

STOCK EXCHANGE PRACTICES

SATURDAY, JUNE 11, 1932

UNITED STATES SENATE,
COMMITTEE ON BANKING AND CURRENCY,
Washington, D. C.

The committee met at 10 o'clock a. m., pursuant to call, in the hearing room of the Committee on Interstate Commerce, the Capitol, Senator Peter Norbeck presiding.

Present: Senators Norbeck (chairman), Brookhart, Goldsborough, Couzens, Townsend, Blaine, Fletcher, Wagner, Barkley, and Bulkley.

The CHAIRMAN. The committee will come to order. Mr. Boyd, will you take a seat right opposite the reporter?

**TESTIMONY OF J. COOKMAN BOYD, ATTORNEY AT LAW,
BALTIMORE, MD.**

(The witness was duly sworn by the chairman.)

Senator BLAINE. You are an attorney at Baltimore, Md.?

Mr. BOYD. Yes, sir.

Senator BLAINE. How long have you practiced there?

Mr. BOYD. Forty-three years.

Senator BLAINE. Of course you began practicing very young?

Mr. BOYD. I was hardly 21, Senator.

Senator BLAINE. Were you the owner of some stock of the Radio Keith Orpheum Co.?

Mr. BOYD. On two or three occasions I was, sir. The last time was stock which I had owned for probably a year, probably a little more than a year—300 shares.

Senator BLAINE. Were you the owner of it in November, 1931?

Mr. BOYD. Yes, sir.

Senator BLAINE. Do you recall a letter that was sent out by Mr. Brown, president of that corporation, dated November 10?

Mr. BOYD. Yes, sir; I recall that very letter and I studied it very carefully.

Senator BLAINE. Thereafter did you take some procedure with reference to your stock?

Mr. BOYD. I did, Senator, based on the reasons, as I saw them, first, that in that letter was a clause that unless the transfer of stock, the exchange of that character of stock, were effected, the concern would have to go into receivership. I was likewise very much provoked at what I thought the excessive salaries that had been paid and what looked to be a great waste of money. The final consideration was, however, that in my opinion as a lawyer, this being a Maryland corporation the only way they could bring about a legal

exchange of stock would be by unanimous consent; and I knew of at least 300 shares that would not be voted for that proposition, they being mine. That being the case I studied the situation and my son and I filed a bill for receivership.

Senator BLAINE. In your own name?

Mr. BOYD. I was the plaintiff and J. Cookman Boyd, jr., was the attorney.

Senator BLAINE. You also represented clients who were stockholders?

Mr. BOYD. Yes, sir.

Senator BLAINE. Or a client?

Mr. BOYD. Yes, sir; I represent a client, Senator Blaine, from your State.

Senator BLAINE. I am not going to ask you what settlement you made, but I am going to ask you this question, whether or not after the filing of the suit and after the filing of the amended bill of complaint a satisfactory settlement was made with you by the company in respect to your own holdings and in respect to your client's holdings?

Mr. BOYD. After there had been two days argument upon questions involved before the court, there was a satisfactory settlement made with me.

Senator BLAINE. Not on the basis of the low price, however, at which the stock was selling at that time?

Mr. BOYD. No, sir.

Senator BLAINE. In fact, the stock had been taken off the stock market at the time the settlement was made, had it not?

Mr. BOYD. Yes, sir. I do not think that entered into it.

Senator BLAINE. The settlement was made in 1932, I assume?

Mr. BOYD. The settlement was made about the 1st of March, 1932, I would say.

Senator TOWNSEND. This year?

Mr. BOYD. Yes, sir; 1932.

Senator BLAINE. Did you ever notify Mr. Whitney, president of the New York Stock Exchange, respecting this matter?

Mr. BOYD. Senator Blaine, I did notify Mr. Whitney.

Senator BLAINE. Have you with you a copy of your communication to him?

Mr. BOYD. Yes, sir; I sent him a telegram.

Senator BLAINE. Will you kindly produce that?

(The witness produced a paper which he handed to Senator Blaine.)

Senator BLAINE. You have handed me, Mr. Boyd, a copy of a telegram or day letter dated December 15, 1931, addressed to Richard Whitney, president, New York Stock Exchange, New York City, which I will read (reading):

No such thing as Radio-Keith-Orpheum Corporation rights. Proposed issuance of rights absolutely illegal. Sale would only defraud innocent purchasers. Hasn't there already been done enough harm on New York Stock Exchange to the many small holders of RKO stock? Why not investigate as to manipulations of this stock?

