brought about in this way. A man that I knew of had had some paper discounted in several banks, making the same statement to several banks, and in making that statement I said that I thought that a card index would check up how many banks a man was getting discounts from.

Mr. UNTERMYER. The question is whether you said to Mr. Constantine in substance that you were preparing such an index system on the retainer of Mr. Davison, of Messrs. Morgan & Co.

Mr. TILLINGHAST. No, sir.

Mr. UNTERMYER. You never said anything of the kind?

Mr. TILLINGHAST. No, sir.

Mr. UNTERMYER. He says you also stated, subsequently, that you had prepared such a system.

Mr. TILLINGHAST. No, sir.

Mr. UNTERMYER. What did you say to him about preparing such a system?

Mr. TILLINGHAST. All I said was that I thought such a system would be a check; that is all I can remember having said.

Mr. UNTERMYER. You mean that your memory is very bad on the subject?

Mr. TILLINGHAST. No, sir; it is not bad on the subject, but it was simply an incident that I did not pass back into my memory in any way.

Mr. UNTERMYER. But the question is, did you prepare such a system?

Mr. TILLINGHAST. No, sir.

Mr. UNTERMYER. And you never had anything to do with such a system?

Mr. TILLINGHAST. No, sir.

Mr. UNTERMYER. And do you remember whether you told Mr. Constantine that you did or not?

Mr. TILLINGHAST. I remember distinctly that I never told him I did. I remember that I had some conversation with him on such a subject.

Mr. UNTERMYER. You had a conversation with him on that subject?

Mr. TILLINGHAST. On some such subject; yes.

Mr. UNTERMYER. You did not tell him anything that was not true, did you?

Mr. TILLINGHAST. No, sir.

Mr. UNTERMYER. But you deny having told him that you had prepared such a system.

Mr. TILLINGHAST. Yes.

Mr. UNTERMYER. You deny having mentioned the name of Mr. Strong, of the Bankers' Trust Co.?

Mr. TILLINGHAST. Yes, sir. I do not know Mr. Strong.

Mr. UNTERMYER. That is all.

Witness excused.

Mr. UNTERMYER. Mr. Chairman, before the examination of Mr. Call, I would like to call attention to some statistics that were introduced here prepared by Mr. Scudder, that purported to show the average balances that were kept by the New York Life Insurance Co., the Mutual Life Insurance Co., the Equitable Life Insurance Co., and the Metropolitan Life Insurance Co. in various banks during certain months of the year 1911, and on the 31st of December, 1911. They were given as the average balance.

The committee has since been advised that they were not the average balances, but that they were the highest balances in those months. The superintendent of insurance of New York has prepared a statement of what were the average balances during those months, and I would like to have it put into the record so that the committee will have the benefit of any corrections that may be suggested from a comparison of the figures.

The CHAIRMAN. These figures are furnished by the proper official of the State, and they will be filed.

The paper referred to was thereupon marked "Exhibit No. 167" and will be found at the end of to-day's proceedings.

TESTIMONY OF JOHN C. M'CALL.

The witness was sworn by the chairman.

Mr. UNTERMYER. You are vice president of the New York Life Insurance Co.

Mr. M'CALL. Second vice president.

Mr. UNTERMYER. And you have been subpoenaed here to produce certain records and papers, have you not?

Mr. McCALL. You have requested them.

Mr. UNTERMYER. Yes; I think you were requested by letter to produce them?

Mr. McCALL. Yes.

Mr. UNTERMYER. The first item of information you were requested to produce was with respect to the proceedings of the annual meetings of the last three years, was it not?

Mr. McCALL. Yes, sir.

Mr. UNTERMYER. Have you that data here?

Mr. McCALL. Not exactly as you asked for it.

Mr. UNTERMYER. Have you extracts from your books?

Mr. McCALL. Yes, sir.

Mr. UNTERMYER. Yours is a mutual company, is it not?

Mr. McCALL. It is; yes, sir.

Mr. UNTERMYER. Taking up the record of the first of these three years, that would be what year?

Mr. McCALL. That would be 1908.

Mr. UNTERMYER. How many policy holders were there outstanding at that time, on the date of the annual meeting of 1908?

Mr. McCALL. Oh, I should say 900,000.

Mr. UNTERMYER. Do your records not show the number of policy holders?

Mr. McCALL. Our records at the office would show that; yes, sir.

Mr. UNTERMYER. Have you not brought that data with you?

Mr. McCALL. No, sir.

Mr. UNTERMYER. Your statement is approximately true, however?

Mr. McCALL. I should say so; yes, sir.

Mr. UNTERMYER. On what date was the annual meeting of 1908?

Mr. McCALL. On the second Wednesday of April.

Mr. UNTERMYER. Have you the proceedings of the meetings there?

Mr. McCALL. I have not got the proceedings of the meeting, Mr. Untermyer. Under the law the superintendent of insurance conducts the elections.

Mr. UNTERMYER. I understand; but you keep the minutes, do you not?

Mr. McCALL. No, sir.

Mr. UNTERMYER. Have you any extracts?

Mr. McCALL. Those minutes are all made, or I presume they are all made, by the inspectors of election. They certify to the board of trustees of the company and also the superintendent of insurance the number of votes cast and for whom the votes were cast.

Mr. UNTERMYER. Have you that certificate here?

Mr. McCALL. I have got a certified copy of the report that was made to our board of trustees for each one of those elections.

Mr. UNTERMYER. How many votes were cast at the meeting of 1908?

Mr. McCALL. There were 62.

Mr. UNTERMYER. That is, 62 policy holders out of 900,000 policy holders voted?

Mr. McCALL. Yes, sir.

Mr. UNTERMYER. Did they vote by proxy?

Mr. McCALL. I do not know.

Mr. UNTERMYER. Have you no means of knowing?

Mr. McCALL. No. You see all of those things—

Mr. UNTERMYER. I say have you no means of knowing?

Mr. McCALL. The poll list is sealed in envelopes, and, under the law, is placed in sealed envelopes, and those envelopes are, in accordance with the law, kept for four months, and not to be opened except by order of the court having jurisdiction.

Mr. UNTERMYER. Does that apply to proxies, too?

Mr. McCALL. It applies to any votes at all that were cast.

Mr. UNTERMYER. Who were the proxies at that meeting? I do not want a history of the whole transaction, because that would take a long while. I want the result.

Mr. McCALL. I understand, but I am trying to tell you why I could not furnish the information you asked.

Mr. UNTERMYER. Very well.

Mr. McCALL. We applied to the superintendent of insurance for authority to open these packages, but the superintendent would not give it to us.

Mr. UNTERMYER. What I would like to know—

Mr. McCALL. I have that correspondence, if you want to see it.

Mr. UNTERMYER. No; what I want to know is whether those 62 policy holders who voted voted by proxies?

Mr. McCALL. I would say that they voted in person.

Mr. UNTERMYER. Were you present at the meeting?

Mr. McCALL. I would not be at all surprised. I can not recall.

Mr. UNTERMYER. Were they agents of the company?

Mr. McCALL. I have no means of determining. I would say, of course, that they must have been policy holders.

Mr. UNTERMYER. But, I say, were they agents of the company?

Mr. McCALL. I have no means of knowing. Those elections are formal propositions, Mr. Untermyer, you know,

Mr. UNTERMYER. As to the election of 1909: How many policy holders voted?

Mr. McCALL. 32.

Mr. UNTERMYER. And how many policy holders were there then?

Mr. McCALL. Approximately the same; about 900,000—somewhere between 900,000 and a million.

Mr. UNTERMYER. Has not the number of policy holders increased in the last two or three years?

Mr. McCALL. No; it is just about the same.

Mr. UNTERMYER. As to those, can you show whether they were agents of the company or not?

Mr. McCALL. I have no means of knowing. In answer to that question I would say that they must have been policy holders. A man can not vote unless—

Mr. UNTERMYER (interposing). I am assuming they were policy holders, but I want to know whether they were policy holders who were general agents of the company.

Mr. McCALL. I do not know. We have no general agents. I would say.

Mr. UNTERMYER. Were they agents of the company?

Mr. McCALL. I have no means of knowing.

Mr. UNTERMYER. Do you know whether they voted by proxy; and if so, to whom the proxy ran?

Mr. McCall. No; I would say that they all voted in person.

Mr. UNTERMYER. That is your recollection?

Mr. McCall. Yes.

Mr. UNTERMYER. As to the meeting of 1910, now?

Mr. McCall. 1911. You know that law was changed, making the elections every two years.

Mr. UNTERMYER. Yes.

Mr. McCall. There were 41 votes cast.

Mr. UNTERMYER. Are your answers with respect to the way in which those votes were cast and by whom and whether they were cast by proxy or not the same as your answers heretofore?

Mr. McCall. I have no means of determining. Of course those were uncontested elections. There was only one ticket to nominate. The election was held in accordance with the rules and regulations of the superintendent of insurance. No ballots were sent out on account of the expense that was involved in sending out the ballots. There was only one ticket nominated, and the policy holders could only vote for the people so nominated.

Mr. UNTERMYER. Have you had any election since?

Mr. McCall. No. We have an election next year. That is also an uncontested election.

Mr. UNTERMYER. The New York Life Insurance Co. has no stock, has it? It has only bonds?

Mr. McCall. It does own stock that it obtained in the reorganization of the Third Avenue Railroad Co.

Mr. UNTERMYER. They had express authority to acquire those?

Mr. McCall. Yes; under section 100 of the insurance law.

Mr. UNTERMYER. I mean apart from that it invests in and holds no stock in corporations?

Mr. McCall. It has not done so since 1899.

Mr. UNTERMYER. Mr. John A. McCall, your father, was president until 1906?

Mr. McCall. He was president until 1906; yes, sir.

Mr. UNTERMYER. And he was succeeded by the present president?

Mr. McCall. No; he was succeeded by Mr. Alexander E. Orr.

Mr. UNTERMYER. And Mr. Orr was president a very short time?

Mr. McCall. About seven or eight months, I should think.

Mr. UNTERMYER. That was following the Armstrong investigation in 1906, was it not?

Mr. McCall. Yes, sir. My father resigned December 31, 1905, and Mr. Orr was elected within a month or so after that, I think probably at the next meeting of the board.

Mr. UNTERMYER. Mr. Orr took office avowedly only temporarily.

Mr. McCall. I think so.

Mr. UNTERMYER. And he was succeeded by the present president?

Mr. McCall. By Mr. Darwin P. Kingsley; yes, sir.

Mr. UNTERMYER. Mr. Kingsley was a son-in-law of Mr. McCall?

Mr. McCall. Yes, sir; he married my sister. He was connected with the company long before my father's death.

Mr. UNTERMYER. And you were, too?

Mr. McCall. Sir?

Mr. UNTERMYER. And you were connected with the company before?

Mr. McCall. Before Mr. Kingsley?

Mr. UNTERMYER. No; whilst your father was with it.

Mr. McCALL. Yes; I have been with the company 14 years.

Mr. UNTERMYER. Was Mr. George W. Perkins an officer of the company?

Mr. McCALL. Yes.

Mr. UNTERMYER. Up to what time?

Mr. McCALL. December, 1905.

Mr. UNTERMYER. Was he at that time a partner in J. P. Morgan & Co.?

Mr. McCALL. Yes.

Mr. UNTERMYER. How long did he remain an officer of the New York Life whilst he was a partner with J. P. Morgan & Co.; do you know?

Mr. McCALL. I should say four or five years, Mr. Untermyer.

Mr. UNTERMYER. He was vice president of the New York Life?

Mr. McCALL. Yes, sir. That was the last office he held. Of course he came up through the ranks. He began as office boy.

Mr. UNTERMYER. His brother is there now?

Mr. McCALL. His brother is dead.

Mr. UNTERMYER. Is he?

Mr. McCALL. Yes.

Mr. UNTERMYER. Recently?

Mr. McCALL. His brother died last January.

Mr. UNTERMYER. Do you know that the superintendent of insurance publishes every year a report that contains an itemized list of all the investments of the life insurance companies in New York State?

Mr. McCALL. Yes.

Mr. UNTERMYER. Have you any personal knowledge of the sources from which the securities that are now held by the New York Life Insurance Co. were purchased—how they were acquired?

Mr. McCALL. No. That is all in the annual report, Mr. Untermyer.

Mr. UNTERMYER. No; that is not the question. The question is not what securities are held—

Mr. McCALL. No.

Mr. UNTERMYER. But from what banking houses or elsewhere they are acquired.

Mr. McCALL. My opinion is—

Mr. UNTERMYER. No; I want to know if you know.

Mr. McCALL. Oh, no.

Mr. UNTERMYER. As to the securities that were on hand at the end of 1911 you would not be able to go through that list and tell us which of them were bought from a given banking house or which were bought from another given banking house?

Mr. McCALL. Our records would indicate that.

Mr. UNTERMYER. But you have not got that data here?

Mr. McCALL. I have not got that in my memory; no, sir. I am not a member of the finance committee.

Mr. UNTERMYER. Who is the chairman of the finance committee?

Mr. McCALL. Mr. Kingsley.

Mr. UNTERMYER. Who are the members of the finance committee?

Mr. McCALL. John Claffin, Mr. Morrison, Mr. Pullyn, Mr. Hepburn, Mr. Willard King—

Mr. UNTERMYER. That is Mr. A. Barton Hepburn?

Mr. McCALL. Yes.

Mr. UNTERMYER. The chairman of the board of directors of the Chase Bank?

Mr. McCALL. I believe so.

Mr. UNTERMYER. And Mr. King is president of the Columbia & Knickerbocker Trust Co.?

Mr. McCALL. Yes.

Mr. UNTERMYER. What other members are there?

Mr. McCALL. Mr. Kingsley.

Mr. UNTERMYER. How many members are there on the committee?

Mr. McCALL. I think there are seven.

Mr. UNTERMYER. I think you have named four.

Mr. McCALL. I have named more than that. Mr. Millburn is one, and Col. Payne.

Mr. UNTERMYER. You mean Mr. John G. Millburn?

Mr. McCALL. Yes.

Mr. UNTERMYER. That is all.

Mr. McCALL. I might say, Mr. Untermeyer, that the reports that we are obliged to furnish the insurance department have the full record of the election under a separate schedule, giving the number of votes and how they were cast, and also an itemized list of the expenses. That is furnished, I think, under Schedule L, and in accordance with section 100 of the insurance law.

Witness excused.

TESTIMONY OF MR. CHARLES A. PEABODY.

The witness was sworn by the chairman.

Mr. UNTERMYER. Are you president of the Mutual Life Insurance Co.?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. You have been president since when?

Mr. PEABODY. Since January 1, 1906.

Mr. UNTERMYER. Prior to that time were you engaged in the practice of law?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. And a member of what firm?

Mr. PEABODY. Baker & Peabody.

Mr. UNTERMYER. Your firm were counsel for the First National Bank and Mr. George F. Baker?

Mr. PEABODY. Yes.

Mr. UNTERMYER. And your partner was related to Mr. Baker. Was he not?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. In what way?

Mr. PEABODY. He is his uncle.

Mr. UNTERMYER. Had you, prior to that time, been a director of the Mutual Life Insurance Co.?

Mr. PEABODY. No, sir.

Mr. UNTERMYER. Had you, prior to that time, any connection with the life-insurance business?

Mr. PEABODY. No, sir.

Mr. UNTERMYER. In any way?

Mr. PEABODY. No, sir.

Mr. UNTERMYER. Who tendered you the position?

Mr. PEABODY. There was a committee of trustees appointed, consisting of Mr. Elbridge T. Gerry and Mr. Stuyvesant Fish. They were the two who called on me and the two with whom I conferred. I do not really know who the other members were.

Mr. UNTERMYER. Was Mr. George F. Baker the chairman of the finance committee at that time?

Mr. PEABODY. He was not the chairman; no, sir. He was a member of the committee, I think. I am not clear as to what took place before I went there, but I think Mr. McCurdy was the chairman.

Mr. UNTERMYER. From the time you went there was George F. Baker chairman of the finance committee?

Mr. PEABODY. No, sir; he has never been chairman since I have been there.

Mr. UNTERMYER. He has been a member of the committee?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. Do you not know whether he was the chairman of the finance committee prior to your connection with the company?

Mr. PEABODY. It is pretty hard to answer as to a negative, but I think Mr. McCurdy was ex officio chairman of all the committees.

Mr. UNTERMYER. Mr. McCurdy resigned when?

Mr. PEABODY. He resigned about the 1st of December, 1905.

Mr. UNTERMYER. That was following the Armstrong investigation?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. Who constituted the finance committee during the first year of your incumbency of the office of president?

Mr. PEABODY. I was the chairman; and the vice president of the company, Mr. McClintock, was a member ex officio; and there were five other members, consisting of Messrs. Baker, Juilliard, Haven, Iselin, and Jarvie.

Mr. UNTERMYER. Have there been any changes in the finance committee since then?

Mr. PEABODY. I beg your pardon. That committee was appointed May 31, 1906.

Mr. UNTERMYER. When you came into office who constituted the committee?

Mr. PEABODY. When I came into office, I really do not know who the former committee had been, but they were largely the same, perhaps all the same.

Mr. UNTERMYER. Have there been any changes since May, 1906, in the finance committee?

Mr. PEABODY. Yes, sir; there has been a change every time we have had an election.

Mr. UNTERMYER. You mean every time you have had an annual election for directors?

Mr. PEABODY. Yes.

Mr. UNTERMYER. How many annual elections have you had since 1906?

Mr. PEABODY. We had an election in 1908, 1909, and 1911.

Mr. UNTERMYER. How many policy holders had the Mutual Life Insurance Co. in 1908, at the time of the annual election?

Mr. PEABODY. About 600,000.

Mr. UNTERMYER. Have you the records here showing how many policy holders participated in that election?

Mr. PEABODY. Yes, sir. In 1908; that is the year about which you desire the information at this time?

Mr. UNTERMYER. Yes.

Mr. PEABODY (continuing). Ninety-three votes were cast.

Mr. UNTERMYER. Have you the list of voters?

Mr. PEABODY. No, sir.

Mr. UNTERMYER. Were they cast in person, or by proxy?

Mr. PEABODY. In person.

Mr. UNTERMYER. All in person?

Mr. PEABODY. All in person.

Mr. UNTERMYER. Can you tell me which of them, if any, were agents of the company or employees in the building?

Mr. PEABODY. I do not know who they were at all.

Mr. UNTERMYER. Were you present at the meeting?

Mr. PEABODY. No, sir. I have never attended an annual meeting.

