

# STOCK EXCHANGE PRACTICES

MONDAY, NOVEMBER 27, 1933

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

The subcommittee met at 10:30 a.m., pursuant to adjournment Friday, November 24, 1933, in room no. 301 of the Senate Office Building, Senator Duncan U. Fletcher presiding.

Present: Senators Fletcher (chairman), Gore (substitute for Barkley), Adams (proxy for Costigan), Couzens, Townsend, and Goldsborough (substitute for Norbeck).

Present also: Ferdinand Pecora, counsel to the committee; Julius Silver and David Saperstein, associate counsel to the committee; and Frank J. Meehan, statistician to the committee; Alfred E. Mudge, Julian L. Hagen, and C. Horace Tuttle, of Rushmore, Bisbee & Stern, also William Dean Embree, of Milbank, Tweed, Hope & Webb, counsel representing the Chase National Bank and the Chase Corporation; Saul E. Rogers, counsel representing Harley L. Clarke.

The CHAIRMAN. The subcommittee will come to order, please. Mr. Pecora, who will you have first?

Mr. PECORA. Mr. Dodge, you will resume the stand please.

## TESTIMONY OF MURRAY W. DODGE—Resumed

Mr. PECORA. Now, Mr. Dodge, do you recall that in the early part of 1931 it became necessary to do some new financing for the Fox Film Corporation as the 55 million dollars of debenture notes, that had been issued in April of 1930, were falling due on April 15, 1931?

Mr. DODGE. Yes, sir.

Mr. PECORA. What, if anything, was done with respect to such new financing?

Mr. DODGE. The completion of the financing, would you like? Hadn't we already touched on a part of that?

Mr. PECORA. The only part we touched on was the putting in evidence of the memorandum that you addressed to Mr. Wiggin, of February 7, 1931.

Mr. DODGE. If it will facilitate this hearing, Mr. Pecora, I have prepared a careful statement showing the—

Mr. PECORA (interposing). Have you a copy of it?

Mr. DODGE. I have a copy of it, and here it is, Mr. Pecora. This statement shows the full financing.

Mr. PECORA. Well, now, Mr. Dodge, I think you can be guided by this statement that you have prepared in telling this subcommittee what was done, that you can summarize it.

Mr. DODGE. Thank you.

Mr. PECORA. I mean, in your oral testimony.

Mr. DODGE. All right.

Mr. PECORA. You may go ahead, now.

Mr. DODGE. There were 55 million dollars of 1-year notes of the Fox Film Corporation coming due April 15. There were also 10 million dollars of notes of the Wesco Corporation, coming due at the same time.

Senator COUZENS. Is that the Pacific coast corporation?

Mr. DODGE. Yes, sir.

Senator TOWNSEND. And that makes a total of 65 million dollars.

Mr. DODGE. Yes, sir.

Senator TOWNSEND. Coming due in April?

Mr. DODGE. Yes, sir. The Wesco Corporation note was due at the same time, I believe.

Mr. PECORA. Go ahead with your answer.

Mr. DODGE. The final plan as put through was that the Fox Film Corporation sold at 92 and accrued interest, 30 million dollars principal of its 5-year convertible gold debentures, due April 1, 1936, to a group headed by Chase Securities Corporation, and realized therefrom \$27,665,000. The Fox Film Corporation sold to a corporation formed and known as Film Securities Corporation 660,900 shares of the common stock of Loew's Inc., and—

Mr. PECORA (interposing). Talk a little louder, please, Mr. Dodge.

Mr. DODGE (continuing). For 462,000 shares of the class A stock of the Film Securities Corporation, and approximately \$28,800,000.

Senator TOWNSEND. Do you mean additional?

Mr. DODGE. Yes, sir. Thereby realizing \$56,465,000.

Mr. PECORA. Go ahead.

Mr. DODGE. The Wesco Corporation sold at 96 and accrued interest 15 million dollars principal amount of 2-year 6 percent gold notes, due April 1, 1933, to the Chase Securities Corporation, realizing therefrom, including accrued interest, the amount of \$14,432,500.

Senator COUZENS. Are they in default?

Mr. DODGE. Those notes are past due, and held by the Chase National Bank.

The CHAIRMAN. What was that answer?