J. COOKMAN BOYD.

Was that day letter sent to Mr. Whitney?

Mr. BOYD. Yes, sir.

Senator BLAINE. Did you ever receive a reply to that letter?

Mr. BOYD. No, sir.

Senator BLAINE. Did you ever receive an acknowledgement of the letter from Mr. Whitney or from anyone in his office?

Mr. BOYD. Unless you might say that having received no reply to this telegram I wrote to the secretary of the New York Stock Exchange, and I wrote that letter on the 17th. The telegram was sent on the 15th of December, and on the 30th of December I received an acknowledgment only of the receipt of the letter, from the secretary of the New York Stock Exchange.

Senator BLAINE. We will offer in evidence the telegram you sent.

The letter which you received is in my hands, on the letterhead of the New York Stock Exchange, office of the secretary, dated December 30, 1931, and is addressed to J. Cookman Boyd, Esq., 2 East Lexington Street, Baltimore, Md., and reads as follows (reading):

DEAR MR. BOYD: Your letter of December 17th was duly received. I regret that through an oversight in my office an earlier acknowledgement was not sent to you.

Very truly yours,

ASHBEL GREEN, *Secretary.*

And that is the only communication that you ever received from or on behalf of President Whitney in answer to your letter?

Mr. BOYD. No, Senator Blaine. That was not an answer to my telegram to Mr. Whitney.

Senator BLAINE. Oh, no; it was——

Mr. BOYD. I wrote a letter on the 17th to Mr. Green.

Senator BLAINE. I beg your pardon.

Mr. BOYD. I got no recognition from Mr. Whitney at all.

Senator BLAINE. No answer from Mr. Whitney, directly or indirectly, to your telegram of December 15?

Mr. BOYD. No, sir. I sent the secretary a letter. I wanted to have no mistake.

Senator BLAINE. I will recur to your letter, of which I have a copy in my hand, dated December 17, 1931, addressed to the New York Stock Exchange, New York, N. Y., attention Mr. Ashbel Green, secretary, and reading as follows [reading]:

DEAR SIR: On the 15th instant we sent a telegram to Richard Whitney, president of the New York Stock Exchange, advising him that there was no such thing as Radio-Keith-Orpheum Corporation rights, that the proposed issuance of rights was absolutely illegal and sale of same would only defraud innocent purchasers, with the suggestion that enough harm had already been done on the New York Stock Exchange to the many small holders of RKO stock, and suggested the advisability of an investigation as to manipulations of this stock.

We learn to-day that the New York Stock Exchange yesterday decided to admit to the list for trading Radio-Keith-Orpheum Corporation temporary certificates for common stock without nominal or par value, and that it had likewise admitted to dealings Radio-Keith-Orpheum Corporation rights.

I shall not read the balance of the letter; but the letter from Mr. Green of December 30, which I read, is the only reply that you have had to your letter of December 17 which I just read.

Mr. BOYD. That is correct.

Senator BLAINE. I suggest, Mr. Chairman, that we have made a part of the record the day letter dated December 15, 1931, the letter from Mr. Boyd dated December 17, 1931, to the New York Stock

Exchange, and the reply of Mr. Green, secretary, dated December 30, 1931; but there are two or three other communications in this file of papers which you have handed me, Mr. Boyd. Do they relate to this matter?

Mr. BOYD. I replied again to that acknowledgment of Mr. Green, Senator Blaine.

Senator BLAINE. What date was that?

Mr. BOYD. January 2, I think.

Senator BLAINE. January 2, 1932. I will read that [reading]:

JANUARY 2, 1932.

NEW YORK STOCK EXCHANGE,

New York, N. Y.

Attention Mr. Ashbel Green, Secretary.

DEAR SIR: Yours of December 30, 1931, received.

I am not so much interested in your acknowledgment that through oversight in your office earlier acknowledgment was not made of my communication of December 17.

I made certain statements in that letter which to my mind required action by the New York Stock Exchange. Evidently the exchange is more interested in the quantity sold rather than in the quality or legality of same.

I think perhaps more beneficial results might be obtained if a copy of this correspondence was submitted to the Senate in Washington.

Very truly yours,

I assume that that was signed by you?