Mr. UNTERMYER. The next meeting, you say, was in 1909?

Mr. PEABODY. 1909; yes.

Mr. UNTERMYER. What was the number of policy holders of the company in 1909?

Mr. PEABODY. Approximately the same.

Mr. UNTERMYER. And how many votes were cast by the policy holders?

Mr. PEABODY. One hundred and thirty.

Mr. UNTERMYER. Can you give us any further information as to the personnel or identity of those policy holders?

Mr. PEABODY. No, sir.

Mr. UNTERMYER. Or whether they were employees in the building?

Mr. PEABODY. No, sir; I do not know who they were.

Mr. UNTERMYER. Do you know how many of your employees are policy holders in the company?

Mr. PEABODY. I do not. I think they all are.

Mr. UNTERMYER. You do not know?

Mr. PEABODY. I do not know; no sir.

Mr. UNTERMYER. What number of policy holders had you in 1911, at the time of the annual election?

Mr. PEABODY. More, but I do not know how many more.

Mr. UNTERMYER. Between six and seven hundred thousand?

Mr. PEABODY. Somewhere about that; yes.

Mr. UNTERMYER. How many participated in that election?

Mr. PEABODY. Thirteen thousand. I think the highest vote cast was 13,527. It varied slightly for different trustees.

Mr. UNTERMYER. Was there a contest?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. And did the administration send out proxies?

Mr. PEABODY. Yes, sir; the company did.

Mr. UNTERMYER. The company sent out proxies in favor of the administration ticket?

Mr. PEABODY. It sent out ballots; ballots containing both the administration ticket and the opposition ticket.

Mr. UNTERMYER. And they were sent to all the policy holders?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. Upward of 600,000?

Mr. PEABODY. Yes.

Mr. UNTERMYER. Did the agents take part in collecting those ballots?

Mr. PEABODY. No, sir.

Mr. UNTERMYER. Do you know whether the agents solicited the policy holders?

Mr. PEABODY. I do not know anything about that, of my own knowledge. I have no doubt that the agents were interested in the election.

Mr. UNTERMYER. How many agents were there?

Mr. PEABODY. I do not know.

Mr. UNTERMYER. How many agents have you?

Mr. PEABODY. Several thousand, all over the world.

Mr. UNTERMYER. And in an election they would have a very potent influence, would they not?

Mr. PEABODY. Some men have a potent influence and some do not.

Mr. UNTERMYER. But the agents, taken as a body, would necessarily have a very potent influence in an election?

Mr. PEABODY. They are very much like other people.

Mr. UNTERMYER. I say, taken as a body, several thousand of them, is it fair to say that they would necessarily have a potent influence in an election?

Mr. PEABODY. I really do not know. It would not influence me to have an agent ask me to vote. I do not know why it should influence anyone.

Mr. UNTERMYER. At any rate, as the result of that campaign in the contested election, you say there were 13,000 and odd votes cast?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. Out of upward of 600,000?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. Does that indicate to your mind at all, Mr. Peabody, that a mutual company is largely a self-perpetuating body?

Mr. PEABODY. No; I do not see how it does.

Mr. UNTERMYER. You do not think so?

Mr. PEABODY. No, sir; I do not.

Mr. UNTERMYER. Do you know of any instance in the history of life insurance in which an existing management, with the agency force behind it, has ever been dislodged?

Mr. PEABODY. I know of one instance in which it was largely thought that it was going to be dislodged.

Mr. UNTERMYER. Do you know of any instance in which it was ever dislodged?

Mr. PEABODY. No, sir.

Mr. UNTERMYER. In 1906 was there not legislation which required the life-insurance companies in New York to dispose of their stocks within a given number of years?

Mr. PEABODY. Yes.

Mr. UNTERMYER. What was the time within which they were to be disposed of?

Mr. PEABODY. Within five years.

Mr. UNTERMYER. That time expired when?

Mr. PEABODY. The term was extended before that five years expired.

Mr. UNTERMYER. What was the date of the expiration of that?

Mr. PEABODY. It would have been January 1, 1912.

Mr. UNTERMYER. When was the time extended?

Mr. PEABODY. The preceding session of the legislature.

Mr. UNTERMYER. In 1911?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. For how long a time?

Mr. PEABODY. For five years more.

Mr. UNTERMYER. The Mutual Life owns now. does it not, stock in the Bank of Commerce?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. The National Bank of Commerce of New York?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. Do you remember how much stock it owns in that bank?

Mr. PEABODY. Seventeen thousand two hundred and ninety-four shares.

Mr. UNTERMYER. It had a larger holding in 1906, did it not?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. And did not the Equitable Life also have a large holding in the same bank?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. Did the time come when both those companies parted with a portion of their holding?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. Do you remember in what year that was?

Mr. PEABODY. In April, 1911.

Mr. UNTERMYER. With how much of its stock did it part in that year?

Mr. PEABODY. 17,294 shares.

Mr. UNTERMYER. That is, with one-half of its holdings?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. And the Equitable Life parted also with one-half of its holdings?

Mr. PEABODY. Well, I understand so.

Mr. UNTERMYER. Was that sale made pursuant to a written agreement?

Mr. PEABODY. No, sir.

Mr. UNTERMYER. No writing?

Mr. PEABODY. No; but there may have been a formal letter of confirmation.

Mr. UNTERMYER. Have you that here?

Mr. PEABODY. Yes.

Mr. UNTERMYER. Is there any objection to putting that in?

Mr. PEABODY. No.

Mr. UNTERMYER. I will read it into the record, so you can have the original back:

MARCH 21, 1911.

CHARLES A. PEABODY, Esq.,
President Mutual Life Insurance Co. of New York, New York City.

DEAR SIR: I beg to confirm the purchase by me of 17,294 shares of the capital stock of the National Bank of Commerce in New York at \$200 per share. all as stated in your letter of the 21st instant.

Yours, very truly,

JAMES STILLMAN,
By J. A. STILLMAN, Attorney.

Also on the same date:

JAMES STILLMAN, Esq.

DEAR SIR: Referring to your proposal to buy 17,294 shares of the capital stock of the National Bank of Commerce in New York at \$200 per share from this company. I beg to confirm the sale of same to you at the above price, the sale to be closed and check to be delivered as of April 3, 1911.

Are these part of the papers, too?

Mr. PEABODY. That is a memorandum of the committee's action, I fancy. I did not look at it.

Mr. UNTERMYER. Do you know for whose account that stock was bought?

Mr. PEABODY. James Stillman.

Mr. UNTERMYER. Do you know in what way that stock was distributed—to whom it went?

Mr. PEABODY. No. As far as I know Mr. Stillman has it now. I never heard anything more than that.

Mr. UNTERMYER. Do you know whether the Equitable stock was bought at the same time?

Mr. PEABODY. About that time. I do not know about the exact date.

Mr. UNTERMYER. Do you know by whom that was bought?

Mr. PEABODY. No, sir.

Mr. UNTERMYER. Was not the stock that Mr. Stillman bought divided up with Mr. Morgan?

Mr. PEABODY. I don't know.

Mr. UNTERMYER. Have you brought with you any record showing to whom you gave proxies from time to time to vote on this Bank of Commerce stock?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. Will you please produce that?

Mr. PEABODY. Yes.

Mr. UNTERMYER. Was Mr. James Stillman president of the National City Bank at this time or chairman of the board of directors?

Mr. PEABODY. I think chairman of the board of directors. The proxies of the National Bank of Commerce you want?

Mr. UNTERMYER. Yes.

Mr. PEABODY. In 1911 we gave our proxy to W. A. Day, W. S. Johnson, and James Timson.

Mr. UNTERMYER. Who were they?

Mr. PEABODY. James Timson is one of the officers of the Mutual Life Insurance Co.

Mr. UNTERMYER. Who is W. A. Day?

Mr. PEABODY. I fancy that is Judge Day.

Mr. UNTERMYER. President of the Equitable Life?

Mr. PEABODY. I assume that; yes, sir.

Mr. UNTERMYER. Who is the third proxy?

Mr. PEABODY. I do not know who W. S. Johnson is; whoever were named in the printed proxy we gave the proxy to them as representing the administration of the bank.

Mr. UNTERMYER. To whom did you give the proxy in 1912?

Mr. PEABODY. James Timson, F. F. Flagg, and H. C. Swords.

Mr. UNTERMYER. Who were they?

Mr. PEABODY. They were named by the bank officers in their printed proxy as their chosen proxies.

Mr. UNTERMYER. And in the preceding year?

Mr. PEABODY. I only have the last three years.

Mr. UNTERMYER. What is the third year?

Mr. PEABODY. 1911.

Mr. UNTERMYER. You gave us 1911 and 1912, I think.

Mr. PEABODY. Oh, 1913, the proxy has already been issued for the election of this year, issued last year, the same as the preceding: James Timson, F. F. Flagg, and H. C. Swords.

Mr. UNTERMYER. When you say you gave it to the administration of the bank, do you know who controls the stock of the Bank of Commerce?

Mr. PEABODY. No, sir.

Mr. UNTERMYER. Do you know where its control lies?

Mr. PEABODY. No, sir. I never footed up the holdings.

I do not know about that. When I said the administration of the bank I meant the formal proxy which we were asked by the officers of the bank to give.

Mr. UNTERMYER. The Mutual Life also owns stock of the First National Bank of New York, does it not?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. It has owned it for many years?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. Have you made any effort to dispose of it?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. Sir?

Mr. PEABODY. Yes, sir; we have from time to time put a price on it.

Mr. UNTERMYER. What is the market price now?

Mr. PEABODY. I do not know.

Mr. UNTERMYER. About \$1,030 a share, is it not?

Mr. PEABODY. Very likely. I do not think there is any market most of the time; it is not sold.

Mr. UNTERMYER. There is an active market, is there not, for preferred stock in Chicago & North Western Railroad Co.?

Mr. PEABODY. Yes, sir; more or less active.

Mr. UNTERMYER. Has any effort been made to sell that?

Mr. PEABODY. No effort except that we are waiting for what we consider a proper price, and we have made quite a large profit by waiting.

Mr. UNTERMYER. Is the Chicago & North Western preferred stock worth more to-day than it was a year ago?

Mr. PEABODY. I do not know.

Mr. UNTERMYER. Is it not worth considerably less?

Mr. PEABODY. Very likely. I do not know. Most things are worth less now.

Mr. UNTERMYER. How about Chicago, Milwaukee & St. Paul preferred? That is an active stock, is it not?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. Salable at any time in the market?

Mr. PEABODY. Yes; we could sell it at a price at any time.

Mr. UNTERMYER. And you have 19,000 shares of that?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. And so on; you have a large number of shares in railway and other corporations that are active shares, being dealt in on the market, have you not?

Mr. PEABODY. Yes, sir. We also have four years by law in which to sell them; don't forget that.

Mr. UNTERMYER. Well you had five years, did you not?

Mr. PEABODY. Yes, sir; and we were entitled to five more.

Mr. UNTERMYER. Was it stated or represented to the legislature that you had not been able to dispose of your stock?

Mr. PEABODY. Not been able to? No, sir.

Mr. UNTERMYER. You are a large holder in the Consolidated Gas Co., of New York?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. Fifty thousand shares, are you not?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. Who controls that company? Do you know?

Mr. PEABODY. I do not know.

Mr. UNTERMYER. The City Bank controls it—the City Bank people.

Mr. PEABODY. Not that I know of.

Mr. UNTERMYER. You do not know that?

Mr. PEABODY. No.

Mr. UNTERMYER. Don't you know anything about the control of the institutions in which the Mutual Life has these large holdings?

Mr. PEABODY. I know who are the executives and directors.

Mr. UNTERMYER. But you do not know who are the controlling forces?

Mr. PEABODY. The stockholders of the company?

Mr. UNTERMYER. No; I do not mean the stockholders, but the people who dominate and control the management.

Mr. PEABODY. I assume they are the stockholders.

Mr. UNTERMYER. You do not know of such a thing as the management of a great corporation being dominated by certain people in control of the management, do you?

Mr. PEABODY. No; I have not any knowledge of that.

Mr. UNTERMYER. You have never heard of such a thing?

Mr. PEABODY. Oh, I have heard of such things.

Mr. UNTERMYER. Take, for instance, the First National Bank. Do you know who dominated the management of that bank?

Mr. PEABODY. I know who is the most influential officer.

Mr. UNTERMYER. Who is that?

Mr. PEABODY. Mr. Baker.

Mr. UNTERMYER. Who is the most influential officer in the Consolidated Gas Co.?

Mr. PEABODY. I do not know.

Mr. UNTERMYER. Have you any knowledge of the sources through which the various bond holdings and assets of the Mutual Life Insurance Co. came into the possession of the company prior to your connection with it.

Mr. PEABODY. No; I have not, personally. It could all be ascertained. It is all in our books, I think.

Mr. UNTERMYER. You mean the banking house or other concern from which it was purchased would appear in your books?

Mr. PEABODY. Yes.

Mr. UNTERMYER. Are many of the bonds that are now held bonds that were held when you came there?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. The bulk of them, would you say?

Mr. PEABODY. Well, I suppose more than half; yes; I do not really know what the proportion would be.

Mr. UNTERMYER. Are they largely securities of corporations in which Mr. Baker was interested or in which he was an officer or director?

Mr. PEABODY. Not that I know of. I do not think so.

Mr. UNTERMYER. Don't you know they are?

Mr. PEABODY. No; I am quite sure they are not all.

Mr. UNTERMYER. Have you looked over the list?

Mr. PEABODY. With that view; no, sir. I never looked over it to see that.

Mr. UNTERMYER. Well, let us see. Mr. Baker is a director in the New York Central and the New York, New Haven & Hartford?

Mr. PEABODY. I think so.

Mr. UNTERMYER. You are very large holders there, are you not? Mr. Baker is a director in most of the anthracite coal roads; that is, the Reading and Erie—

Mr. PEABODY. Very likely. I do not know about the Reading; he is in the Erie.

Mr. UNTERMYER. He is in the Reading, the Erie, the Lehigh Valley, and the Susquehanna & Western.

Mr. PEABODY. I do not know. He is in the Erie; I know that.

Mr. UNTERMYER. You are large holders of those securities, are you not?

Mr. PEABODY. Of the Erie?

Mr. UNTERMYER. Yes.

Mr. PEABODY. We have bonds; yes, sir. I have not a list here. You have it there; whatever that says was right. We also have large holdings in a long list of railroads in which Mr. Baker is not interested at all.

Mr. UNTERMYER. Is not Mr. Morgan interested in most of those?

Mr. PEABODY. No; I think not.

Mr. UNTERMYER. Well, let us see.

Mr. PEABODY. The Brooklyn City Railroad Co., 1,247 shares, I do not think either of them has any interest in.

Mr. UNTERMYER. How many shares in the Brooklyn City, did you say?

Mr. PEABODY. I should say 124,700.

Mr. UNTERMYER. Those have been held for a good many years, have they not?

Mr. PEABODY. Before I came there. I do not know how long.

Mr. UNTERMYER. They amount to a little over \$2,000,000?

Mr. PEABODY. Very likely.

Mr. UNTERMYER. You have securities of the Southern Railway, for instance, have you not, to the extent of something like seven or eight million dollars?

Mr. PEABODY. I think so. I do not know the exact amount.

Mr. UNTERMYER. Mr. Baker is a voting trustee of that railroad?

Mr. PEABODY. I think so.

Mr. UNTERMYER. And largely interested.

Mr. PEABODY. I do not know about that. I suppose so.

Mr. UNTERMYER. Understand me, Mr. Peabody, nothing in my questions is meant to imply that there is any impropriety in these investments; I am simply getting at the facts.

Mr. PEABODY. That is right, Mr. Untermeyer, but it also should be remembered that I do not know what Mr. Baker holds. I have no knowledge as to his personal affairs.

Mr. UNTERMYER. The committee is not endeavoring to characterize any of these transactions, but is simply looking for the facts.

Mr. PEABODY. As to the facts as to Mr. Baker's personal affairs, I have no knowledge.

Mr. UNTERMYER. You have been his counsel, or were his counsel, for many years?

Mr. PEABODY. Yes, sir; but I did not buy his securities. I wish I had.

Mr. UNTERMYER. The Louisville & Nashville—is he interested in that?

Mr. PEABODY. Is he?

Mr. UNTERMYER. Was he?

Mr. PEABODY. Not that I know of.

Mr. UNTERMYER. That is owned by the Atlantic Coast Line?

Mr. PEABODY. Yes.

Mr. UNTERMYER. And is Mr. Baker interested in the Atlantic Coast Line?

Mr. PEABODY. Not that I know of.

Mr. UNTERMYER. J. P. Morgan & Co. are, are they not?

Mr. PEABODY. Not that I know of.

Mr. UNTERMYER. Did not they buy the Louisville & Nashville Railroad for the Atlantic Coast Line?

Mr. PEABODY. I think they sold it to the Atlantic Coast Line.

Mr. UNTERMYER. They bought it for the Atlantic Coast Line and sold it to the Atlantic Coast Line?

Mr. PEABODY. I do not know for what purpose they bought it. I think they sold it to the Atlantic Coast Line.

Mr. UNTERMYER. What is the amount, approximately, of new investments that the Mutual Life makes year by year?

Mr. PEABODY. Including mortgages, real estate mortgages?

Mr. UNTERMYER. No; I mean on securities, not real estate.

Mr. PEABODY. Probably from 15,000,000 to 20,000,000.

Mr. UNTERMYER. What are its total funds available for all new investments, approximately?

Mr. PEABODY. I think the natural increase is probably from twenty to twenty-five millions a year, and then—

Mr. UNTERMYER. Then the turning in of old investments?

Mr. PEABODY. The turning in of old investments would probably make ten to fifteen millions more.

Mr. UNTERMYER. Do you know how much money at approximately present value the Mutual Life Co. has invested in stock, which it is required to dispose of within a given time?

Mr. PEABODY. You mean the present market values?

Mr. UNTERMYER. Not exactly the present market values, but the market values at the last time they were computed?

Mr. PEABODY. I have a list of all stock owned on December 31, with their par value. I do not think I have the market value.

Mr. UNTERMYER. The par value would be no criterion?

Mr. PEABODY. No; it would not indicate much.

Mr. UNTERMYER. For instance, the par value of the First National Bank stock?

Mr. PEABODY. I have the market value here, Mr. Untermyer. on December 31, 1911.

Mr. UNTERMYER. That will do.

Mr. PEABODY. 1911; I have all the market values stated here, but they are not footed up.

Mr. UNTERMYER. Perhaps you will supply that.