Mr. DODGE. Those notes are past due. The grand total amount realized was \$70,897,500. That amount enabled the Fox Film Corporation and the Wesco Corporation to meet its maturing obligations. The next step was the sale by Film Securities Corporation of 20 million dollars principal amount of its 2-year 6 percent secured gold notes, due April 1, 1933, and secured by 660,900 shares of Loew's, Inc., common stock, to a group headed by Chase Securities Corporation, realizing, including accrued interest, the amount of \$19,268,333.33.

Mr. PECORA. At what price were they sold, I mean those 2-year 6 percent secured gold notes?

Mr. DODGE. Included in this sale were 51,333 shares of the common stock of the Film Securities Corporation, the two going together. The approximate amount of the sale was—

Mr. PECORA (interposing). But included in the consideration of the purchase price of nineteen million two hundred and sixty-eight thousand and odd dollars, for that 20 million dollars principal amount, were 51,333 shares of the capital common stock of the Film Securities Corporation?

Mr. DODGE. Yes, sir.

Mr. PECORA. And you say that purchase price was nineteen million two hundred and sixty-eight thousand and odd dollars, and how was it allocated or apportioned between the two securities? That is, as to the 2-year notes and the Film Securities Corporation common stock?

Mr. DODGE. As I remember, \$25,000 was the sum allocated to the common stock. Is that correct, Mr. Mudge?

Mr. MUDGE. That is correct.

Mr. DODGE. Yes. The reason for that we will come to a little later. The Film Securities Corporation also sold to General Theatres Equipment, Inc., at 97 flat, 100,000 shares of its \$7 dividend preferred stock, realizing therefrom the amount of \$9,700,000. The total amount of cash received, therefore, by the Film Securities Corporation was \$28,968,333.33, which checks, for the approximate amount as stated above, with \$28,800,000.

The CHAIRMAN. What was the date of that?

Mr. DODGE. This transaction, or this plan occurred, or the notes were due on the 15th, Senator Fletcher, and I think the actual plan was consummated on the 9th. The closing took place on the 14th, but the contracts were signed on the 9th.

The CHAIRMAN. The 9th of what?

Mr. DODGE. The 9th of April 1931. But the actual closing took place on the 14th of April.

Mr. PECORA. Now, Mr. Dodge, have you entirely overlooked a loan of 10 million dollars that was made in the fall of 1930 to General Theaters Equipment, Inc., by the Chase National Bank?

Mr. DODGE. In the fall of 1930?

Mr. PECORA. Or early part of 1931. I see that it was in October of 1930.

Mr. DODGE. No, sir. That was not a part of the financing of the 55 million dollars of Film Securities Corporation, or I mean of the Fox Film Corporation notes which were coming due April 15.

Mr. PECORA. In order to get these events arranged on the record so far as possible in chronological order, I want you to go back to that 10 million dollar loan made to General Theaters Equipment, Inc., by the Chase National Bank. You recall the transaction that I have in mind, do you not?

Mr. DODGE. Yes, sir.

Mr. PECORA. In connection with that transaction, did you on or about the 8th of October 1930 prepare and cause to be given to Mr. Wiggin a memorandum, a photostatic copy of which I now show you?

Mr. DODGE. I will look it over.

Mr. PECORA. You will find in the upper right-hand corner the identifying number of that memorandum according to your records.

Mr. DODGE. You have two memoranda here, have you not?

Mr. PECORA. How is that?

Mr. DODGE. Do you wish me to take both of them?

Mr. PECORA. You may just ignore the second one.

Mr. DODGE (handing back one paper). Yes, this is a copy.

Mr. PECORA. Is that a true and correct copy of the memorandum you prepared and gave to Mr. Wiggin on or about October 8, 1930?

Mr. DODGE. Yes—one second, please. [After looking over the paper again.] Yes, sir.

Mr. PECORA. Mr. Chairman, I offer that in evidence and ask that it may be spread on the record of the subcommittee's proceedings.

The CHAIRMAN. Let it be admitted, and the committee reporter will make it a part of the record.

(A memorandum from Mr. Dodge to Mr. Wiggin dated Oct. 8, 1930, was marked "Committee Exhibit No. 180, Nov. 7, 1933", and will be found immediately following where read by Mr. Pecora.)