Mr. BOYD. Yes, sir. May I say that I never anticipated this, and that I am not a voluntary witness here. I was summoned last night. I talk with a great deal of reserve, at least, about matters in which I have had business connections, and I might say that, so far as the R-K-O is concerned, the ending of my relations with them was quite satisfactory. That reference to the Senate in my letter of January 2, 1932, rather evidently was due to the fact that I had written to Senator Dill, who had introduced a resolution in the Senate some time before that providing for an investigation of R-K-O.

Senator BLAINE. I offer the letter of January 2, of Mr. Boyd, to the New York Stock Exchange; and I feel that all these letters, unless you have objection, Mr. Boyd, ought to be made a part of the record.

Mr. BOYD. I have no objection, Senator Blaine, to any communications I had with any official of the New York Stock Exchange. I feel now just as those letters represented my feelings at that time.

(The correspondence referred to will be found printed at the end of the testimony of this witness.)

Senator BLAINE. Would you care to testify as to the total amount you received in your settlement of the suit and the settlement of your client's claim?

Mr. BOYD. Senator Blaine—

Senator BLAINE. If you do not care to, I am not going to ask you to.

Mr. BOYD. There is no reason why I should not, except that I think it is a personal matter, and unless the committee insists, I would rather not do it.

Senator BLAINE. I would not insist, of course.

Mr. BOYD. There is nothing of which I need to be ashamed in the matter, except it may be that I did not settle with them for a larger

sum.

The CHAIRMAN. You brought action for how much money? It was to recover how much?

Mr. BOYD. My action was for a receivership of the concern, sir. It was not a suit brought for a specific sum. I alleged that this concern had been very wastefully managed, and, to my mind, there were matters bordering on fraud.

The CHAIRMAN. Did you get as much as \$20,000 in this settlement—or don't you care to answer that?

Mr. BOYD. I might say again, Senator—

Senator TOWNSEND. Mr. Chairman, if the gentleman does not care to answer that question—

The CHAIRMAN. Oh, no; I am not going to insist on it.

Senator BLAINE. It is really not material.

Mr. BOYD. I can only say that it was a substantial sum.

Senator BLAINE. It has the relationship of attorney and client.

The CHAIRMAN. It was not 75 cents a share, like the others got?

Mr. BOYD. Oh, no.

Senator BLAINE. It was very close to the price the stock had been selling for when it was selling at a respectable price?

Mr. BOYD. I would say it was very much nearer to the respectable price than the price at the time they made the settlement.

Senator BLAINE. In spite of your telegram to Mr. Whitney and in spite of your letter to the New York Stock Exchange, attention of Mr. Green, the secretary, do you know whether or not it is a fact that the New York Stock Exchange continued to list the stock of the R-K-O on the stock exchange?

Mr. BOYD. They did; that is, new stock.

Senator BLAINE. And did it also continue to list the debentures?

Mr. BOYD. It did do that. Just how it was done, Senator, I do not know. As I stated in one of my letters, it looked like it was undue haste in the matter.

Senator BLAINE. Do you recall what letter that is?

Mr. BOYD. I think that was the letter of the 17th. It had the impression on me that this matter was being urged more to make it appear that their action in attempting to amend the character of their stock was legal.

Senator BLAINE. You called the attention of the New York Stock Exchange not only to the fraudulent feature of the manipulation, but also to the illegal feature of the reorganization?

Mr. BOYD. Yes, sir; and I am still of the opinion, sir, that the reorganization was and is illegal.

Senator BLAINE. The company, or those who represented the company, must have been of the same opinion when they made the settlement with you to prevent a receivership on the basis of the substantial amount for the stock?

Mr. BOYD. That may be. I can not answer for them.

Might I say, Senator, that in connection with the other matter, we sent practically the same letter to Mr. David Saranoff of the Radio Corporation. There was too close a connection, in my mind, between those two concerns, interlocking directors, and that had a great deal to do with my bitterness of feeling, if there were any about it.

Senator BLAINE. Do you recall who the interlocking directors were?

Mr. BOYD. No; I can not remember that. I know Mr. Saranoff was one; I know some others that I would rather not mention.

Senator BLAINE. I am going to read a portion of the letter of December 16, 1931, to the Radio Corporation of America—

Mr. BOYD. Yes; that is the one I am referring to.