Mr. PEABODY. We will supply that later; yes.

Mr. UNTERMYER. Will you have one of your men do that for us?

Mr. PEABODY. I beg your pardon. The market value of railroad stocks on December 31, 1911, was \$24,779,082; the market value of bank and trust company stocks on December 31, 1911, was \$10,849,050; and the market value of miscellaneous stocks on December 31, 1911, was \$3,205,310.

Mr. UNTERMYER. At what figure does that include the First National Bank stock, if it is separated?

Mr. PEABODY. The First National Bank stock is 1,000 shares: the total value, \$1,020,000.

Mr. UNTERMYER. That is at the rate of \$1,020 a share?

Mr. PEABODY. Yes. Since that date there have been various sales of course, during the past year. That is given a year ago.

Mr. UNTERMYER. Were you a party to the application to the Legislature of the State of New York for a further extension of time within which to dispose of the stocks of the company?

Mr. PEABODY. I was a party to a request for a repeal of the compulsory sale law; I was opposed to an extension.

Mr. UNTERMYER. You wanted the life insurance companies to have returned to them the right to invest in stocks?

Mr. PEABODY. No; I beg your pardon. I wanted the life insurance companies to have the feature compelling the sale of their stock repealed, in order that we might sell them to advantage.

Mr. UNTERMYER. Having had five years in which to do that, and there being a large number of marketable railroad stocks, what was the difficulty in doing that within the five years?

Mr. PEABODY. One difficulty was that early in the five years there came on a panic which killed the value of almost everything for sale, and the market and the community had not recovered from that panic for a year or two later as the expiration of the five years approached. That was one difficulty.

Mr. UNTERMYER. That would bring you up to the end of 1908, before the recovery from the panic of 1907?

Mr. PEABODY. It brought us further than that, I think, before there was a recovery.

Mr. UNTERMYER. You were in favor of a further extension?

Mr. PEABODY. No; I was in favor of a repeal.

Mr. UNTERMYER. Of a repeal—

Mr. PEABODY. Of the compulsory feature of the law.

Mr. UNTERMYER. Of the compulsory sale of your stocks?

Mr. PEABODY. Yes, sir.

Mr. UNTERMYER. You wanted the privilege to continue holding them without any limitation?

Mr. PEABODY. We wanted the privilege of selling them without having the compulsory feature kill the price.

Mr. UNTERMYER. Do you not think the prohibition against life insurance companies engaging in stock sales and purchases was a good one?

Mr. PEABODY. I think the provision prohibiting life insurance companies from purchasing stocks was a very good one.

Mr. UNTERMYER. I think that is all, unless there is something else you wish to say.

Mr. PEABODY. I do not think of anything else.

Witness excused.

Mr. UNTERMYER. Judge Day, will you take the stand?

TESTIMONY OF MR. WILLIAM A. DAY.

The witness was sworn by the chairman.

Mr. UNTERMYER. Judge Day, you are president of the Equitable Life Assurance Society, are you not?

Mr. DAY. I am.

Mr. UNTERMYER. You succeeded Mr. Paul Morton, who died, did you not?

Mr. DAY. Yes.

Mr. UNTERMYER. In what year was that?

Mr. DAY. 1911. He died two years ago this month, and I was vice president at the time.

Mr. UNTERMYER. You had been vice president, had you not?

Mr. DAY. Yes.

Mr. UNTERMYER. For how long?

Mr. DAY. Since about five years, then, in 1906; I think February, 1906.

Mr. UNTERMYER. Since Mr. Hyde resigned?

Mr. DAY. Yes.

Mr. UNTERMYER. Had you gone in with Mr. Morton?

Mr. DAY. Yes; I went in in July of 1905, about a month after Mr. Morton entered the society.

Mr. UNTERMYER. On whose invitation did you go into the society?

Mr. DAY. Mr. Paul Morton's.

Mr. UNTERMYER. The Equitable Life or its controlling stockholders have inaugurated a sort of policy holders' representation, have they not?

Mr. DAY. Yes, sir.

Mr. UNTERMYER. And has the majority of the stock been trusteeed for that purpose?

Mr. DAY. Yes; that was the object stated in the deed of trust. The charter was amended in 1906. Under its provision the policy holders were to elect, and did elect, 28 directors out of the 52, and the share owners elected 24.

Mr. UNTERMYER. In practical effect, Judge Day, do you get any policy holders interested in those elections?

Mr. DAY. Well, no; practically, no.

Mr. UNTERMYER. Practically, they do not take any interest?

Mr. DAY. No. At every election—we have elections held annually in December, and seven policy-holder directors are voted for and six stockholder directors; that is to say, 13 are elected each year.

Mr. UNTERMYER. But in effect, who nominates those policy-holder directors?

Mr. DAY. The trustees—Grover Cleveland was the chairman of the original board—Grover Cleveland, Morgan J. O'Brien, and George Westinghouse. They nominated them in the first instance; and they called on the policy holders from all over the United States to nominate to them men that they thought were fit and competent to represent them.

Mr. UNTERMYER. They could not get any interest worked up in it?

Mr. DAY. They sent out, I think, something over 400,000 invitations, and they got perhaps 20,000 replies. And I think they sent out stamped envelopes for the replies. And from that list they made nominations, and the policy holders since then have reelected their nominees.

Mr. UNTERMYER. But the policy holders since then, have they responded at all?

Mr. DAY. No; I do not think we have ever had more than 25 to 50 policy holders actually voting at the elections.

Mr. UNTERMYER. Twenty-five to fifty policy holders out of how many hundred thousand?

Mr. DAY. Over 500,000.

Mr. UNTERMYER. So that, as a matter of fact, is it not true that a mutual company is in effect a self-perpetuating management more so even than a stock company?

Mr. DAY. Our company, the Equitable, is mutual in its operation, but its structure is stock and policy holders.

Mr. UNTERMYER. That I understand, but I am speaking of your experience, from what you know of your own company and from what you know of other companies. Is it not your experience that a mutual form of organization is a self-perpetuating form of organization?

Mr. DAY. You know, Mr. Untermeyer, I have had no experience whatever with any company except the Equitable. I am able to say this, that from my experience and observation the policy holders do not take any active interest in the election of directors unless the policy of the management is challenged, and it has not been challenged in our society since Mr. Cleveland became chairman of the board of trustees.

Mr. UNTERMYER. But is it not your experience, if you have any, that even when it is challenged you can not get them interested?

Mr. DAY. Yes; in our company, speaking for the Equitable, we did try that and failed to get them. We sent out once, I think, nearly 500,000 ballots with envelopes addressed for the policy holders to vote, containing the ballots and the envelope already addressed, and to that we received—I think there were about 22,000 of the 500,000 that voted.

Mr. UNTERMYER. And it is not——

Mr. DAY. And we made extraordinary efforts at that time to get out a vote, but were unable to get it out.

Mr. UNTERMYER. And did you utilize your agency force to assist you?

Mr. DAY. I think not, Mr. Untermeyer. I do not think we ever have done that.

Mr. UNTERMYER. How large is your agency force?

Mr. DAY. Oh. 5,000 anyhow; possibly more. That election, though, was conducted under the auspices of the department of insurance as well as the board of trustees, of which Mr. Grover Cleveland was chairman.

Mr. UNTERMYER. Now, I want to ask you a few questions as to your company's stock holdings. Your company holds how many shares of stock in the Bank of Commerce?

Mr. DAY. The Bank of Commerce?

Mr. UNTERMYER. Yes.

Mr. DAY. We now have about 25,000—just 25,000.

Mr. UNTERMYER. You did hold 50,000?

Mr. DAY. Yes; we did have 50,200 and something.

Mr. UNTERMYER. When did you dispose of the remaining 25,000?

Mr. DAY. It was in April, I think, of last year.

Mr. UNTERMYER. Have you the correspondence bearing upon that subject?

Mr. DAY. No, Mr. Untermeyer, I do not remember that there was any correspondence.

Mr. UNTERMYER. With whom did you negotiate?

Mr. DAY. George F. Baker. If there was any correspondence it was destroyed in our fire. All of my correspondence was destroyed.

Mr. UNTERMYER. Your building was destroyed by fire within a year?

Mr. DAY. Yes, sir; just about a year ago, the 9th day of January last year. But I can tell you the terms of the sale.

Mr. UNTERMYER. Please state them.

Mr. DAY. Mr. Baker came to see me and made a definite proposition for the purchase of half of our holdings. I submitted his proposition to our finance committee, and the finance committee authorized me to accept his offer.

Mr. UNTERMYER. That was in March or April?

Mr. DAY. It probably began in March; that was probably in March.

Mr. UNTERMYER. It was closed in April?

Mr. DAY. It was closed in April.

Mr. UNTERMYER. About the same time as the Mutual transaction?

Mr. DAY. I did not notice what date Mr. Peabody stated, but it was about that time.

Mr. UNTERMYER. I think that was the 21st of March.

Mr. DAY. Our records show that the sale was actually made or completed and it was paid for on the 3d of April. We had considerable negotiations. I was endeavoring to get a higher price than he was willing to pay.

Mr. UNTERMYER. Who constituted the finance committee?

Mr. DAY. E. B. Thomas, T. De Witt Cuyler, Frank S. Witherbee, James McMahan, former president of the Hibernia Savings Bank.

Mr. UNTERMYER. At that time Mr. Morgan owned the control of the stock, did he not?

Mr. DAY. Yes.

Mr. UNTERMYER. He had acquired it in 1910?

Mr. DAY. Yes; that is right.

Mr. UNTERMYER. And when you negotiated with Mr. Baker to buy this stock from the Equitable; this 25,200 shares; the transaction amounted to about \$5,000,000, did it not?

Mr. DAY. Yes.

Mr. UNTERMYER. Did you know that Mr. Baker had any present or contingent interest in the Equitable?

Mr. DAY. No; I never heard of his having any interest in the Equitable.

Mr. UNTERMYER. On what date did you say that transaction was?

Mr. DAY. The 3d of April, that it was paid for. That is the day it was completed.

Mr. UNTERMYER. When was it negotiated for?

Mr. DAY. The negotiations were running along for, I should say, perhaps two weeks.

Mr. UNTERMYER. It appears from the correspondence here in evidence, Mr. Day, that on the 21st of April, 1911, Mr. Morgan, jr., wrote Mr. Baker, confirming various conversations that had been had previous to that time, to the effect that Mr. Morgan had the right at any time to call on Mr. Baker and take one-fourth of the stock of the Equitable Life. That was a transaction you did not know anything about?

Mr. DAY. No; I never heard of that until——

Mr. UNTERMYER. Until it came out in the testimony?

Mr. DAY. I never heard about it before.

Mr. UNTERMYER. You did not know that Mr. Stillman had a like arrangement?

Mr. DAY. No; I did not. There was no——

Mr. UNTERMYER. Would that have affected your judgment, Judge Day, in selling stock to Mr. Baker, if you had understood he had a call on the stock of the Equitable Life that owned the Bank of Commerce stock?

Mr. DAY. It would not. I will answer that in this way, Mr. Untermyer: I think I got all that it was possible for the Equitable to get for the National Bank of Commerce stock at the time this sale was made.

Mr. UNTERMYER. Well, you have got more of it, have you not?

Mr. DAY. Yes; we have 25,000 more.

Mr. UNTERMYER. Have you sought to sell it?

Mr. DAY. No; because we have been hoping, and we hoped at that time, that Mr. Baker's entry into the National Bank of Commerce would result in putting more life into the bank with the result that the remaining shares would bring a higher price.

Mr. UNTERMYER. For whose account did you understand Mr. Baker had bought the stock?

Mr. DAY. I do not think I ever knew.

Mr. UNTERMYER. Did you not know that Mr. Morgan was a large stockholder in the Bank of Commerce?

Mr. DAY. Well, I knew that that was the popular belief; I thought he was a holder, yes; but I do not know how large. I probably did know at some time.

Mr. UNTERMYER. Do you know whether this purchase by Mr. Baker was made for the joint account of himself and Mr. Morgan?

Mr. DAY. No.

Mr. UNTERMYER. You do not know whether it was or not?

Mr. DAY. No; I do not know whether it was or not.

Mr. UNTERMYER. You do not know whether Mr. Stillman's purchase was made in the same way from the Mutual Life?

Mr. DAY. Indeed I did not know it was Mr. Stillman who had purchased from the Mutual Life.

Mr. UNTERMYER. Did you know for whose account the purchase was made?

Mr. DAY. Do you mean from the Mutual?

Mr. UNTERMYER. From the Mutual.

Mr. DAY. No.

Mr. UNTERMYER. Well, you knew, did you not, that prior to the time when the Mutual Life and the Equitable Life parted with one-half of their Bank of Commerce stock holdings, that both Mr. Morgan and Mr. Baker were interested in the Bank of Commerce?

Mr. DAY. I knew Mr. Morgan was.

Mr. UNTERMYER. Did you not know of Mr. Ryan's holdings in the Bank of Commerce?

Mr. DAY. No; I do not think I knew that at the time.

Mr. UNTERMYER. You knew Mr. Ryan was interested.

Mr. DAY. Yes. I knew he had been.

Mr. UNTERMYER. Do you know whether he still is?

Mr. DAY. I presume he is, but I do not know. I had supposed he was.

Mr. UNTERMYER. Do you know whether he parted with any of his holdings to Messrs. Baker, Morgan, and Stillman?

Mr. DAY. I do not know; I have no information at all on that point.

Mr. UNTERMYER. Are you a director in the Bank of Commerce?

Mr. DAY. Yes; as representing the Equitable.

Mr. UNTERMYER. Representing your stock?

Mr. DAY. Representing the Equitable stock.

Mr. UNTERMYER. Mr. Morgan has 51 per cent of the Equitable?

Mr. DAY. Yes, that is what his holding is; yes, 51 per cent.

Mr. UNTERMYER. Is the rest of the stock scattered?

Mr. DAY. Yes; I should say there are probably—there are 1,000 shares in all, and Mr. Morgan has—

Mr. UNTERMYER. Mr. Morgan has 510?

Mr. DAY. Five hundred and something. Just from recollection, I should think there were 20 or 30 other owners, the largest one probably 50 or 60 shares, and from that down to 1 share and 5 shares.

Mr. UNTERMYER. Do you know what the present price of the Bank of Commerce stock is?

Mr. DAY. No; I think it is about—the quotations are nominal. You know what a nominal quotation is. I do not think there are any actual sales.

Mr. UNTERMYER. There is not very much dealing?

Mr. DAY. No, very little.

Mr. UNTERMYER. What are the prices?

Mr. DAY. The last I recall was about 205.

Mr. UNTERMYER. 205?

Mr. DAY. Yes.

Mr. UNTERMYER. It has a capital of how much?

Mr. DAY. Twenty-five million.

Mr. UNTERMYER. 25,000,000?

Mr. DAY. Yes; 25,000,000 and 20,000,000 surplus.

Mr. UNTERMYER. The book value is 200?

Mr. DAY. Yes.

Mr. UNTERMYER. Are you not mistaken? Is not the surplus only 10,000,000?

Mr. DAY. No; I think its surplus is nearly 20,000,000.

Mr. UNTERMYER. And it is one of the great Wall Street banks?

Mr. DAY. It is one of the great banks of the United States and has been. It has extraordinary resources.

Mr. UNTERMYER. It has deposits of how much?

Mr. DAY. I ought to know, and I have known, but I could not answer offhand.

Mr. UNTERMYER. Something over 200,000,000?

Mr. DAY. I do not think as much as that, but that is a matter of public record, easy to obtain. I could furnish it to you.

Mr. UNTERMYER. Yes; we have the data here. To whom have you been giving proxies to vote on this stock?

Mr. DAY. Usually where we give them at all, we give them to the proxy committee of the bank.

Mr. UNTERMYER. To those designated by the board of directors?

Mr. DAY. Yes.

Mr. UNTERMYER. That is, the board of directors names the people who are to gather proxies, and you hand your proxies to them to vote your stock?

Mr. DAY. Ordinarily, yes. If there was any question about the management, it would be different.

Mr. UNTERMYER. But there has not been any such question?

Mr. DAY. No; not on any of those we have.

Mr. UNTERMYER. Have you any instance in mind in which you did not give your proxy to the management?

Mr. DAY. No; I do not recall any.

Mr. UNTERMYER. It is a common custom for you, is it, to give your proxies to the people who are designated by the board of directors of the company?

Mr. DAY. Yes; unless there is some question raised, we would do that.

Mr. UNTERMYER. And you do not know of any instance where any question has been raised since you have been president of the Equitable Life?

Mr. DAY. No; I do not recall any now. Certainly none in the last two years.

Mr. UNTERMYER. Do you know how large the interests of Messrs. Morgan, Baker, Stillman, and Ryan are in the Bank of Commerce?

Mr. DAY. No; I do not.

Mr. UNTERMYER. They have amounted to an effective control, have they not, so far as management is concerned?

Mr. DAY. There has been no change in the management at all, except that when Mr. Snyder resigned the vice president was elected in his place.

Mr. UNTERMYER. Do you not know that a number of Morgan directors went in?

Mr. DAY. I think that was before my time. I have only been a director since Mr. Paul Morton's decease.

Mr. UNTERMYER. Were you not a director when you were vice president?

Mr. DAY. No; I think not. I think I succeeded Mr. Paul Morton on that board. I am not sure about that; I do not recall.

Mr. UNTERMYER. Mr. J. P. Morgan, jr., I think, and Mr. Davison are members of the board, are they not?

Mr. DAY. Yes; J. P. Morgan, jr., is a member of the board, and H. P. Davison is a member.

Mr. UNTERMYER. And the Baker interests are represented by Mr. Baker and Mr. Hine, are they not?

Mr. DAY. Mr. Hine is a member of the board.

Mr. UNTERMYER. And the City Bank is represented by Mr. Vanderlip, is it not?

Mr. DAY. Mr. Vanderlip is also a member of the board.

Mr. UNTERMYER. Don't you know, Judge Day, what interests dominate that bank and its management?

Mr. DAY. No; I do not.

Mr. UNTERMYER. From the constitution of its board and the ownership of its stock?

Mr. DAY. Well, I do not recall—

Mr. UNTERMYER. Or have you not been very active in it?

Mr. DAY. No; I have not been active in it.

Mr. UNTERMYER. Have not taken any interest in it?

Mr. DAY. Yes; I have attended a number of meetings of the board. I am not an officer and not on any of the committees. I have been attending since Mr. Morton's death. I do not think I was a member of the board prior to his decease.

Mr. UNTERMYER. How can the Bank of Commerce be fairly expected to compete with the City Bank or the First National Bank, Judge Day, when the interests that are in the First National Bank and on its board are also on the board of the Bank of Commerce?

Mr. DAY. Well, I sincerely believe that Mr. Alexander is doing his best to make a good showing for the National Bank of Commerce. He was just recently elected president.

Mr. UNTERMYER. I know he is recently elected, but how can competition in the true sense of the word possibly exist between the two banks with such identity of stock interests and of management in the board? Does not that seem to you an impossibility?

Mr. DAY. I do not think I am competent to speak to that, Mr. Untermeyer.

Mr. UNTERMYER. You do not think you could pass any judgment on a situation of that kind?

Mr. DAY. I do not think I know enough about the operations of the bank; indeed, I do not.

Mr. UNTERMYER. Very well; I will not press it. Were you in favor of the extension of the time limit for the disposition of stocks by the life insurance companies?

Mr. DAY. No.

Mr. UNTERMYER. You thought they ought to be closed out?

Mr. DAY. No; I thought this: I wrote a letter—I never appeared before the New York Legislature in respect to legislation at all—but I did write a letter setting out that in my opinion the stocks which the life insurance companies held generally were of a class of stocks for which there was no market, or an exceedingly slow market, or a market for a very limited amount. That particularly applied to bank and trust company stocks; and that the mandate of the legislature to sell before the 1st day of January, 1911, had operated as a cloud, and I really believed that, and it retarded their sale. There are very few people who are competent to buy those high-priced trust company stocks, for example, and high-priced bank stocks. I felt that the law was a sound one prohibiting life insurance companies from purchasing stocks, but I did think they ought to be permitted to dispose of them in their own way, without a cloud on the title.

Mr. UNTERMYER. Don't you think the law would be just as sound with respect to banks, prohibiting them from being investors or speculators in stock?

Mr. DAY. I think it is perfectly sound regarding insurance companies.

Mr. UNTERMYER. What about a bank?

Mr. DAY. I came to that conclusion in 1907, in the panic, that an insurance company ought not to own any bank stock; it ought not to be interested in sustaining any moneyed institution.

Mr. UNTERMYER. And does not that same argument apply to banks? Why should they be permitted to use depositors' money in buying stocks for a rise or a fall, instead of keeping their money liquid, for the use of their customers?

Mr. DAY. There is a great deal in that argument, Mr. Untermyer.

Mr. UNTERMYER. That is as far as you would like to go just now?

Mr. DAY. Yes; I would rather not express any opinion on the other question.

Mr. UNTERMYER. As to some of the stocks the Equitable bought, they were quite liquid and readily disposable?

Mr. DAY. Yes; some, at a price.

Mr. UNTERMYER. Take, for instance, Chicago, Milwaukee & St. Paul preferred; that is an investment stock, is it not?

Mr. DAY. Yes.

Mr. UNTERMYER. It does not fluctuate much in value?

Mr. DAY. No; but there is not a very great market for it, either.

Mr. UNTERMYER. Well, in the course of five years it would be easy to get rid of 2,000 shares, would it not?

Mr. DAY. Yes; but we all felt, and felt so in good faith, that if we put off the sale the price would rally and we would get more for it.

Mr. UNTERMYER. But instead of that, they have gone down?

Mr. DAY. They have gone on down; yes. I doubt whether we would have sold that National Bank of Commerce stock when we did but for the expiration of the time limit in which it would have become a misdemeanor if we did not dispose of it.

Mr. UNTERMYER. It was a good thing that you did?

Mr. DAY. Yes; it turned out that it was a good thing that we did.

Mr. UNTERMYER. It would be a good thing if you had sold the others?

Mr. DAY. Yes. I do not say we could find a market for all. I would not buy a share of stock for an insurance company, if the law was repealed.

Mr. UNTERMYER. There was no difficulty in selling 2,200 shares of Illinois Central 12 months ago?

Mr. DAY. No; but at a price at which we should have had to sustain a loss if we had sold most of those stocks.

Mr. UNTERMYER. It has been selling and could have been sold at a much higher price than you could get now?

Mr. DAY. Yes. When we sold the Mercantile Trust Co. stock we got a higher price than we could have gotten at the time the mandate to sell was passed.

Mr. UNTERMYER. I want to ask you a few questions about the sale of the Mercantile Trust stock. Has Mr. Peabody gone? I wanted to ask him a few questions, too.

With whom did you negotiate for the sale of the Mercantile Trust to the Bankers' Trust?

Mr. DAY. We did not sell to the Bankers' Trust. The sale was made to Benjamin Strong, jr.

Mr. UNTERMYER. Well, he was representing the Bankers' Trust, was he not?

Mr. DAY. I did not so understand.

Mr. UNTERMYER. He is president of the Bankers' Trust?

Mr. DAY. No; he is vice president.

Mr. UNTERMYER. He is vice president, and his father-in-law, Mr. Converse, is the nominal president?

Mr. DAY. Yes.

Mr. UNTERMYER. But he is the active president?

Mr. DAY. But I did not understand from conversations with him that he was buying for the Bankers' Trust.

Mr. UNTERMYER. Well, you negotiated with him, in any event?

Mr. DAY. Yes.

Mr. UNTERMYER. Did anybody else take part in the negotiation on the part of the Equitable Life?

Mr. DAY. Only our finance committee. I was the spokesman, and I was the mouthpiece, but I reported the conversations I had on the subject to the finance committee.

Mr. UNTERMYER. You did not know the purchase was being made on behalf of and for the account of the Bankers' Trust?

Mr. DAY. No; I did not.

Mr. UNTERMYER. Who did you suppose was buying that large block of stock?

Mr. DAY. Well, Mr. Strong disclosed to me the names of some of the men who were acting with him.

Mr. UNTERMYER. What was the amount involved?

Mr. DAY. Nine millions, I think.

Mr. UNTERMYER. You knew Mr. Strong was not buying it for his own account?

Mr. DAY. Oh, no; I knew he was buying on account of himself and others.

Mr. UNTERMYER. Did you know that the Bankers' Trust was then operating under a voting trust?

Mr. DAY. I did not know it until I saw it in the newspapers.

Mr. UNTERMYER. When was this Mercantile Trust sale?

Mr. DAY. The sale was concluded as of the 30th of June, 1911.

Mr. UNTERMYER. Mr. Morgan was then in control of the stock of the Equitable, was he not?

Mr. DAY. Yes; Mr. Morgan owned a majority of the shares of the Equitable Life.

Mr. UNTERMYER. You say at that time you did not know that Mr. Morgan was a voting trustee or a member of the firm was a voting trustee also in the Bankers' Trust?

Mr. DAY. No; I did not know anything about it, nor was there any reason why I should know.

Mr. UNTERMYER. Being down town in that section of the city and being largely engaged in these financial affairs on behalf of the insurance company, you did not know that the Bankers' Trust was under a voting trust?

Mr. DAY. No.

Mr. UNTERMYER. That was not a thing generally known?

Mr. DAY. It was not a thing I would have any occasion to know, Mr. Untermeyer.

Mr. UNTERMYER. The Equitable Life is a very large depositor of the Bankers' Trust, is it not?

Mr. DAY. It was not before—

Mr. UNTERMYER. It is now, is it not?

Mr. DAY. Yes; but—

Mr. UNTERMYER. It has been for the past 18 months?

Mr. DAY. It has since the sale.

Mr. UNTERMYER. Your account went over to the Bankers' Trust?

Mr. DAY. Yes; our account in the Mercantile Trust Co. We deposited more largely in that company than in any other, and when they merged or consolidated they carried our account with it.

Mr. UNTERMYER. You keep from \$5,000,000 to \$10,000,000 in the Bankers' Trust?

Mr. DAY. We did for a time there, and that was due to the very fact we sold about between \$20,000,000 and \$25,000,000 of stock—

Mr. UNTERMYER. But you keep a regular balance of some millions, do you not?

Mr. DAY. No; not a regular balance.

Mr. UNTERMYER. In the Bankers' Trust?

Mr. DAY. No. The average balance—we have not increased our balance by reason of the merger, but it has increased because our cash has increased from the enormous sales of stock in the past year. We have sold about \$25,000,000, and we have had an abnormal balance by reason of forced sale of these stocks.

Mr. UNTERMYER. But do you not invest your money when you get money?

Mr. DAY. As rapidly as we can safely.

Mr. UNTERMYER. What is your average balance in the Bankers' Trust? It is a few millions always, is it not?

Mr. DAY. I should say the average balance has been for some time, and will be from this on, perhaps, somewhere from \$1,500,000 to \$2,000,000.

Mr. UNTERMYER. And in the Bank of Commerce it is about as large?

Mr. DAY. No. It will not be as large as that, perhaps half on an average.

Mr. UNTERMYER. At any rate, being a large depositor in the Bankers' Trust, and familiar with what is going on on the Street, can you tell us whether it was generally known that there was such a thing as a voting trust of the Bankers' Trust Co.?

Mr. DAY. You naturally would suppose, I have no doubt, Mr. Untermyer, that because we buy a great many securities, and we do a large life insurance business, that I am familiar with the operations on Wall Street. I am not, not as familiar as you would suppose.

Mr. UNTERMYER. You knew the Guaranty Trust Co. was also being operated under a voting trust?

Mr. DAY. No.

Mr. UNTERMYER. You did not know that?

Mr. DAY. No; but I answer as to that, that I know of no reason why I should have been informed of it.

Mr. UNTERMYER. Do you take part in the purchase and sale of securities of your company?

Mr. DAY. Yes.

Mr. UNTERMYER. And you come into contact with financiers?

Mr. DAY. Well, many of them. I am chairman of our finance committee.

Mr. UNTERMYER. Yes; you are chairman of the finance committee and are in constant touch with the financial world.

Mr. DAY. Yes; in the class of securities we deal in.

Mr. UNTERMYER. But you are in constant touch with bankers who have securities to sell?

Mr. DAY. Yes; those who have them to sell to us.

Mr. UNTERMYER. In the ordinary course of things you would be quite as well informed as to what was going on in the Street as most men, would you not, in that neighborhood, who come in contact with financial men?

Mr. DAY. Yes; except I have nothing to do with stock exchange transactions.

Mr. UNTERMYER. When the fact came out, when it was disclosed that these two great trust companies were operating under voting trusts in the way that has been proven, was not that a surprise even to the Street?

Mr. DAY. It was new to me.

Mr. UNTERMYER. From the comment you heard, and from discussions with people, did you not find it was new to almost everybody else?

Mr. DAY. I think the newspapers said something to that effect.

Mr. UNTERMYER. Said it was new?

Mr. DAY. Yes; I think so.

Mr. UNTERMYER. No; but I do not care about that part of it. The question is whether the people down there in that neighborhood with whom you come in contact generally regarded it as new?

Mr. DAY. Well, it was new to me.

Mr. UNTERMYER. Did you ascertain that that condition had been existing for about nine years?

Mr. DAY. I read what appeared in the newspapers that was developed by this committee, that was my information.

Mr. UNTERMYER. Did you know anything about the way or the source or the banking houses or otherwise from which securities, bonds, and other securities now held by the Equitable Life were acquired?

Mr. DAY. How they were acquired?

Mr. UNTERMYER. Yes; prior to the time you came into the management?

Mr. DAY. No.

Mr. UNTERMYER. Do you know through whose influence they were acquired, or by whom they were sold to the company?

Mr. DAY. No; only from hearsay. I do not know.

Mr. UNTERMYER. You do not know personally?

Mr. DAY. No; but I know pretty well how they have been acquired since.

Mr. UNTERMYER. Yes; I understand. That is since——

Mr. DAY. 1906. I have been a member of the finance committee since 1906.

Mr. UNTERMYER. I think that is all, Judge Day.

Witness excused.

TESTIMONY OF FREDERICK H. ECKER.

The witness was sworn by the chairman.

Mr. UNTERMYER. You are an officer of the Metropolitan Life Insurance Co., are you not?

Mr. ECKER. Yes.

Mr. UNTERMYER. What office do you hold?

Mr. ECKER. Treasurer.

Mr. UNTERMYER. How long have you been connected with the Metropolitan Life?

Mr. ECKER. Nearly 30 years.

Mr. UNTERMYER. That is a mutual company, is it not?

Mr. ECKER. No; it is not.

Mr. UNTERMYER. No; that is a stock company.

Mr. ECKER. Right.

Mr. UNTERMYER. Do the policy holders vote?

Mr. ECKER. They do.

Mr. UNTERMYER. They are supposed to vote, are they not? How many of them do?

Mr. ECKER. I suggest that on the subject of the inquiry as it relates to the election of directors that Mr. Woodward is here and acts as secretary of those stockholders' meetings, and perhaps could more accurately answer those questions.

Mr. UNTERMYER. You are not familiar with that part of it?

Mr. ECKER. To some extent, but not as familiar as Mr. Woodward is.

Mr. UNTERMYER. Very well, we will inquire of Mr. Woodward. Does your company hold stocks?

Mr. ECKER. Yes.

Mr. UNTERMYER. In various corporations?

Mr. ECKER. Yes.

Mr. UNTERMYER. And has it parted with much of the stockholdings it had in 1906, when the law was passed?

Mr. ECKER. Well, it has sold some.

Mr. UNTERMYER. How much has it parted with?

Mr. ECKER. I have a list here. I have not added it up; possibly between 2,500 and 3,000 shares of different stocks.

Mr. UNTERMYER. Altogether?

Mr. ECKER. Altogether.

Mr. UNTERMYER. Out of a holding of how many thousand shares has it parted with 2,500 to 3,000 shares since January, 1906?

Mr. ECKER. I would not like to answer that accurately. I have a list of our present stockholding, and I could give you approximately the number of shares; about 40,000, I should think, we have left. I have not counted it up.

Mr. UNTERMYER. You have 40,000 left out of about 42,000 which you had in 1906?

Mr. ECKER. Something like that, I should think, without making the addition.

Mr. UNTERMYER. And what is the market value of the stock which you disposed of; what did it amount to in dollars and cents, as compared with the market value of the stock still held?

Mr. ECKER. I should think we might have sold about 20 per cent—25 per cent.

Mr. UNTERMYER. If you have sold 2,500 out of 45,000 that would be about 5 per cent, would it not?

Mr. ECKER. Yes; but—

Mr. UNTERMYER. What were the stocks which you sold?

Mr. ECKER. We sold the holdings we had in 1906 of the National Bank of Commerce, of Kansas City, Mo.; of the Franklin Trust Co., of Brooklyn; of the Peoples' Trust Co., of Brooklyn; and the Peoples' State Bank, which was formerly the State Savings Bank, of Detroit; the Federal Trust Co, of Newark; the Howard National Bank, of Burlington; and we have doubtless sold other stocks, and my answer would be quite uncertain as to the total number of stocks sold, because I was not asked to bring any except the bank stocks that have been sold in the three years, and I have not a memorandum of all of the stocks which have been sold.

Mr. UNTERMYER. Then you can not tell us in dollars and cents what sales you have made since 1906?

Mr. ECKER. Not in dollars and cents; no.

Mr. UNTERMYER. Nor the amount still held in dollars and cents?

Mr. ECKER. As to par value I can, and I can tell you approximately the market value.

Mr. UNTERMYER. No. The par value would not be of any use.

Mr. ECKER. The par value would be about \$5,844,000, and the market value between seven and eight million dollars.

Mr. UNTERMYER. Many of these stocks you still hold are stocks with a ready market, are they not?

Mr. ECKER. No; not at the price they cost the company.

Mr. UNTERMYER. Do you ever expect to get back the price it cost the company?

Mr. ECKER. Many of them we do.

Mr. UNTERMYER. Some of them you do not expect to get a fraction back, do you?

Mr. ECKER. There may be one or two.

Mr. UNTERMYER. The Allis-Chalmers, for instance, which cost the company about \$655,000, you do not expect to get 10 cents on a dollar, do you?

Mr. ECKER. We would be very fortunate if we got back our original investment in Allis-Chalmers.

Mr. UNTERMYER. I say, you would be very fortunate if you got 10 cents on a dollar, would you not?

Mr. ECKER. I would not say that.

Mr. UNTERMYER. Is not that the fact?

Mr. ECKER. No; I should not think so.

Mr. UNTERMYER. Have you not had to pay an assessment?

Mr. ECKER. Yes.

Mr. UNTERMYER. And the present market value of those stocks, deducting the assessment you have paid, would not give you 5 cents on the dollar which you paid for them?

Mr. ECKER. It would not.

Mr. UNTERMYER. Are there not a number of these stocks which you hold that are marketable stocks and could have been sold at any time within this period?

Mr. ECKER. Yes; at a price.

Mr. UNTERMYER. They could have been sold at a price better than you can get for them now?

Mr. ECKER. Not in all cases.

Mr. UNTERMYER. Well, in what case, for instance, could not they have been so sold?

Mr. ECKER. Lake Shore & Michigan Southern, for instance.

Mr. UNTERMYER. Has not the Lake Shore & Michigan Southern been higher in market price than it is to-day?

Mr. ECKER. I should say not.

Mr. UNTERMYER. You think not?

Mr. ECKER. I think not.

Mr. UNTERMYER. What is the price to-day?

Mr. ECKER. The last sale that I know of was 464.

Mr. UNTERMYER. Yes, and how long ago was that?

Mr. ECKER. Last fall, within six months, I think.

Mr. UNTERMYER. Are you in favor of life insurance companies purchasing stock?

Mr. ECKER. I am not.

Mr. UNTERMYER. You are against it, are you?

Mr. ECKER. I think it would be unwise.

Mr. UNTERMYER. As long as they were purchasing stock, it kept them, to a certain extent, in speculation, did it not?

Mr. ECKER. It might. I can not say that it did, with our company. There are some investment stocks that are very excellent investments.

Mr. UNTERMYER. Do you know in what way these bonds were bought that are listed in the superintendent of insurance's report?

Mr. ECKER. I am very familiar with all the purchases since I was made treasurer.

Mr. UNTERMYER. When were you made treasurer?

Mr. ECKER. Early in 1906.

Mr. UNTERMYER. Since then have the purchases been made under your direction?

Mr. ECKER. In every instance, I believe.

Mr. UNTERMYER. Are there any bankers on your finance committee?

Mr. ECKER. Yes.

Mr. UNTERMYER. How many?

Mr. ECKER. One bank president and one ex-bank president.

Mr. UNTERMYER. Who is the bank president?

Mr. ECKER. Mr. Ollesheimer, president of the Metropolitan Bank.