Senator BLAINE. It is addressed to the Radio Corporation of America, attention of Mr. David Saranoff, president [reading]:

GENTLEMEN: We are writing to inform you that any action taken by your corporation, or any expenditure made by your corporation, for or on account of the Radio-Keith-Orpheum Corporation, and especially on account of any matter connected with the attempted amendments to the charter of the Radio-Keith-Orpheum Corporation, or of the change in the 500,000 shares of class B stock of the Radio-Keith-Orpheum Corporation owned by the Radio Corporation of America, or the purchase of any so-called indentures, will be done at the peril of the Radio Corporation of America, as the legality, as well as the outcome of the whole proceedings in connection with the alleged amendments to the charter of the Radio-Keith-Orpheum Corporation, or any transfer of or change in or reduction of the stock, has been questioned and is pending in the circuit court of Baltimore City, in the State of Maryland.

Any action of the court in determining the legality or illegality of said proceedings of the Radio-Keith-Orpheum Corporation will date from the day of the filing of the proceedings—in one instance, as to the question of receivership, dating from December 1, 1931, and in the other instance as to the question of the legality of the alleged amendments to the charter of the Radio-Keith-Orpheum Corporation, accounting as from December 14, 1931.

Very truly yours,

BOYD & BOYD.

That is, you and your son, attorneys?

Mr. BOYD. Yes.

Senator BLAINE. By yourself, J. C. Boyd?

Mr. BOYD. Yes, sir.

Senator BLAINE. I think all this correspondence should be made a part of the record, Mr. Chairman.

The CHAIRMAN. If there is no objection.

Mr. BOYD. Senator Blaine, that represents our office files.

Senator BLAINE. You will have them returned to you.

Mr. BOYD. Oh, very well, sir.

(The correspondence referred to will be found at the end of the testimony of this witness.)

Senator FLETCHER. What reply did you get from the New York Stock Exchange?

Mr. BOYD. The only reply I received, sir, was an acknowledgement by the secretary of my letter of December 17, written by him on December 30, regarding the fact that it had been overlooked. As to any reply to any material question involved in my telegram or letter, there was absolutely nothing said.

Senator FLETCHER. That is the only reply you received?

Mr. BOYD. The only reply.

There are in this file a letter to Lehman Bros. and one to the Commercial National Bank, which were the transfer agents of the concern, and I notified them along the same lines that I notified the others.

Senator BLAINE. I think, if you have no objection, we should put them all into the record.

Mr. BOYD. No objection. They have not been spoken of before, and I just wanted you to know that if they were not combined there I would not have spoken of them.

Senator FLETCHER. I want to get your idea, if I may, about what you think Congress can do in the matter of regulation, or providing for regulation or supervision or control over the New York Stock Exchange in their transactions.

Mr. BOYD. I would have no objection to giving the matter some consideration and giving you my views, but I would rather not—

Senator FLETCHER. I did not know but what your experience in connection with this case might enable you to point us how we can do something to correct or remedy this kind of business.

Mr. BOYD. Whether I can or not I could not say now. I would be very glad to inform the committee, but you understand, Senator, that we are just a couple of poor lawyers over in Baltimore trying to make a living, and that takes a great deal of our time. Senator Goldsborough would vouch for that.

Senator GOLDSBOROUGH. Yes; I think I may say that Mr. Boyd is a prominent member of the Baltimore bar, but I do not think he knows much about the stock market, perhaps.

Senator FLETCHER. You appreciate that we are trying to find something that we can do to prevent transactions which you evidently regard as being reprehensible in connection with the New York Stock Exchange. We can not prevent corporations from manipulating their stock arrangements and issuing stock, and that sort of thing. I think one great trouble with this business has been the watering of stock and listing it on the stock exchange and selling to the public this watered stock which, after the water was squeezed out, of course, went down to nothing. I do not know that we can do anything with reference to these corporations along that line.

Mr. BOYD. Except possibly something along this line, that a director of a concern, except to a very limited capacity, will be precluded from dealing in his own stock, or indirectly deal with it in the nature of a pool. Make it a criminal offense, or something along that line. That requires some drastic action.

Senator FLETCHER. Yes; I appreciate that. We are concerned here now in an investigation of the New York Stock Exchange and its practices.

Mr. BOYD. I think this question of interlocking directors, Senator, is one of the worst things we have had to contend with and it has been more responsible for these various pools than anything else. One can not serve two masters at the same time.