Mr. UNTERMYER. The Metropolitan Bank is a bank in which the Metropolitan Life has a large stock interest, is it not?

Mr. ECKER. It has.

Mr. UNTERMYER. Your stock interest there amounts to 10,400 shares, or thereabouts, does it not?

Mr. ECKER. That is right.

Mr. UNTERMYER. And what is the total capital stock of the company?

Mr. ECKER. \$2,000,000.

Mr. UNTERMYER. So that you have a clear control of that bank?

Mr. ECKER. We have.

Mr. UNTERMYER. Is that a national bank?

Mr. ECKER. No; it is a State bank. It is not a very large institution.

Mr. UNTERMYER. You have interests in other banking institutions, have you not? That is, your company has?

Mr. ECKER. Yes; a small interest, however.

Mr. UNTERMYER. Well, in the Central Trust Co.; that is not a small interest, is it?

Mr. ECKER. One hundred and forty shares.

Mr. UNTERMYER. Yes, but worth how much money?

Mr. ECKER. It is worth \$1,000 a share; \$140,000.

Mr. UNTERMYER. Do you approve of insurance companies controlling banks?

Mr. ECKER. It is a matter to which I have never given any consideration.

Mr. UNTERMYER. How many policy holders have you in the Metropolitan Life?

Mr. ECKER. In the neighborhood of 13,000,000 of policies.

Mr. UNTERMYER. Thirteen million policies; and how many policy holders?

Mr. ECKER. I suppose about 8,000,000. Is that right, Mr. Woodward?

Mr. WOODWARD. Between 8,000,000 and 9,000,000.

Mr. UNTERMYER. Well, we will take Mr. Woodward now. Will you take the stand, Mr. Woodward?

Witness excused.

TESTIMONY OF MR. GEORGE B. WOODWARD.

The witness was sworn by the chairman.

Mr. UNTERMYER. Are you secretary of the Metropolitan Life Insurance Co.?

Mr. WOODWARD. No; third vice president.

Mr. UNTERMYER. Are you in immediate charge of the conduct of elections?

Mr. WOODWARD. I have been elected for the last three or four years secretary of the meeting.

Mr. UNTERMYER. Of the annual meeting?

Mr. WOODWARD. Of the annual meeting.

Mr. UNTERMYER. Do the policy holders vote at those meetings?

Mr. WOODWARD. A good many vote by mail.

Mr. UNTERMYER. Do you send out notices?

Mr. WOODWARD. We send out ballots to the ordinary policy holders, with a stamped envelope addressed to the inspectors of elections.

Mr. UNTERMYER. Have you records here showing how many votes were cast at those elections?

Mr. WOODWARD. Yes. Do you want 1910 first?

Mr. UNTERMYER. If you please.

Mr. WOODWARD. The number of votes varies, according to the popularity of the candidate; but I will take the first one on the list, because I take it you do not want me to read each one—

Mr. UNTERMYER. Yes; we are interested in seeing the difference in the popularity of the candidates; so if there is any discrimination on that subject, we would like to see where it lies.

Mr. WOODWARD. At the 1910 meeting there were 10,848 votes cast in person, and they were all cast for the regular nominees.

Mr. UNTERMYER. There were no favorites there, were there?

Mr. WOODWARD. Yes; that comes later. I am giving you the votes in person.

Mr. UNTERMYER. Let us stop there. You say there were 10,000 votes cast in person?

Mr. WOODWARD. Yes.

Mr. UNTERMYER. You mean by policy holders who attended?

Mr. WOODWARD. No; stockholders.

Mr. UNTERMYER. Stockholders?

Mr. WOODWARD. The stockholders' and policy holders' votes are all in together.

Mr. UNTERMYER. There are how many shares of stock in this company—20,000, are there not?

Mr. WOODWARD. Eighty thousand.

Mr. UNTERMYER. Eighty thousand quarter shares?

Mr. WOODWARD. Eighty thousand.

Mr. UNTERMYER. Eighty thousand shares of stock?

Mr. WOODWARD. Yes; the par value is 25.

Mr. UNTERMYER. I do not want to know anything about the stockholders' votes. We are talking now about the policy holders' votes. Have you no record there of the number of policy holders' votes?

Mr. WOODWARD. Yes.

Mr. UNTERMYER. When you stated that there were 10,000 and odd votes, you did not mean that there were that number of policy holders' votes in person?

Mr. WOODWARD. No; that is the personal stock vote. Then by proxy there were 66,547, nearly all of which was a stock vote.

Mr. UNTERMYER. That is all stock?

Mr. WOODWARD. No; there may be a few individual votes by proxy in that column.

Mr. UNTERMYER. You mean a few policy holders?

Mr. WOODWARD. That sent in proxies.

Mr. UNTERMYER. Do you know whether there are any?

Mr. WOODWARD. I can estimate, because I thought you would ask that question—

Mr. UNTERMYER. No; I do not want estimates, but want to know directly.

Mr. WOODWARD. I do not know.

Mr. UNTERMYER. Then you do not know of any policy holders?

Mr. WOODWARD. Yes; I do know; but you will not let me state it approximately. I know there were some.

Mr. UNTERMYER. I will let you state what you know, but there is no use of your guessing, if you have no record and nothing to tell.

Mr. WOODWARD. If you will let me tell you how I make it up, then you can leave it out of the record, if you do not want it. There are 66,547 proxy votes turned in by the inspectors of election. Now, I know that there were cast by the president 66,476 proxy votes given to him, because I asked him.

Mr. UNTERMYER. Those are stockholders?

Mr. WOODWARD. Those are stockholders. That leaves 71 votes that were undoubtedly proxies, but I have no proof of it.

Mr. UNTERMYER. So your inference or impression is that there were 71 policy holders that voted at that election?

Mr. WOODWARD. That it not all. Then we had 8,677 votes by mail for the president. John R. Hegeman.

Mr. UNTERMYER. Those are policy holders?

Mr. WOODWARD. Those are policy holders.

Mr. UNTERMYER. Eight thousand six hundred and seventy-seven?

Mr. WOODWARD. Eight thousand six hundred and seventy-seven. For the next candidate. Thomas L. James, 8,667; for Edward C. Wallace, 8,682; Joseph P. Knapp, 8,676; Haley Fiske, 8,646; George H. Gaston, 8,672; Stewart L. Woodford, 8,661; Benjamin De F. Curtiss, 8,635; James M. Craig, 8,677; George B. Woodward, 8,675; John R. Hegeman, jr., 8,652; Thomas H. Hubbard, 8,661; John W. Hollenbeck, 8,618; William H. Crocker, 8,648; Henry Ollesheimer, 8,610; Morgan J. O'Brien, 8,642; Frederick H. Ecker, 8,637.

Mr. UNTERMYER. Those are policy holders?

Mr. WOODWARD. Those are policy holders.

Mr. UNTERMYER. And there are how many policy holders?

Mr. WOODWARD. There are probably between eight and nine million individual.

Mr. UNTERMYER. Did you send out stamped envelopes to all those eight or nine million policy holders?

Mr. WOODWARD. No; only the policy holders in the ordinary department.

Mr. UNTERMYER. You sent out stamped envelopes to them?

Mr. WOODWARD. Yes, sir.

Mr. UNTERMYER. And those are the replies you got?

Mr. WOODWARD. Those were the votes that came back.

Mr. UNTERMYER. Did you instruct your agents or notify them that there was to be an election?

Mr. WOODWARD. We notify the agents every year.

Mr. UNTERMYER. How many agents have you?

Mr. WOODWARD. We have about 10,000. We do not notify the 10,000. We notify what we call the superintendents, each of whom has a staff under him.

Mr. UNTERMYER. How many of those did you notify?

Mr. WOODWARD. About 350.

Mr. UNTERMYER. Did they assist in getting these ballots?

Mr. WOODWARD. That I do not know.

Mr. UNTERMYER. With the aid of an agency force of 10,000, was that the total result you were able to get in the way of policy holders?

Mr. WOODWARD. Well, I do not think we called on the agency force, except by circular letter, telling them the policy holders could vote if they wanted to, and if they wanted to, what they were to do.

Mr. UNTERMYER. I understood you to say you did not know whether the superintendents had instructed their agents to assist in getting the vote.

Mr. WOODWARD. I do not; but you asked me if that was all we could get by doing that.

Mr. UNTERMYER. When was the next election?

Mr. WOODWARD. 1911.

Mr. UNTERMYER. How many policy holders voted then? You need not go through the whole list, but just tell us.

Mr. WOODWARD. Twenty-eight thousand six hundred and twenty-seven was the vote cast for Mr. Hegeman by mail.

Mr. UNTERMYER. Those are policy holders, are they?

Mr. WOODWARD. Yes, sir.

Mr. UNTERMYER. And was that about the highest vote, or in that neighborhood?

Mr. WOODWARD. That is the highest vote of anyone.

Mr. UNTERMYER. How many of those, if you know, were turned in by agents or superintendents?

Mr. WOODWARD. I do not know. I think nearly all of them came by mail, because they come addressed to the inspectors of elections in sealed envelopes, and are opened by the inspectors.

Mr. UNTERMYER. But do not they come inclosed in a letter from your superintendents at times?

Mr. WOODWARD. No. I would not say they never did, but a very large majority of them come in separate envelopes addressed to the inspectors of election.

Mr. UNTERMYER. Do not your superintendents also collect them and send them on?

Mr. WOODWARD. Very few.

Mr. UNTERMYER. How many?

Mr. WOODWARD. I could not give you any idea, but very few.

Mr. UNTERMYER. How about 1911?

Mr. WOODWARD. I guess that was 1911, was it not?

Mr. UNTERMYER. You said 1910, I think.

Mr. WOODWARD. Well, I brought three here.

Mr. UNTERMYER. You have only given us two.

Mr. WOODWARD. I will give you the last one. By mail the highest number was for the president again, Mr. John R. Hegeman—83,986.

Mr. UNTERMYER. Now, can you tell us how many of those came from your superintendents?

Mr. WOODWARD. No.

Mr. UNTERMYER. Do you know whether you issued any circulars to your superintendents?

Mr. WOODWARD. Yes, sir; the same one that we have issued every year.

Mr. UNTERMYER. Have you a copy of it?

Mr. WOODWARD. Yes.

Mr. UNTERMYER. Would you please let us have it?

Mr. WOODWARD. Yes [producing paper].

Mr. UNTERMYER. That may be marked in evidence.

The paper referred to was marked "Exhibit No. 168."

Mr. UNTERMYER. These proxies and ballots were sent to your superintendents, were they not?

Mr. WOODWARD. Yes, sir; and also to all the ordinary policy holders by mail.

Mr. UNTERMYER. For what purpose were they sent to your superintendents?

Mr. WOODWARD. In order that policy holders might vote, if they wished to, as stated in the circular letter.

Mr. UNTERMYER. Were they not sent to your superintendents in order to have them solicit the policy holders?

Mr. WOODWARD. No, sir.

Mr. UNTERMYER. Have you read this circular?

Mr. WOODWARD. Yes.

Mr. UNTERMYER. Of the 83,000 votes, is there anybody who can tell us how many came in response to those circular letters from your superintendents?

Mr. WOODWARD. No, sir.

Mr. UNTERMYER. Or can you give us no idea?

Mr. WOODWARD. Nobody.

Mr. UNTERMYER. Do you know to what extent your superintendents through their agency forces canvassed and solicited the ballots and proxies?

Mr. WOODWARD. No.

Mr. UNTERMYER. That is all.

Mr. CHAIRMAN. The committee will take a recess until to-morrow at 11 o'clock for the resumption of testimony. I will ask the members to remain for a short conference.

Thereupon, at 4.45 o'clock p. m., the committee adjourned until to-morrow morning, January 8, 1913, at 11 o'clock.

EXHIBIT No. 154, JANUARY 7, 1913.

Total amount of deposits with J. P. Morgan & Co.:

On Jan. 1, 1912-----	\$103, 177, 603. 49
On Nov. 1, 1912-----	113, 345, 500. 00

Total amount of deposits with Drexel & Co.:

On Jan. 1, 1912-----	43, 532, 889. 66
On Nov. 1, 1912-----	49, 146, 319. 65

EXHIBIT No. 155, JANUARY 7, 1913.

DECEMBER 30, 1912.

NAMES OF ALL INTERSTATE CORPORATIONS HAVING DEPOSITS WITH J. P. MORGAN & Co. UPON WHOSE BOARDS THE FIRM IS REPRESENTED, INCLUDING ALL OTHER INTERSTATE CORPORATIONS UPON WHOSE BOARDS THE NEW YORK MEMBERS ARE REPRESENTED.

	Depositors.
Alaska Development & Mineral Co.....	Yes.
Alaska Steamship Co.....	No.
Adams Express Co.....	No.
Alabama Great Southern Railroad Co.....	Yes.
Atchison, Topeka & Santa Fe Railway Co.....	Yes.
American Telephone & Telegraph Co.....	Yes.
Boston & Maine Railroad.....	No.
Central New England Railway Co.....	Yes.
Cleveland, Cincinnati, Chicago & St. Louis Railway Co.....	Yes.
Columbus, Hope & Greensburg Railroad.....	No.
Central & South American Telegraph Co.....	No.
Central Railroad Co. of New Jersey.....	No.
Chicago & Erie Railroad Co.....	No.
Chicago Great Western Railroad Co.....	Yes.
Chicago, Indianapolis & Louisville Railway Co.....	Yes.
Cincinnati, Hamilton & Dayton Railroad Co.....	Yes.
Dunkirk, Allegheny Valley & Pittsburgh Railroad Co.....	No.
Ellenville & Kingston Railroad Co.....	No.
Erie & Jersey Railroad Co.....	Yes.
Erie Railroad Co.....	Yes.
Fort Wayne, Cincinnati & Louisville Railroad Co.....	No.
General Electric Co.....	Yes.
Gulf, Colorado & Santa Fe Railway Co.....	No.
Hartford & Connecticut Western Railroad Co.....	No.
International Harvester Co.....	Yes.
International Mercantile Marine Co.....	Yes.
International Agricultural Corporation.....	No.
J. G. White & Co. (Inc.).....	No.
J. I. Case Threshing Machine Co.....	Yes.
Kennecott Mines Co.....	Yes.
Lake Erie & Western Railroad Co.....	No.
Lake Shore & Michigan Southern Railway Co.....	Yes.
Lehigh Valley Railroad Co.....	No.
Lehigh Valley Railway Co.....	No.
Lamont, Corliss & Co.....	No.
Maine Central Railroad Co.....	No.
Mexican Telegraph Co.....	No.
Michigan Central Railroad Co.....	Yes.
Mobile & Ohio Railroad Co.....	No.
New England Navigation Co.....	Yes.
New England Railroad Co.....	No.
New Jersey Junction Railroad Co.....	No.
New York & Ottawa Railway Co.....	No.
New York Central & Hudson River Railroad Co.....	Yes.
New York, Chicago & St. Louis Railroad Co.....	Yes.
New York, New Haven & Hartford Railroad Co.....	Yes.
New York, Ontario & Western Railway Co.....	No.
New York, Westchester & Boston Railway Co.....	No.
Niagara Falls Branch Railroad Co.....	No.
Niagara Development Co.....	Yes.
Niagara Falls Power Co.....	No.
Niagara Junction Railway Co.....	Yes.
New York & Long Branch Railroad Co.....	No.
Northwestern Commercial Co.....	Yes.
Northwestern Fisheries Co.....	No.
National Tube Co.....	No.
New Jersey & New York Railroad Co.....	No.
New York, Susquehanna & Western Railroad Co.....	Yes.

	Depositors.
Northern Pacific Railway Co.....	Yes.
Ontario, Carbondale & Scranton Railway Co.....	No.
Pittsburgh & Lake Erie Railroad Co.....	No.
Port Jervis, Monticello & Summitville Railroad Co.....	No.
Pullman Co.....	Yes.
Pere Marquette Railroad Co.....	Yes.
Rutland Railroad Co.....	No.
Reading Co.....	No.
Syracuse, Geneva & Corning Railway Co.....	No.
Santa Fe, Prescott & Phoenix Railway Co.....	No.
Southern Railway Co.....	Yes.
United States Steel Corporation.....	Yes.
Union Typewriter Co.....	No.
Utah Copper Co.....	No.
Wallkill Valley Railroad Co.....	No.
West Shore Railroad Co.....	No.
Western Union Telegraph Co.....	Yes.
Westinghouse Electric & Mfg. Co.....	No.

EXHIBIT No. 156, JANUARY 7, 1913.

AMOUNT OF SECURITIES OF INTERSTATE CORPORATIONS MARKETED BY J. P. MORGAN & Co. DURING THE YEARS 1902-1912.

Year.	Dollars.	Francs.	Pounds sterling.
1902.....	205,628,000		
1903.....	126,618,000		
1904.....	71,227,000		
1905.....	163,254,000		
1906.....	205,475,000		
1907.....	136,681,000		
1908.....	200,415,000		
1909.....	191,629,000		
1910.....	174,921,000	100,000,000	1,031,000
1911.....	207,808,000	60,000,000	200,000
1912.....	230,570,000	25,000,000	1,400,000
Total.....	1,914,226,000	185,000,000	2,631,000

EXHIBIT No. 159, JANUARY 7, 1913.

BANKERS' AGREEMENT.

Memorandum of agreement made this sixteenth day of March, 1896, by and between

J. P. Morgan & Co. and the Deutsche Bank (hereinafter called the bankers) parties of the first part (neither of the parties of the first part contracting for the other), and

Edward D. Adams and others, constituting the Northern Pacific Reorganization Committee (hereinafter called the committee), as such committee and not individually, parties of the second part:

Whereas, The committee has prepared and, with the approval of the bankers, is about to issue a plan for the reorganization of the Northern Pacific Railroad Company; and

Whereas, The committee desires to insure to the new company the services of the bankers in the manner, to the extent, and upon the terms and conditions hereinafter set forth:

Now, therefore, this agreement witnesseth: That, in consideration of the premises and of the mutual promises herein contained, and the expected benefits from the performance thereof,

The bankers severally agree:

To enter into agreement with the new company, upon its demand;

To assist, during the next ten years, in marketing such additional securities as the new company may desire to market, upon such terms and for such compensation as from time to time may be agreed upon by the new company

and by both of the bankers, it being understood, however, that the bankers shall not be required to market any securities issued without their joint express approval in writing.

The committee convenants and agrees:

Without personal liability on its part or on the part of any of its members, to use its best endeavors, so long as the bondholders' agreement under which they exist shall be in force, to cause the new company to enter into agreement with said bankers:

That at all times during said period of ten years, the new company will give to the bankers, upon request of either of them, full information regarding the accounts, operations and conditions of the company and its property, and a preference with reference to all new securities which it may desire to issue as to the purchase thereof, also with reference to loans and other financial services the new company may desire, but only upon terms at least as beneficial to the new company as may be offered it by any other party at the time.

Witness the following signatures the day and year first above written:

(Signed)	J. MORGAN & Co.
(Signed)	DEUTSCHE BANK.
(Signed)	A. GWINNER.
(Signed)	EDWARD D. ADAMS,

As Chairman Northern Pacific Reorganization Committee.

(Copy.)

[Extract from minutes of meeting of the reorganization committee of the Northern Pacific Railroad Co. held at the office of the committee, room No. 2, fourth floor, Mills Building, New York, on Saturday, March 14, 1896.]

The chairman also stated that in the conferences between the bankers and himself it had been considered desirable that the bankers who had charge of the reorganization, should, if possible, continue their friendly relations with the reorganized company for further 10 years upon terms and conditions set forth in the agreement prepared for this purpose and now laid before the committee, and, on motion duly made and seconded, it was

Resolved, That the proposition made by the chairman on behalf of the bankers acting in the reorganization of the Northern Pacific Railroad Co. meets with the full approval of this committee, and that it will use its best endeavors to have the same carried out by the new company.

A true copy:

(Signed) A. MARCUS, *Secretary.*

EXHIBIT No. 160, JANUARY 7, 1913.

CALIFORNIA PETROLEUM CORPORATION STOCK SYNDICATE.

[Confidential.]

SEPTEMBER 21, 1912.

DEAR SIR: We are forming a syndicate of which we shall be managers, and in which we shall participate, to purchase from us \$5,000,000, par value, preferred stock of the California Petroleum Corporation, and \$2,500,000, par value, common stock voting trust certificates, for the sum of \$5,000,000 cash and accrued dividend on the preferred stock.

We have reserved for you a participation in this syndicate of \$----- cash and accrued dividend, representing the equivalent of the purchase price by the syndicate of \$-----, par value, preferred stock and \$-----, par value, common stock.

The syndicate is to continue until April 1, 1913, unless sooner terminated by us in our discretion. We shall make no charge to the syndicate for our services as managers, but shall be entitled to retain for our own benefit, the difference in common stock and cash between the price to the syndicate and the price paid by us. We have arranged for the formation of other syndicates in London and Paris to purchase further amounts of the preferred and common stocks from us on the same terms.

Both the preferred and common stocks are to remain syndicated for sale under our management, the preferred stock not to be sold at less than 91½ and accrued dividend, nor the common stock at less than 40.

We hand you herewith copy of a letter which we have received under date of September 20, 1912, from Messrs. E. L. Doheny and C. A. Canfield, describ-

ing the California Petroleum Corporation to be organized and its stocks, with certain other data, and also a letter from Dr. Ralph Arnold, dated August 13, 1912, concerning the same. We are further sending you under separate cover a complete copy of Dr. Arnold's report to us upon the controlled properties, together with maps and photographs.

The accounts of the controlled properties were audited for us by Messrs. Price, Waterhouse & Co., chartered accountants. All legal matters in connection with the new corporation are under the supervision of our counsel, Messrs. Cravath, Henderson & de Gersdorff, for whom the titles to the proven properties have been passed upon by H. W. O'Melveny, Esq., of Messrs. O'Melveny, Stevens & Milliken, of Los Angeles, Cal.

Please advise us promptly if you desire to accept this participation and in due course we will send you formal confirmation, together with copies of the syndicate agreement for your signature and files.

Yours, truly,

_____, *Syndicate Managers.*

EXHIBIT No. 161, JANUARY 7, 1913.

CALIFORNIA PETROLEUM CORPORATION STOCK SYNDICATE.

[Confidential.]

NEW YORK, *September 24, 1912.*

DEAR SIR: Referring to your cash participation in the above syndicate of \$-----, we now inclose two copies of the syndicate agreement.

Kindly sign one copy for the amount of your participation, as above stated, and return same to us, retaining the other copy for your files.

Yours, truly,

_____, *Syndicate Managers.*

EXHIBIT No. 162, JANUARY 7, 1913.

CALIFORNIA PETROLEUM CORPORATION STOCK SYNDICATE.

[Confidential.]

OCTOBER 21, 1912.

DEAR SIR: Referring to your participation in the above syndicate, we would say that as all the preferred and common stocks purchased have now been sold, we take pleasure in inclosing our check for \$-----, being your share of the profit realized. Kindly acknowledge receipt of same as in final settlement of your interest in the syndicate.

Yours, truly,

_____, *Syndicate Managers.*

EXHIBIT No. 163.—JANUARY 7, 1913.

NEW YORK CURB MARKET ASSOCIATION.

NEW YORK CURB MARKET MANUAL OF CONSTITUTION, RULES, REGULATIONS, AND PENALTIES.

[Information regarding employees, public messengers, transfer and registrar offices, listing of stocks, blanks, notices, list of members and all matters pertaining to New York Curb Market, obtainable at the secretary's office.]

Application—In re: _____, 19—.

SECRETARY OF THE NEW YORK CURB MARKET,

New York.

_____ hereby apply to become a member of the New York Curb Market. Firm name, _____. Address, _____. Name of individual partners, _____. Residence of each, _____. Nature of business, _____. Bank with, _____. References, _____. Initiation and dues inclosed, _____, and hereby agree to comply with the constitution, rules, regulations, and penalties, as laid down in the manual of the New York Curb Market.

Respectfully,

CONSTITUTION AS AMENDED AND ADOPTED.

ARTICLE I.—*Title—Objects.*

The title of this association shall be the "New York Curb Market."

Its objects shall be to furnish constitution, rules, regulations, penalties, and facilities for the transaction of business by its members, as dealers or brokers, in securities not listed in any department of the New York Stock Exchange. Also to take over all archives or other assets now held and owned by the New York Curb Market Agency, registered.

ARTICLE II.—*Government.*

The government of the New York Curb Market (hereafter designated as the "Association") shall be vested in a board of representatives composed of 15 members, which shall be elected at a meeting to be held annually, in the manner herein provided. Such board of representatives shall be the officers and executive authority of the association.

ARTICLE III.—*Board of representatives.*

SECTION 1. The board of representatives shall be divided into three classes, each class consisting of five members, first class to hold office for one year, second for two years, and third for three years.

SEC. 2. The board of representatives shall determine the manner and form by which all its proceedings shall be conducted; appoint and dissolve all standing or other committees, and elect a chairman, secretary, and treasurer from their own number for the proper conduct of business.

SEC. 3. It shall fix the amount of initiation fee, dues, listing fee, and salaries; and through its finance committee the method of collection and payment of the same; regulate all business and make such other requirements for the purposes of insuring economy, safety, and the protection of its members, as may appear to the board to be necessary or proper.

SEC. 4. The members of the board of representatives shall attend the meetings of the board and act promptly upon any and all matters of business affecting the association that may be brought before them.

SEC. 5. Any member of the board absenting himself from three consecutive meetings without having been excused by the chairman may be declared no longer a member thereof by a two-thirds vote of the existing members.

SEC. 6. Vacancies occurring in the board of representatives from any cause whatever shall be filled by the remaining members until the next annual election.

SEC. 7. A majority of all the existing members of the board of representatives shall be necessary to constitute a quorum for the transaction of business.

SEC. 8. Eight members of the board of representatives may request the chairman to call a special meeting of the board by giving notice in writing, when it shall be his duty to at once notify all members of the board of such notice and call such meeting.

ARTICLE IV.—*Chairman.*

SECTION 1. The chairman shall preside over all meetings of the association, and shall also be presiding officer of the board of representatives.

SEC. 2. The chairman may call special meetings of the association and of the board of representatives. He shall call special meetings of the association on written request of 50 members.

SEC. 3. In case of special exigencies he may appoint committees for the purpose of transacting business or performing service not within the province of any standing committee.

SEC. 4. He shall be ex officio a member of all committees.

ARTICLE V.—*Secretary.*

SECTION 1. It shall be the duty of the secretary to record in a book of minutes the proceedings of the association and take charge of all its books, papers, records, statistics, and correspondence.

Sec. 2. He shall be a member of the board of representatives and their secretary and secretary of all committees of the association.

Sec. 3. He shall be the accountant of the association and shall perform such other duties as the board of representatives may direct.

Sec. 4. He shall countersign all checks and orders for the payment of money.

ARTICLE VI.—*Treasurer.*

SECTION 1. It shall be the duty of the treasurer to receive and, acting under instructions from the finance committee, take charge of and disburse the moneys of the association, keeping proper books of record of the same.

Sec. 2. He shall present to the board of representatives at their first meeting each month a report of the finances of the association to the first day of the month.

Sec. 3. All checks for disbursements made by him shall be countersigned by the secretary.

Sec. 4. In event of failure or neglect or inability of the treasurer for any reason to execute the duties of his office, the finance committee shall appoint one of its own members who shall act as treasurer pro tem.

ARTICLE VII.—*Elections.*

SECTION 1. The first election for representatives shall be held on the adoption of this constitution, and thereafter the annual election for representatives whose terms have expired, and to fill vacancies from other causes, shall take place on the first Wednesday in February each year thereafter.

Sec. 2. At said election there shall also be chosen a nominating committee to consist of five members, not officers of the association. It shall prepare and report to the association at least two weeks prior to the annual election in the following year, nominations to fill such vacancies in the board of representatives as are to be filled at the ensuing election. The committee's report shall be presented to the board of representatives, and, if approved, the names shall be presented as the nominees upon the regular ticket. In case such report is disapproved by the board of representatives, it shall be referred back to the nominating committee for amendment, and if the nominating committee fails to present an amended report within 10 days prior to the day of the annual election, which report is thereupon duly approved by the board of representatives, or in case the nominating committee fails to present a report at least two weeks prior to the day of the annual election, then and in such case the board of representatives shall elect a new nominating committee from among the members of the association, not officers of the association, which shall present its report at least one week prior to the annual election, and if approved by the board, the names shall be presented as the nominees upon the regular ticket.

Sec. 3. All members of the association in good standing shall be entitled to a vote at the annual election or at any meeting of the association.

Sec. 4. All elections shall be by ballot, and the time, method, and place for said elections shall be designated by the board of representatives.

ARTICLE VIII.—*Eligibility for membership.*

SECTION 1. No person shall be elected as a member who at the time of his application has any claims filed against him for any indebtedness to members or others.

Sec. 2. No person shall be eligible as a member who is under 21 years of age; nor shall any member employ as his representative any person who is under 21 years of age for any trading purposes whatever.

ARTICLE IX.—*Standing committees.*

SECTION 1. After the annual election the board of representatives shall elect their chairman, secretary, and treasurer, and appoint the following committees:

First. A finance committee to consist of five members, and the treasurer. It shall meet prior to the regular meeting of the board of representatives each month and examine the various accounts and vouchers of the secretary and treasurer; acting as a board of audit, and shall report its examination to the

board of representatives. It shall provided ways and means, levy and collect funds for the suitable conduct of the finances of the association; it shall recommend to the board of representatives the amount of initiation, and the dues to be required each year from the members, and any other matters pertaining to the finances of the association.

Second. A committee on commissions to consist of five members, who shall fix the various rates of commissions, to be concurred in by the board of representatives; also to report to the board any violations of the rates. whereupon the board shall fix such penalties as it may deem proper.

Third. A membership committee to consist of five members. All applications for membership and all applications of suspended members for reinstatement shall be referred to this committee.

The majority vote of all the members of this committee will be necessary to recommend for membership, or reinstate a suspended member, and the consent of the board of representatives required. No person can be admitted to membership or reinstated except at a regular meeting of the board of representatives.

Fourth. A committee on listing to consist of three members. It shall receive and consider all applications for listing securities, submit a report to the board of representatives, giving full statement concerning organization, capitalization, resources, and indebtedness. It shall have full control over the publishers of quotation lists.

It shall make all necessary rulings as to securities, including the fixing of delivery days, accrued interest periods, and the time for settlement of contracts in unissued securities.

Fifth. A committee on complaints to consist of three members, to whom shall be referred complaints for investigation and settlement, if necessary; or if of a more serious character be referred to the board of representatives for action.

Sixth. An arbitration committee to consist of five members, shall investigate and decide when properly brought before it, in writing, all claims and matters of difference arising from contracts subject to the rules of the association between members of the association; or at the instance of a member between members and nonmembers. This committee may dismiss any case and refer the parties to their remedies at law, and it shall so refer them on joint request in writing of the contestants. The decision of this committee shall be final in all cases, unless an appeal be taken to the board of representatives; upon such appeal the board of representatives may adjudicate the case and relegate the parties to their remedies at law, or direct a rehearing by the arbitration committee.

A nonmember making a claim shall execute an agreement to abide by the rules of the association, and also a full release of said claim, and shall deliver them to the chairman of the arbitration committee, who shall keep them in trust to abide the result of the said arbitration and deliver them to the defendant in any of the following cases:

A. In case the claimant shall fail to appear before the committee, after notice from the secretary at the time and place set for the hearing by the committee.

B. In case judgment shall be rendered for said defendant by the arbitration committee.

C. In case the defendant shall pay, or offer to pay, to the claimant the amount found due him and shall have filed with the chairman satisfactory evidence of such payment.

D. In case findings shall be made against any member of the association which he neglects to pay, or if the case be dismissed, then such release shall be canceled and returned to the complainant.

Seventh. A law committee to consist of three members, to whom shall be referred all questions of law affecting the interest of the association.

Eighth. A committee on constitution to consist of five members, to whom shall be referred all additional reforms and amendments to the constitution and by-laws.

This committee shall consider all proposed amendments or changes and report to the board of representatives, with its recommendation, at their next regular meeting, or at a special meeting called solely for the purpose of considering them.

ARTICLE X.—*Appeals.*

SEC. 1. All appeals to the board of representatives from any decision of standing committees must be made by the member of the association interested

therein, in writing, to the chairman within two days after such decision has been rendered.

ARTICLE XI.—*Initiation, dues, etc.*

SEC. 1. The initiation fee and six months' dues must accompany all applications for membership, and any person elected to membership must sign the constitution and over his signature agree to abide by the constitution, rules, regulations, and penalties contained in the New York Curb Market Manual.

SEC. 2. The initiation fee and dues shall be paid at such periods and in such amounts as may be designated by the board of representatives.

SEC. 3. Any member neglecting to pay his dues when notified by the secretary by mail or by messenger, or by posting upon the bulletin board, shall be subject to such penalties as the board of representatives may inflict.

ARTICLE XII.—*Expulsion and suspension.*

SEC. 1. Any member who shall be adjudged by a two-thirds vote of the existing members of the board of representatives to be guilty of fraud, fraudulent acts, or unseemly conduct may be suspended or expelled, and public announcement may be made to the members by blackboard, mail, or otherwise.

SEC. 2. 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 dealing in any security or property admitted to dealing in any department of the New York Stock Exchange, shall be ineligible for membership.

SEC. 3. A member who shall have been adjudged by a majority vote of all the existing members of the board of representatives after due trial of willful violation of the constitution, rules, and regulations of the association, or of any resolution of the board of representatives regulating the business of the members, or of any conduct inconsistent with just and equitable principles of trade, may be suspended or expelled, as the board of representatives may determine.

SEC. 4. No person shall be allowed to be represented by professional counsel at a hearing before the board of representatives or of any standing or special committees.

SEC. 5. Violations of the rates of commission, now in force or hereafter amended, changed, or adopted by the board of representatives, shall be considered as detrimental to the interests of the association, and shall be referred to the committee on complaints for action.

ARTICLE XIII.—*Employees' accounts.*

SEC. 1. The taking or carrying of any account, joint or otherwise, for an employee of a member of the association, by a member of the association, without written consent of his employer, is prohibited.

Any violation of this article by any member of the association subjects him to such penalties as the board of representatives may determine.

ARTICLE XIV.—*Alterations of the constitution.*

The board of representatives may make additions, alterations, or amendments to the constitution by a majority vote of all its existing members. Every proposed addition, alteration, or amendment must be presented in writing at a regular meeting of the board of representatives and referred to the committee on constitution, which shall report thereon at the next regular meeting of the board of representatives or at a special meeting called solely for the purpose of considering it. Action thereon may be postponed to a fixed date by two-thirds vote of the members of the board of representatives present. Such alterations when adopted by the board of representatives shall be submitted to the association, and shall stand as the law of the association if not disapproved within one week by a majority vote of the entire membership.

We, the undersigned, do hereby absolutely bind ourselves to abide by the constitution, rules, and regulations as set forth in the New York Curb Market Manual, which is hereby adopted and agreed to by us. Our object is to provide for the maintenance and government of the New York Curb Market, the purpose of which is to deal only in securities not listed in any department of the New York Stock Exchange; we further agree that when any security

traded in upon the New York Curb Market is listed upon the New York Stock Exchange, we will at once cease to deal in it; and we further agree to trade only with members of the association, except as specified in the manual regarding strangers or others, while being a public street market. We further agree to subject ourselves to any and all penalties mentioned within the said New York Curb Market Manual, and do hereby authorize and empower the board of representatives elected and chosen by us to prescribe and carry out such penalties and to act for us in all representative capacities in all business, trading, and operations conducted by or with us in the New York Curb Market.

Date _____ 19__.

Signature _____

Witnesses _____

SPECIAL NOTICE.

Contracts with strangers.—The New York Curb Market is open to all who choose to trade there, but no one is obliged to accept any contract which is not acceptable. Strangers or others must be properly identified in justice to themselves and those they attempt to trade with, and they may be called upon to give up acceptable persons before the contract is closed. This is for the safety of all concerned.

Public complaints.—For the protection of the public, complaints made in writing against any corporation or member or individual using the New York Curb Market, directly or indirectly, will be investigated and referred to the proper authorities for suitable action.

MANUAL.

The following rules, regulations, and penalties have been accepted and agreed to by the members of the New York Curb Market:

New York Stock Exchange securities.

Special agreement.—Trading or quoting securities listed on New York Stock Exchange absolutely prohibited, and excluded from the New York Curb Market quotation and authorized sale list.

When securities are listed by the New York Stock Exchange the trading and reporting of sales ceases.

Trading hours.—Trading will not begin before 10 o'clock a. m., and promptly close at 3 p. m., except Saturday, when the close is 12 m. on each business day of the year.

The electric bell on the clock will announce the time.