Senator FLETCHER. Admitting all that, what has the New York Stock Exchange got to do with it? Is there some way we can reach the practices of the New York Stock Exchange? That is the market place for these securities. You brought notice to them of what was taking place, and it would seem that they ought to have paid attention to that notice and perhaps canceled the listing of this stock or protected the public in some way. That is a point that I would like to see developed.

Mr. BOYD. Well, take this matter before us to-day. It was almost indecent haste; it was worse than the marriage of Hamlet's mother to his uncle.

Senator BLAINE. I was going to suggest to Senator Fletcher that Senator Couzens pursued the examination of Mr. Whitney respect-

ing complaints that had been filed, whether they made investigations or what they did; and the chairman ascertained that Mr. Boyd could present a concrete case of how they handled complaints. That was the main purpose of calling Mr. Boyd down here.

Mr. BOYD. I do not know how you got onto it, Senator.

Senator BLAINE. I knew about this last December.

Mr. BOYD. I have been absolutely quiet on the matter since they settled with me.

Senator BLAINE. Not December, but last March. I beg your pardon. I think it has been quite clear from your testimony that, notwithstanding your telegram and notwithstanding the letter that you wrote to the New York Stock Exchange, bringing their attention to these alleged fraudulent practices and illegal practices, the stock of the concern was still listed upon the New York Stock Exchange, as well as the debentures?

Mr. BOYD. Yes, sir; and is being sold now; and I think now, as I did in December, that that stock is absolutely illegal and that it was the duty of the exchange, after warning and before it proceeded with the sale of it, to have its own attorneys look into the matter and advise it. It was not necessary to take the opinion of a 1-horse lawyer.

Senator FLETCHER. Did you go into the matter to determine whether there was watered stock?

Mr. BOYD. No, sir; I was not interested in that.

Senator BROOKHART. If Congress would prohibit the use of the mails and the telegraph in interstate commerce with regard to practices such as you have described, that would meet it, would it not?

Mr. BOYD. Yes; that would. The only trouble about that, sir, is that you might strike the innocent.

Senator BROOKHART. The innocent are being struck now by this system so hard that you can afford to strike a few and still have a result that would be to the great advantage of the public, could you not? Under proper regulation it would be much less than are suffering under the system now?

Mr. BOYD. I think there ought to be some regulation. Just what that is I am not prepared to say.

Senator BROOKHART. The power to reach it is through the interstate commerce clause of the Constitution, by the control of the mails.

Mr. BOYD. Yes; but I would hope that it would not be turned over to the Interstate Commerce Commission.

Senator BROOKHART. No; I mean the interstate commerce clause of the Constitution.

Mr. BOYD. Yes; I think you have a right to do that.

(The correspondence referred to and submitted by the witness is here printed in full, as follows:)

DECEMBER 15, 1931.

RICHARD WHITNEY,
President New York Stock Exchange,
New York City.

No such thing as Radio-Keith-Orpheum Corporation rights. Proposed issuance of rights absolutely illegal. Sale would only defraud innocent purchasers. Hasn't there already been done enough harm on New York Stock Exchange to the many small holders of R-K-O stock? Why not investigate as to manipulations of this stock?

J. COOKMAN BOYD.

DECEMBER 16, 1931.

RADIO CORPORATION OF AMERICA,
New York, N. Y.

(Attention of Mr. David Saranoff, president.)

GENTLEMEN: We are writing to inform you that any action taken by your corporation, or any expenditure made by your corporation, for or on account of the Radio-Keith-Orpheum Corporation, and especially on account of any matter connected with the attempted amendments to the charter of the Radio-Keith-Orpheum Corporation, or of the change in the 500,000 shares of class B stock of the Radio-Keith-Orpheum Corporation owned by the Radio Corporation of America, or the purchase of any so-called indentures, will be done at the peril of the Radio Corporation of America, as the legality, as well as the outcome of the whole proceedings in connection with the alleged amendments to the charter of the Radio-Keith-Orpheum Corporation, or any transfer of or change in or reduction of the stock, has been questioned and is pending in the circuit court of Baltimore city, in the State of Maryland.

Any action of the court in determining the legality or illegality of said proceedings of the Radio-Keith-Orpheum Corporation will date from the day of the filing of the proceedings—in one instance, as to the question of receivership, dating from December 1, 1931, and in the other instance, as to the question of the legality of the alleged amendments to the charter of the Radio-Keith-Orpheum Corporation, accounting as from December 14, 1931.

Very truly yours,

Boyd & Boyd,
By J. C. B.

DECEMBER 17, 1931.

NEW YORK STOCK EXCHANGE,
New York, N. Y.

(Attention of Mr. Ashbell Green, secretary.)

DEAR SIR: On the 15th instant we sent a telegram to Richard Whitney, president of the New York Stock Exchange, advising him that there was no such thing as Radio-Keith-Orpheum Corporation rights; that the proposed issuance of rights was absolutely illegal and sale of same would only defraud innocent purchasers, with the suggestion that enough harm had already been done on the New York Stock Exchange to the many small holders of R.-K.-O. stock and suggested the advisability of an investigation as to manipulations of this stock.

We learn to-day that the New York Stock Exchange yesterday decided to admit to the list for trading Radio-Keith-Orpheum Corporation temporary certificates for common stock without nominal or par value, and that it had likewise admitted to dealings Radio-Keith-Orpheum Corporation rights.

The issuance of this proposed stock is illegal, the stock must of necessity be void for many reasons, among them being (1) that the alleged amendment of the charter of the corporation was not provided for by the necessary votes under the law; (2) that proxies not duly executed were voted at said meeting; (3) that proxies given for the purpose of voting against the proposed amendment were voted for the same; (4) that the meeting itself was illegal; and (5) admitting for the sake of argument the legality of everything that transpired, the amendments themselves, even if properly carried, were illegal and void.

In consequence, to permit the sale of this proposed stock and the so-called rights would be a gross fraud upon the public who may purchase the same and do not understand the situation.

Since you have been notified of said illegality, it should be incumbent upon your organization to be satisfied that the same are duly and properly authorized and are legal under the law before the same should be permitted to be sold. The feeling of the general public as to alleged waste, extravagance, and mismanagement of this corporation, as well as gross dissipation of its assets, is of such character as that nothing less than a vigorous research on the part of the stock exchange will satisfy.

The press asserts that there has been filed with you by the Radio-Keith-Orpheum Corporation a statement of assets and liabilities as of September, 1931, which provided for assets of practically \$17,000,000 and liabilities of \$10,000,000.

At the meeting of the stockholders in Baltimore on December 10, 1931, B. B. Kahane, vice president and general counsel of Radio-Keith-Orpheum Corporation, who presided at that meeting, stated that the net worth of the assets of the concern was at that time \$47,000,000, over and above liabilities.

The times are too ticklish, values are too uncertain, and the stock market generally is in such desperate condition as that no chances as to sale of illegal stock like the above should be permitted.

The people themselves have become tired and will demand a strict accounting.

The haste in this matter seems so indecent as to make one ask whether there may be an ulterior motive.

Very truly yours,

BOYD & BOYD.

c/o to

Hon. C. C. DILL,

United States Senate, Washington, D. C.

Mr. HIRAM S. BROWN,

President Radio-Keith-Orpheum Corporation,

New York, N. Y.

DECEMBER 18, 1931.

Messrs. LEHMAN BROS.,

New York, N. Y.

GENTLEMEN: We notice by a circular of the Radio-Keith-Orpheum Corporation, dated December 17, 1931, signed by Hiram S. Brown, president, that subscriptions for debentures and common stock are accepted at your office.

Are you informing those who present same to you of the proceedings in the Circuit Court of Baltimore city, State of Maryland, alleging the illegality of this transaction and the order of that court passed in said proceedings? If not, we should suggest from the standpoint of common honesty and fairness that you do so.

Very truly yours,

BOYD & BOYD,

By J. COOKMAN BOYD.

DECEMBER 18, 1931.

COMMERCIAL NATIONAL BANK & TRUST Co. OF NEW YORK,

New York, N. Y.

GENTLEMEN: We notice by a circular of the Radio-Keith-Orpheum Corporation, dated December 17, 1931, signed by Hiram S. Brown, president, that certificates for new common stock are now being delivered upon transfers and in exchange for outstanding certificates for class A stock when presented for the purpose at your office.

Are you informing those who present same to you of the proceedings in the Circuit Court of Baltimore city, State of Maryland, alleging the illegality of this transaction, and the order of that court passed in said proceedings? If not, we should suggest from the standpoint of common honesty and fairness that you do so.

Very truly yours,

BOYD & BOYD,

By J. COOKMAN BOYD.

NEW YORK STOCK EXCHANGE,

OFFICE OF THE SECRETARY,

December 30, 1931.