1. *Public messengers.*—The cap with badge must at all times be worn in sight, both in receiving and delivering messages, for identification, and boys are forbidden to accept messages from other than subscribers.

The rates to be charged are as follows: Within Broadway, William, Cedar, and Beaver Streets, each message on delivery, 5 cents; certifying checks, and answers requiring waiting, 5 cents for each 10 minutes. Messages outside above limits, price must be agreed upon before sending. Overcharges prohibited. In case of dispute or overcharge take messenger's badge number and report him to the secretary.

Violation of these rules will cause badges to be revoked forthwith by the secretary.

2. *Boys employed by brokers.*—It is required that boys employed by brokers be furnished with a numbered button, to be worn in sight for identification, in order that they may remain within the lines allotted by police for trading. Buttons furnished to members, record kept for identification.

The secretary should be notified when boys are discharged or leaving.

3. *Police regulations for street to be rigidly enforced.*—Trading outside ropes prohibited; sidewalks and streets must be kept clear at all times for traffic; skylarking, disorderly conduct, and unnecessary noise forbidden.

4. *Orders to buy or sell.*—All offers to buy or sell securities are for 100 shares of stock or for \$10,000 par value of bonds unless otherwise stated.

Offers to buy or sell specific amounts, other than as above stated, may be made at the same time and may be independently accepted.

Buyds and offers may be made only as follows: "Cash" for delivery upon the day of contract.

"Regular way" for delivery upon the business day following the contract.

"Buyer's" or "seller's" options for not less than four days nor more than 60 days.

"At three days" for delivery upon the third following the contract.

Bids and offers under each of these specifications may be made simultaneously, as being essentially different propositions, and may be separately accepted without precedence of one over another.

Bids and offers made without stated conditions are considered to be in the "regular way."

5. *Time contracts.*—On transactions for more than three days, written contracts shall be exchanged on the day following the transaction, and shall carry interest at the legal rate, unless otherwise agreed; on such contracts one day's notice shall be given, at or before 2.15 p. m., before the securities shall be deliverable prior to the maturity of the contract.

On offers to buy "seller's option" or to sell "buyer's option" the longest option shall have precedence. On offers to buy "buyer's option" or to sell "seller's option" the shortest option shall have precedence.

All contracts falling due on holidays or half-holidays shall be settled on the preceding business day, except when two or more consecutive days are holidays or half-holidays; contracts falling due on other than the first of such days shall be settled on the next business day.

Loans of money or securities made on the day preceding a holiday or half-holiday observed shall mature on the succeeding business day unless otherwise specified.

6. *Return loan notices.*—Notice of the return of loans by money or securities must be given before 1 o'clock p. m. All such notices shall be considered as in full force until delivery is made.

7. *Half-holiday sales.*—On half-holidays securities sold specifically for cash or to close contracts must be delivered at or before 11.30 o'clock a. m. In case of default the contract may be closed after 11.45 o'clock a. m.; written notice must be served upon the party in default.

8. *Damages are not to be deducted.*—Parties receiving securities shall not deduct from purchase price any damages claimed for nondelivery, except by consent of the party delivering the same.

9. *Delivery by transfer.*—Any purchaser may demand the delivery of any stock by transfer.

The seller having the right to demand the amount due for the same in certified check deposited at the transfer agency before such transfer is made, said amount only to be paid seller when transfer is consummated, except in such cases where transfer receipt of the transfer agency accompanies the bill.

10. *Ex-dividend contracts.*—Stocks sell ex-dividend (except for cash) on the day books close in New York (except Saturday, then the business day preceding).

Stocks having transfer offices in other cities, agreement must be made between contracting parties regarding dividend at time of sale and so compared.

11. *Bonds.*—Deliveries can only be made in bonds of not less than \$500 each, unless stipulated at time of sale otherwise.

All bonds will be quoted and interest, unless sold flat and so compared and recorded at time of sale, except defaulted bonds, which must carry all unpaid coupons. Money can only be attached for missing coupons by special agreement at time of sale.

12. *Stocks.*—All deliveries in stocks except certain mining stocks must be made in 100-share certificates or in amounts equal thereto, except in case of odd lots, when the exact amount must be delivered in certificates or by transfer if the purchaser agrees to take the same in this manner.

13. *Deliveries, on account of contracts.*—The buyer must not later than 2.15 o'clock p. m. accept and pay for all or any portion of a lot of stock contracted for which may be tendered in lots of one hundred shares or multiples thereof; and he may buy in cash the undelivered portion, if having made the usual demand for the entire contract. This rule also applies to bonds in lots of not less than \$1,000.

14. *When, as, and if issued contracts.*—All "when, as and if issued" contracts shall become due and payable the day after the final payment on same has been made, under terms of corporation's circular, and interest then ceases thereon, except when listed by the New York Stock Exchange and delivery day announced by the Stock Exchange.

15. *Deliveries.*—All stocks and bonds must be delivered before 2.15 p. m. unless otherwise specified.

16. *Payment upon delivery.*—In all deliveries the party delivering shall have the right to require the purchase money to be paid upon delivery and certified checks may be demanded.

17. *Rules not herein specified.*—In case where the manual does not state specifically a rule, the same shall be governed by the rules of the New York Stock Exchange in like cases.

18. *Stocks issued and marked for special purposes.*—Companies disposing of treasury stock will notify secretary of amount and date of sale. Companies who increase or decrease their capital stock must also notify secretary. Stock issued with stamp thereon marked for purchase property or otherwise or stock stamped treasury stock, is only a good delivery when the same is so specified at the time of sale and compared as such.

19. *Bankruptcy—Receivership, assignee or other failures.*—Contracts should be closed on official notice of failure, after duly notifying receiver or assignee or other designated officer the time and place and where the transaction is to be bought or sold. In closing contracts it must be publicly announced for whom the purchase or sale is made. When closed, a statement must be sent to the authorities in charge—if a credit, a check attached for difference, if a debit, amount of such. The names from whom the securities were bought or sold must be stated and full statement also filed with the secretary of the association for record.

20. *State transfer tax stamps.*—The New York State law requires stamps be put on all bills of sale and the same mutilated or cut to prevent fraud.

Those who do not comply with this law are liable to criminal prosecution and fine.

21. *Reclamation for irregular deliveries of securities.*—Reclamation for irregularities in securities must be made within 10 days from date of delivery and before 2.15 p. m. Irregular securities having been delivered shall be returned to the party who delivered them, who must immediately give the party presenting them the security in proper form for delivery; such securities in proper form must be delivered to the claimant before 2.15 p. m. on the day of demand.

22. *Disputes on contracts.*—When a disagreement arising from a transaction in securities shall be discovered, the money difference shall forthwith be established by purchase of sale and settled by arbitration committee under the rules.

23. *Arbitration settlements.*—Settlements for arbitration decisions must be made on the next business day following such decision, and unless so made the member may be suspended from the association.

24. *Fictitious sales.*—No fictitious sales shall be made. Any subscriber violating this section may, upon proof, be suspended or expelled and name posted on blackboard.

25. *Quotation lists.—Requirements.*—Authorized publishers of sales of securities on the New York Curb Market are prohibited to furnish same to persons or corporations other than subscribers without consent of the board of representatives.

They shall print only sales made on the New York Curb Market and then only within prescribed hours of trading.

Proper reporters must be employed to collect the sales and due care to have them correct, and the publishers must at all times be able to furnish the authority.

Violations of these regulations will cause the revoking of the privilege to report the official sales.

26. *Deposits on contracts.*—Mutual cash deposits not exceeding 10 per cent may be required at any time by either party to a contract. Whenever the margin of either party becomes reduced to 5 per cent by reason of changes in the market value of the securities, further deposits may be called from time to time sufficient to restore the impaired margin.

When deposits are called before 2 o'clock p. m., they must be made at or before 2.30 o'clock of the same day. If called after 2 o'clock p. m. they must be made at or before 10.30 o'clock a. m. of the next business day.

In case either party shall fail to comply with a demand for a deposit, in accordance with the provisions of this article, the party calling, after having given due notice, may report the default to the chairman or an officer of the association, who shall repurchase or resell the security forthwith, and any difference that may accrue shall be paid over to the party entitled thereto.

27. *Trust company in case of disagreement.*—In event of contracting parties not agreeing upon the trust company to receive joint margin deposits on time contracts, the Columbia Trust Co. of New York has been requested to receive such deposits.

28. *Mining stocks.*—Mining stocks which have transfer offices other than as stated below, the following regulations apply thereto:

Stocks selling at two dollars (\$2) per share and above must be delivered in 100-share certificates or amounts equal thereto, unless otherwise specified at time of sale, and so compared.

All stocks selling at or under two dollars (\$2) may be delivered in certificates of 1,000 shares each, unless otherwise specified at time of sale, and so compared. This rule does not apply to companies having transfer offices in New York, Boston, Philadelphia, and Pittsburgh, in which event certificates must be of 100 shares or amounts equal thereto.

29. *New York transfer agencies.*—Companies desiring to list their securities may be required to have a transfer office or registrar, or both, at New York, and upon failing to maintain the same after listing may be denied further quotations on curb lists.

30. *Transfer charges, etc.*—No listed company is permitted to charge for the ordinary transfer of its stock certificates under penalty of having stock removed from sales lists. Exception is, however, made where special transfers or certificates are demanded.

31. *Change of registrar or in certificate.*—After a stock has been placed upon the list, any change in the certificate, or place of registry, must be reported to the secretary.

32. *Closing of transfer books.*—All companies must notify the secretary at least one week before the closing of transfer books. Neglect to so notify may cause the stock to be refused further quotation on the New York Curb Market lists.

33. *Statement of companies.*—Periodical and complete financial statements will be required as to the condition of all corporations quoted on the New York Curb Market lists, signed by an officer of the company, with seal attached. These statements must be made, when required, to the secretary. If not, the securities will be removed from the New York Curb Market lists without notice.

34. *Publications and circulars.*—Publications or circulars issued reflecting directly or indirectly on members of the public market, known as the New York Curb Market, are prohibited absolutely.

35. *Securities in the name of a deceased person or a firm that has ceased to exist* are not a delivery except when the transfer books are closed. The assignment must be acknowledged before a notary public.

36. *Securities of a company whose transfer books are closed indefinitely* for any reason, legal or otherwise, the assignment and each prior assignment or substitution must be acknowledged by a notary public.

37. *Delivery of certificates when filled in and transfer books are closed.*—In case the power on the back of a certificate of stock has been filled in to transfer the stock to an individual or a firm, and transfer books are closed, the following is necessary in order to make the certificate a good delivery.

The party whose name has been filled in as transferee, and the attorney, if an attorney's name has been filled in, must each separately write on the back of the certificate: By transferee "I (or we) have no interest in the within certificate of stock." By attorney, "I (or we) have no interest in the within certificate of stock and the within power of substitution dated _____, 19—, is hereby cancelled," and acknowledge the same before a notary.

The party who signed the power must write on the back of the certificate, "Above power of attorney cancelled by me (or us) and new detached power issued in lieu of it." and acknowledge this before a notary.

[Acknowledgment for an individual.]

STATE OF _____,
County of _____, ss.

On this _____ day of _____, 19—, before me, a notary public for the county of _____, personally came _____, to me known to be the individual described in and who executed the above instrument, and acknowledged to me that he executed the same.

[SEAL] _____

If used for a power of substitution insert the words "power of substitution dated _____, 19—" in lieu of the word "instrument" in fifth line.

[Acknowledgment for a firm.]

STATE OF _____,
County of _____, ss.

On this _____ day of _____, 19—, before me, a notary public for the county of _____, personally came _____, to me known, and known to me to be a member of the firm of _____, described in and who executed the above instrument, and acknowledged to me that he executed the same.

[SEAL] _____

If used for a power of substitution insert the words "power of substitution dated _____, 19—," in lieu of the word "instrument" in fifth line.

[Acknowledgment for a firm that has been dissolved.]

STATE OF _____,
County of _____, ss.

On this _____ day of _____, 19—, before me, a notary public for the county of _____, personally came _____, to me known, and known to me to have been on, _____, 19—, a member of the firm of _____, described in and who executed the above instrument, and acknowledged to me that he executed the same."

[SEAL] _____

If used for a power of substitution insert the words "power of substitution dated _____, 19—," in lieu of the word "instrument" in sixth line.

The person or firm in whose name the stock stands must then execute a separate assignment describing the certificate of stock by name of company, number, and amount, the latter written in words and numerals, and acknowledge the same before a notary public.

38. *Reguarantee, etc.*—In case a firm has ceased to exist, a reguarantee is required if the transfer books are closed. If transfer books are open, a new certificate can be demanded in the name of an existing firm or individual.

39. *Closing contracts in default.*—Securities can be bought in or sold out after due notice of demand or tender has been made, on curb forms to be used in such cases, which are furnished free on application to the secretary.

40. *Regulations regarding give-ups.*—Give-ups, if made at the time of sale and accepted, immediately release the buyer or seller. If given up on comparison, the give-up is accepted only for the account of person making the transaction, whose liability, however, shall cease by any delay in delivery of the contract after the same is due. The original party in the contract, however, must be notified before 3 p. m., on the day delivery was due, to be held for any alleged claim of default.

41. *Fail notices.*—Fail notices must be sent in every case where contracts are not delivered within the specified time and duly signed by contracting parties.

42. *Comparisons.*—All transactions must be compared in writing by the buyer and seller. The signature may be by name, initial, or stamp of the contracting parties or their representatives. It shall be the duty of the buyer and seller to compare or endeavor to compare each transaction within one hour after the closing of the market. In any attempt to compare, should the matter of dispute arise necessitating a new purchase or sale, such purchase or sale should be made promptly to establish loss.

It shall be the duty of the buyer or seller to investigate before 10 a. m. on the day following the contract any transaction that has not been compared for protection against misunderstanding or loss.

COMPARISON FORMS.

[Original.]

Comparison.

Make no changes or give-ups hereon without our acceptance and confirmation.

(Name of individual or firm.)

New York, _____, 191—

Have this day bought of (or sold to) account of _____.

Deliver to (or receive of) _____.

[Duplicate.]
Comparison.

Make no changes or give-ups hereon without our acceptance and confirmation.

(Name of individual or firm.)
New York, ———, 191—

Have this day bought of (or sold to) account of ———.
Deliver to (or receive of) ———.

43. *Payments.*—Payments for securities can only be made on banking institutions within the Wall Street district. Checks on extreme uptown or out-of-town banks are only accepted by courtesy and may be declined. Certified checks may be demanded in all cases.

44. *Change in address, etc.*—The secretary must be notified of all dissolutions, removals, changes in firms' trading employees, addresses, or telephone numbers.

45. *Transfer offices and registrar.*—Record of transfer offices and registrars of securities quoted on the New York Curb Market lists are filed with the secretary.

46. *Transfers.*—Transfers of stock should be executed by the stockholder in person, giving address in full.

The full legal name and full address of transferee, number of shares transferred, and date should be written in spaces provided on the back of certificate, but space for name of attorney should be left blank. Full first name is always desired. "Mrs." and "Miss" may be used when necessary. Abbreviations, prefixes, and suffixes, such as "Rev.," "Lieut.," "M. D.," etc., should not be used.

The signature must correspond with the name as written on the face of the certificate in every particular, without alteration or enlargement, and should be witnessed. Signatures unknown to the transfer agent should be properly guaranteed. Usually (1) the guarantee of an officer of a banking institution, or (2) the guarantee of a broker, or (3) an acknowledgment before a notary public is sufficient.

In transfer to a married woman use her own Christian name, not that of her husband, with Mrs. prefixed. In case new certificate is desired by reason of change of name by marriage, old certificate should be signed as follows: "Mrs. Mary B. Smith, formerly Mary B. Jones." Transfer completed to Mrs. Mary B. Smith, as noted in suggestion No. 2, signature acknowledged before a notary public, and certificate surrendered to transfer agent for exchange. Transfers should be made directly from husband to wife, or from wife to husband.

Transfers to a minor should also give guardian's name as follows: "John Smith (minor), under guardianship of William Jones." Transfers from a minor can be made only by a guardian appointed by the court, who must exhibit a properly certified copy of his appointment.

Administrators, agents, attorneys, executors, guardians, or trustees should not transfer directly to themselves individually.

In transfers to trustees, the trust must be fully described by a reference to the will or indenture under which trust is created and the name of beneficiary given if possible. In transfers from trustees, all must sign, and transfer must be accompanied by a copy of instrument, properly certified, showing authority of trustees to sell or transfer. Trustees appointed by the court must exhibit both certified copy of instrument and certified copy of court appointment.

In transfers executed by an attorney, the original power of attorney (or notarial copy of the same) must be left on file. Authority to transfer stock must appear in the instrument, and evidence is required that signature is genuine and power of attorney is in force.

Transfers by administrators must be accompanied by copy of appointment certified by probate court.

Transfers by executors or administrators with the will annexed must be accompanied by copy of will and copy of court appointment, both certified by probate court.

47. *Assignments by corporations, etc.*—Assignments by associations, societies, or corporations must be executed by duly authorized officers only, under seal and accompanied by properly certified copy of vote or copy of by-laws authorizing transfer.

48. *Lost or stolen securities.*—Lost, stolen, or securities on which transfer has been stopped for any cause, the secretary must be notified at once of the

numbers of such securities, to be posted on the public blackboard as a safeguard in deliveries.

49. *Stock pooled by special contract, loan, or otherwise.*—In all cases where stock is pooled under special contract, loan, or otherwise, the certificates thereof used under such agreements, as above stated, shall be issued in the name of a trustee or trustees only. The trust to specify the particular purpose for which said stock was issued. Under no circumstances can this stock be utilized for delivery, and must in every case be issued in the name of a trustee or trustees.

Certificates other than the above shall be considered a delivery unless lost or actually stolen, in which case the numbers and denominations of same shall be furnished to the secretary at once for the protection of all.

50. *Regulation regarding employers' representatives on the curb.*—Employers must notify the secretary at once names of employees leaving or discharged, thereby preventing transactions being construed for old employers. Names of new ones must be submitted.

51. *Incorporated firms.*—No applications will be received from corporations doing business under firm names on the New York Curb Market, but only from individuals and firms, who are personally liable for their transactions.

52. *Mining companies—Listing requirements.*—Absolute requirements in all cases to be furnished the New York Curb Market Association, which must accompany all the applications of companies requesting quotation on the New York Curb Market lists.

Statements of assets and liabilities, earnings and expenses, signed by an officer of the company, with seal attached, and sworn to before a proper court officer or notary public.