J. COOKMAN BOYD, Esq.,

Baltimore, Md.

DEAR MR. BOYD: Your letter of December 17 was duly received. I regret that through an oversight in my office an earlier acknowledgment was not sent to you.

Very truly yours,

ASHBEL GREEN, *Secretary.*

JANUARY 2, 1932.

NEW YORK STOCK EXCHANGE,

New York, N. Y.

(Attention of Mr. Ashbel Green, secretary.)

DEAR SIR: Yours of December 30, 1931, received.

I am not so much interested in your acknowledgement that through oversight in your office an earlier acknowledgement was not made of my communication of December 17.

I made certain statements in that letter which to my mind required action by the New York Stock Exchange. Evidently the exchange is more interested in the quantity sold rather than in the quality or legality of same.

I think, perhaps, more beneficial result might be obtained if a copy of this correspondence was submitted to the Senate in Washington.

Very truly yours,

(Witness excused.)

The CHAIRMAN. I want the attention of the committee a moment. This other matter has taken 2 hours and 30 minutes. There is no criticism of the committee or the members. But Mr. Muir is here to be heard and we would like to hear him also. But at this time I had intended to put on Mr. Stock, the investigator of the committee, to make a partial report on Continental shares. He is ready to make a statement of that as the investigator of the committee. If there is no objection to that we will call him.

Senator BULKLEY. I do object. Do you want to hear the reasons for the objection?

The CHAIRMAN. You may state them.

Senator BULKLEY. Mr. Chairman, the subject matter of this controversy over Continental shares is the subject matter of litigation in the courts. For that reason I do not want to express an opinion one way or the other. I have no reason to question the good faith of the people who brought the action against Mr. Eaton and his associates. I think the whole matter should be postponed until the courts have had a chance to act. I do not think we should be in a position of giving publicity to a matter that is pending in the courts.

But that is not the whole point I wanted to address myself to here to-day. If, for any reason, you think it is proper to go ahead notwithstanding this matter is pending in the courts, there is an orderly and there is a disorderly way to go ahead. We all know that where anybody is under suspicion of doing anything that is not right, he has been called here and questioned in person. I do not know of any precedent for a committee expert to go on in a public hearing and spread matters on the record here and have it broadcast through the newspapers of the United States, at a hearing at which the person mentioned has not been called. I protest against that very vigorously.

The CHAIRMAN. I desire to make a brief statement on that matter. It is well understood that this matter is in litigation and, unfortunately, many of the cases that should be investigated are in litigation. The report came to me, which now seems to be erroneous, that this case would be heard on the 6th of June, and that it should not be heard here until that time. I said that we would try to postpone it until that time. It now turns out that it is to be tried at a later date, and at a date after the expiration of the date for the authority of this committee to act. That is one of the reasons for investigating it now. And I think that this is a peculiar case in many respects.

I think this is the first case which has come to our attention which has a tax-dodging feature, of \$2,000,000. The record is very interesting, as Mr. Stock has informed me. And he has gone into the matter very carefully.

Now the question still remains, is this the best way to proceed? I understand they send out investigators in the courts and they make reports.

Senator BULKLEY. Without calling the man accused?

The CHAIRMAN. Yes. I do not think it is right to call the man who is prosecuted, in the first instance.

Senator BULKLEY. I assume you will put in the record any precedents you have for that.

The CHAIRMAN. The members of the committee will bear me out that that is done, if I am not wrong in it.

Senator BROOKHART. Practically every case is done like that. Mr. LaGuardia brought in several cases.

Senator BULKLEY. Mr. LaGuardia was an original witness on his own responsibility.

Senator CAREY. Mr. Chairman, these people will have a chance to come here, if they care to, following this hearing, if anybody wants to be heard.

The CHAIRMAN. I want the committee to pass judgment on the propriety of handling it this way. Our time is getting very, very short, and our attorney has been very busy in other matters. And you know there has been criticism of him when he was spending time on these other matters, and when he made a statement to us he was criticized that he was trying to testify.

I want to leave it to the committee which is the best way to proceed in the matter. I do not want to do anything wrong or anything unethical, neither do I want to delay it until the committee's authority expires.

Senator COUZENS. May we not take this up, Mr. Chairman, in executive session?

Senator BULKLEY. I have suggested that it should be taken up in executive session.

Senator FLETCHER. I think that would be better.

(Thereupon the committee proceeded to the consideration of other business.)