Engineer's report or a certified copy.

Certified copy of the charter.

Map of the property.

A copy of annual report or prospectus duly authenticated.

A list of the officers and directors, with their addresses, and an individual reference for each.

Transfer office and registrar at New York.

Certified copy of any leases.

Confirmation of the titles, etc., certified.

The following resolutions were adopted by the listing committee on November 16, 1911, and approved by the board of representatives November 16, 1911:

Resolved, That mining or oil companies applying for listing be required to state whether they are prospects or developed properties, and if accepted the listing committee may classify as "A prospect" or "A developed property."

Resolved, That where a corporation is a going concern and has caused to be published one or more annual reports, including the current yearly report, containing the statements of the assets, liabilities, earnings, and expenses of the company, and other information relating to its property which in the opinion of the listing committee is sufficient to inform its shareholders and properly protect the investing public, then and in such case the listing committee of this association is empowered to pass upon such application without taking into consideration such listing requirements as are demanded in the case of prospects.

Resolved, That the New York Curb Market Association hereby reserves the right at all times to remove any listed stock from trading and from quotation upon the official lists when, in the opinion of the listing committee, the proper protection of the public requires it; and be it further

Resolved, That this be plainly printed upon all application blanks.

The following resolution was adopted by the listing committee on November 29, 1911, and approved by the board of representatives December 13, 1911:

The listing fee is \$100.

53. *Industrial companies—Listing requirements.*—Application to the New York Curb Market Association to list securities must be accompanied by the following requirements:

1. The company's last statement of assets and liabilities.
2. A statement of income and expenditure for the last fiscal year.
3. A copy of the last annual report.
4. A certified copy of the certificate of incorporation made by an officer of the company or by its attorney or accountant, and a copy of the by-laws.
5. If a holding company or consolidation give names and location of subsidiary companies.
6. Transfer office and registrar at New York.

7. The names of all the officers and directors, with their addresses, and an individual reference for each, if required by the listing committee.

The following resolution was adopted by the listing committee on November 16, 1911, and approved by the board of representatives November 16, 1911:

Resolved, That the New York Curb Market Association hereby reserves the right at all times to remove any listed stock from trading and from quotation upon the official lists when, in the opinion of the listing committee, the proper protection of the public requires it; and be it further

Resolved, That this be plainly printed upon all application blanks.

The following resolution was adopted by the listing committee on November 29, 1911, and approved by the board of representatives December 13, 1911:

Resolved, That the listing committee may place upon the list for temporary quotations and trading the securities of a company that gives sufficient preliminary information and engages itself to have its securities formally listed within a reasonable time.

Securities listed on this basis are to be traded in "When, as, and if issued." The listing fee is \$100.

54. *Notice to sell out.*—

NEW YORK, ———, 19—.

DEAR SIR: Having made a tender to you this day before 2.15 p. m. of ——— sold to you on the New York Curb Market ———, 19—, at ——— and compared by you with ———.

The signature on said certificate ——— having been guaranteed by ——— and payment on same having been refused by you, ——— beg to notify you that ——— will hold the stock at this office until 2.15 p. m. to-day, and if payment is not paid by you at that hour, ——— will cause the above stock to be sold at 2.30 p. m. to-day, cash or regular, for your account and risk, at the New York Curb Market and charge or credit you with any differences.

55. *Notice to buy in.*—

[THIS NOTICE MUST BE SERVED AT OR BEFORE 1 O'CLOCK ON THE DAY OF DEMAND.]

NEW YORK, ———, 19—.

DEAR SIR: ——— hereby demand the delivery of you this day before 2.15 p. m. ———, bought of you on the New York Curb Market ———, 19—, at ——— and compared by you with ———, ——— beg to notify you that if said stock is not delivered by you at that hour ——— will cause the above stock to be bought in at 2.30 p. m. to-day, cash or regular, for your account and risk, at the New York Curb Market, and charge or credit you with any differences.

Yours, truly,

—————,
—————, 19—.

56. *Notification.*—

M ———.

DEAR SIR: ——— have this day ——— for your account at the New York Curb Market ——— shares of the ——— at ——— cash ———.

The same having been ——— you and compared by ——— 19— and you having been duly notified.

Statement herewith.

Yours, truly,

This account to be settled on next business day; and if not, posting on black-board agreed to.

57. *Public notice of failure of contract.*—

[Agreed to by all members to New York Curb Market.]

————— hereby notify the New York Curb Market that (name) ———, (address) ———, failed to comply with contract.

Signed ———,
Date ———, 19—.

58. *Special resolutions adopted by the board of representatives.*—Resolved that the advertising or furnishing of quotations to the newspapers by members of this association of any securities not listed on the New York Curb Market

without stating in such advertisement or quotation lists that they are not listed securities is detrimental to the best interests of the association and is prohibited, and that members who, after having been duly warned, so continue to advertise are subject to such penalties as the board of representatives may inflict.

Resolved that stocks be divided into two classes, and that the units of trading for members of the association be as follows:

Class "A" stocks of a par value less than \$5.

Class "B" stocks of a par value of \$5 or over.

	Selling under \$1 per share.	Selling from \$1 to \$5 per share.	Selling at \$5 or over per share.
Class "A".....	Cents.	$\frac{1}{4}$	$\frac{1}{4}$
Class "B".....	$\frac{1}{4}$	$\frac{1}{4}$	$\frac{1}{4}$

Resolved that on holidays of the New York Stock Exchange the same shall also apply to the New York Curb Market.

Resolved that any member trading in or making quotations in unauthorized issues of Government, State, county, and municipal bonds shall be charged with action detrimental to the best interests of the association.

Resolved that all Government, State, county, and municipal bonds which have been duly authorized and which are not regularly listed upon the New York Stock Exchange be admitted to trading and quotation upon the official lists of the New York Curb Market.

59. *Removal of stocks from trading.*—Resolved that the New York Curb Market Association hereby reserves the right at all times to remove any listed stock from trading and from quotation upon the official lists when in the opinion of the listing committee the proper protection of the public requires it, and that the foregoing be plainly printed upon all application blanks.

Amendment of listing requirements.—Resolved that where a corporation is a going concern and has caused to be published one or more annual reports, including the current yearly report, containing statements of the assets, liabilities, earnings, and expenses of the company and other information relating to its property, which in the opinion of the listing committee is sufficient to inform its shareholders and properly protect the investing public, then and in such case the listing committee of this association is authorized to pass upon such application without taking into consideration such listing requirements as are demanded in the case of prospects.

Addition to rule 26.—Resolved that in case either party shall fail to comply with a demand for a deposit, in accordance with the provisions of this article, the party calling, after having given due notice, may report the default to the secretary or an officer of the association, who shall repurchase or resell the security forthwith, and any difference that may accrue shall be paid over to the party entitled thereto.

Mining and oil companies applying for listing.—Resolved that mining or oil companies applying for listing shall be required to state whether they are prospects or developed properties, and if accepted the listing committee may classify as "A prospect" or "A developed property."

Temporary quotations and trading.—Resolved that the listing committee may place upon the lists for temporary quotations and trading the securities of a company that gives sufficient preliminary information and engages itself to have its securities formally listed within a reasonable time. Securities listed on this basis are to be traded in when, as, and if issued.

Members' orders.—Resolved that on and after January 2, 1912, all members who give orders to nonmembers in stocks traded in upon the New York Curb be summoned before the complaint committee, and on the first offense cautioned, the second offense fined \$25, and the third offense suspended from the privileges of the New York Curb Market Association.

Resolved that salaried representatives of brokerage houses or anyone whose dealings in any way conflict with the commission rates shall not be eligible for membership.

Curb employees.—Resolved that the term "Curb representatives" be discontinued and that representatives of firms be hereafter designated as "Authorized salaried market employees of curb members."

Appeals.—Resolved that when any appeal from a unanimous decision of the arbitration committee is taken, the appellant shall deposit with the secretary the sum of \$25, which sum shall be forfeited to the association in case the appeal is dismissed.

Employees.—Resolved that authorized salaried market employees shall not be in the employ of more than one firm or individual.

Initiation fee.—Resolved that on and after July 1, 1912, the initiation fee shall be \$250 until further order of the board.

Changes in manual.—These rules, regulations, and penalties may be changed by board of representatives as circumstances require from time to time, and such changes will then constitute part of the manual.

EXHIBIT No. 164, JANUARY 7, 1913.

NOVEMBER 26, 1909.

F. K. STURGIS, Esq.,

Chairman New York Stock Exchange.

DEAR SIR: After carefully thinking over the subject that was brought to my notice, and in view of the requests for suggestions, I beg leave, with your permission, to offer the following:

That the New York Curb Market agent furnish a proper shelter for subscribers to the New York Curb Market agency.

That all the rules and regulations which now exist by common consent be the government thereof, amended and corrected to cover the place of abode chosen, and a contract made by the agent with each subscriber individually to conform with the same.

In view of the above offer I beg to state that the power of enforcing penalties, the supervisions of installing of telephones, telegraph, or other electrical devices shall come under the agent's control and shall be in conformity with the regulations and caution that are now in vogue. I also beg to state that the title, New York Curb Market, has been so secured as to prevent the use of that particular name by unscrupulous persons or others.

May I ask, if you please, that this subject receive your prompt attention, as the fiscal year of the agency ends on December 31, 1909, and during the month of December the agency arranged for the funds and subscriptions for the coming year to meet its expenses and fixes the amount thereof.

In event of the above proposition being received favorably (unofficially, of course), a much greater expense would be incurred for rental and the proper services to conduct this proposition, and the funds would have to be arranged for accordingly.

I inclose herewith the proof sheets of the amended and corrected manual, adopted by common consent, which would have been issued on the 1st of January next and which are submitted for inspection and correction by your honorable committee should they deem fit. Kindly return these with your reply.

Thanking you in advance for your attention and consideration, I beg to remain,

Yours, truly,

E. S. MENDELS, *Agent.*

P. S.—I inclose herewith the proof sheets of the amended and corrected manual, adopted by common consent, which would have been issued on the 1st of January next, which is submitted for the inspection or correction by your honorable committee should they so seem fit. Kindly return this with your reply.

EXHIBIT No. 165, JANUARY 7, 1913.

NEW YORK STOCK EXCHANGE,
SECRETARY'S OFFICE,
New York, January 6, 1911.

E. S. MENDELS, Esq.,
Agent.

DEAR SIR: I beg to state that while the law committee of the stock exchange assume no authority or supervision over the members of the curb market or their transactions, they are of the opinion that so long as no dealings are had in securities listed at the stock exchange, the curb is justified in making all necessary rulings and laws for their protection.

Yours, truly,

F. K. STURGIS, *Chairman.*

EXHIBIT No. 166, JANUARY 7, 1913.

STATE OF NEW YORK,

City and County of New York:

Samuel W. Lambert, being duly sworn, deposes and says:

I am a physician in general practice in the city of New York, having my office at No. 130 East Thirty-fifth Street. I have been continuously in active practice for nearly a quarter of a century. I am now, and since 1904 have been, dean of the College of Physicians and Surgeons, medical department of Columbia University, and I have been professor of therapeutics in the said college since 1903. I have been an attending and consulting physician at the New York Hospital since 1896, and I have been attending physician at St. Luke's Hospital since about 1906.

I have acted as general physician for Mr. William Rockefeller, of No. 689 Fifth Avenue, New York, for about two years last past, having first attended him during an attack of pneumonia.

I have read the affidavit of Dr. Walter F. Chappell, verified on January 6, 1913, and I am familiar with the conditions of Mr. Rockefeller's throat, referred to in the said affidavit, and know that they are therein correctly described.

Mr. Rockefeller has a distinctly pronounced gouty tendency; and a further condition, to which Dr. Chappell does not refer in his affidavit, is the tremor habit or shaking of the head and hands, which has existed ever since I have attended upon Mr. Rockefeller, and is the result of his advanced years and general condition. This shaking of the hand makes it very difficult for him even to sign his name, and impossible for him to write continuously without great effort for more than a few minutes. In the present highly sensitive and critical condition of his throat any effort or strain or excitement might produce a condition that would not only imperil Mr. Rockefeller's life but might very reasonably be expected to cause his sudden death.

SAML. W. LAMBERT, M. D.

Subscribed and sworn to before me this 6th day of January, 1913.

[SEAL.]

FREDERIC N. GILBERT,

Notary Public, New York County.

STATE OF NEW YORK.

City and County of New York:

Walter F. Chappell, being duly sworn, deposes and says:

I am a physician, having my office in the city of New York, at No. 7 East Fifty-fifth Street. I have been in active practice for more than 30 years.

I make a specialty of diseases of the ear and throat. I am professor of clinical laryngology, in the College of Physicians and Surgeons, medical department of Columbia University, and am surgeon of the Manhattan Eye, Ear, and Throat Hospital of New York.

During the past 11 years I have been in almost constant attendance upon Mr. William Rockefeller, whose city address is at No. 689 Fifth Avenue, New York.

Mr. Rockefeller has been suffering from a gouty inflammation of the larynx and windpipe, accompanied by swellings on the vocal cords. This has necessitated, at various times, six operations, the last one being of a more serious character. Since this operation Mr. Rockefeller has had intermittent attacks of edema of the larynx, accompanied by some stenosis and spasms. This condition is brought on by talking, excitement or disturbance of the stomach, and a severe attack would terminate fatally.

Since the last operation Mr. Rockefeller has also been unable to speak above a whisper, and can not express himself in that way for more than a few moments with safety. I have advised complete rest of the larynx, or, in other words, "the silent treatment."

Mr. Rockefeller is in his seventy-second year; and, under my advice, he has carefully avoided all excitement or strain since the last operation. It would not only be an act of inhumanity to subject him to the excitement incident to his examination as a witness at this time, but, in my judgment, it would actually endanger his life.

WALTER F. CHAPPELL, M. D.

Subscribed and sworn to before me, this 6th day of January, 1913.

[SEAL.]

FREDERIC N. GILBERT,

Notary Public, New York County.

EXHIBIT No. 167, JANUARY 7, 1913.

New York Life Insurance Co.

Name of bank and year.	Published average.	Actual average.
Citizens Central National Bank:		
1909.....	\$3,595,717	\$2,665,400
1910.....	2,980,523	1,964,662
1911.....	2,386,388	1,677,159
Chase National Bank:		
1909.....	1,881,120	1,806,607
1910.....	768,720	1,265,878
1911.....	1,557,585	1,296,543
Mechanics & Metals National Bank:		
1909.....	976,237	893,043
1910.....	1,010,390	840,313
1911.....	1,527,225	1,298,635
New York Trust Co.:		
1909.....	617,973	624,680
1910.....	727,667	519,101
1911.....	1,502,644	1,279,977

Mutual Life Insurance Co.

National Bank of Commerce:		
1909.....	\$1,884,395	\$722,531
1910.....	1,044,601	513,574
1911.....	1,424,152	538,590
First National Bank:		
1909.....	736,706	429,549
1910.....	.....	315,432
1911.....	558,214	359,656
American Exchange National Bank:		
1909.....	.....	127,480
1910.....	635,352	108,807
1911.....	655,213	116,802
Farmers Loan & Trust Co.:		
1910.....	1,471,700	1,301,884
1911.....	2,872,986	2,460,214
United States Mortgage & Trust Co.:		
1909.....	1,253,583	870,547
1910.....	.....	489,041
1911.....	.....	215,068
Guaranty Trust Co.:		
1909.....	3,137,500	2,238,219
1910.....	954,166	581,232
1911.....	.....	335,205

Equitable Life Assurance Society.

National Bank of Commerce:		
1909.....	\$2,675,297	\$2,036,802
1910.....	2,082,972	1,636,196
1911.....	2,130,162	1,496,243
Bankers Trust Co., 1911.....		
	6,290,459	5,380,117
Equitable Trust Co.:		
1909.....	2,611,424	2,321,735
1910.....	1,872,809	1,619,460
1911.....	3,069,907	2,404,265
Mercantile Trust Co.:		
1909.....	4,448,741	3,881,967
1910.....	2,523,549	2,188,067
Guaranty Trust Co., 1911.....		
	524,470	405,764
Commercial Trust Co., Philadelphia:		
1909.....	507,349	476,861
1910.....	207,433	181,483
1911.....	.....	402,546

Metropolitan Life Insurance Co.

Name of bank and year.	Published average.	Actual average.
Metropolitan Bank:		
1909.....	\$2,710,941	\$1,746,786
1910.....	2,958,583	2,088,447
1911.....	2,790,410	1,857,638
Central Trust Co.:		
1909.....		512,775
1910.....		272,639
1911.....	202,151	210,594
Federal Trust Co.:		
1909.....	189,788	189,559
1910.....	195,832	195,465
1911.....		175,053
Hamilton Trust Co.:		
1909.....	435,559	414,641
1910.....	567,652	506,902
1911.....	530,604	480,262
Metropolitan Trust Co.:		
1909.....	604,917	534,444
1910.....	515,904	490,007
1911.....	404,864	370,694

EXHIBIT No. 168, JANUARY 7, 1913.

[Metropolitan Life Insurance Co. (Incorporated by the State of New York. Stock company.) Industrial department.]

NEW YORK, January 22, 1912.

Superintendents and Detached Assistant Superintendents:

GENTLEMEN: The annual meeting of the company for the election of directors will be held at the home office, in New York, on April 9 next. The polls will be open from 10 o'clock in the morning until 2 in the afternoon.

Under the provisions of the insurance law of New York, every policy holder in this company whose policy has been in force for the full term of one year before, and shall be in force at the time of, the annual meeting for the election of directors, shall have the right of voting for members of the board of directors.

Many thousands of policy holders voted at the annual meetings since 1904, and it is the desire of the executive that the privilege of voting at future annual meetings be extended to every policy holder eligible to vote in consequence of his policy having been in force over one year.

In the issue of The Metropolitan which is now on the press, there will appear a notice advising policy holders of the meeting and of the desire of the officers that they should vote. They are instructed to apply to any agent of the company for particulars, and that the agent will furnish them with either a ballot or a proxy.

There will be shipped to you in the near future a limited supply of both proxies and ballots; full instructions as to how to use the same are printed on the documents. If the supply which we forward is running low at any time before the election, please make prompt requisition on the home office for an additional supply in order that there may be no opportunity for any policy holder to claim that he was unable to vote.

Those entitled to vote are persons of both sexes, 21 years of age or older, whose lives are insured or who are beneficiaries under policies which have been in force for the full term of one year.

Yours, truly,

JNO. R. HEGEMAN,
President.