Mr. PECORA. The memorandum in question, received in evidence as committee exhibit no. 180, reads as follows [reading]:

**MEMORANDUM—PROPOSED PLAN FOR RECLASSIFYING CAPITAL STOCK OF GENERAL THEATRES EQUIPMENT, INC.**

To MR. WIGGIN: At the present time there are outstanding 2,847,955 shares of Common Stock, and 300,000 stock purchase warrants, having the right to buy the stock at \$45 per share. It is proposed to authorize \$3 Cumulative No Par Value Preferred Stock to the extent of 1,500,000 shares. This stock will be callable at \$52.50 and convertible into common stock of the Company, 4 shares of common stock for each 5 shares of preferred, or the approximate market price of \$62.50. The present stock will be reclassified, and there will be issued for each share of the present common stock  $\frac{1}{4}$  of a share of preferred and  $\frac{2}{3}$  of a share of common stock. The Company would then have outstanding 949,318 shares of preferred and 1,898,637 shares of common stock. The dividend requirements on the stock would be about \$2,850,000, which the Company can easily pay. The holders of the 300,000 warrants, which are closely held, would be required to waive any rights to subscribe to the preferred stock.

The conversion rights of the debentures would be protected by depositing with the trustee  $\frac{1}{4}$  of a share of preferred and  $\frac{2}{3}$  of a share of common stock against each share now reserved for conversion. Probably an alternative right would be given to convert into the all common stock as now constituted, or into the preferred and common. As all of the common stock of the Company is held under a voting trust agreement, only ten days notice will have to be given to the stockholders under Exchange requirements and the vote of the directors of the Company and of the voting trustees is required. A consenting vote of over 60% of the common stockholders can be obtained immediately, but this is not a necessity.

The common stock syndicate, managed by Pynchon & Co., has approximately 345,000 shares at a cost of around \$46 per share. Trading account #2 has 200,000 shares at a cost of approximately \$48 per share. Trading account #3 has approximately 50,000 shares at a cost of around \$30 per share. These three accounts were the result of the purchase of common stock from the Company to enable the purchase of the Fox Film Company stock, and amounted in all to approximately 600,000 shares. It is the desire of Harley Clarke to do everything in his power to protect the members of these accounts, and he is favorably considering an offer to exchange preferred stock, which he and a few of his associates received in the reclassification, for the common stock held by these accounts, share for share. It would work out in this way: Syndicate stock, 600,000 shares, will receive in reclassification 200,000 shares of preferred and 400,000 shares of common stock. Harley Clarke and associates, with a round figure of 1,200,000 shares of present common stock, will receive 400,000 shares of preferred and 800,000 shares of common stock. An offer of exchange of stock held by Harley Clarke of 400,000 shares of preferred and 400,000 shares of common, to be owned by the Syndicate, would leave the syndicate with 600,000 shares of preferred stock.

In consideration of Harley Clarke making this exchange, those who wish to accept it would agree to form a new syndicate of the preferred stock for six

months, with renewal privileges of three months each, to create a trading account of 100,000 shares of preferred stock, either long or short, and give an option to the syndicate managers on their stock at \$45 per share, which is practically what the market would be. The Chase Bank, at the same time, will agree with the syndicate managers to continue the present syndicate loan during the life of the syndicate. As this loan will be paid down to around \$25 per share, it will be a safe loan for the Bank, with preferred stock as collateral. As this preferred stock should be an attractive one, especially with its conversion feature, making it valuable if a turn in the market occurs within the year, it should be saleable, and even in this market I would figure a minimum price of \$40 per share under almost any conditions, with a probability of selling the stock to the public at between \$45 and \$50 per share. Harley Clarke would expect Chase Securities, Shermar, Pynchon, West & Co. and others to join in this offer to the syndicate to the extent of stock owned, exclusive of stock in the above syndicate. I will try to bring this amount to the minimum possible and, at the same time support Harley Clarke for this cheap stock.

The only objection that Harley Clarke at the present time makes to the above plan is that, while it safeguards the syndicate members and assists the market in General Theatres by withdrawing this additional common stock from the market, it does not cure the situation in regard to the Fox "A" Stock, of which the General Theatres owns 1,160,000 out of 2,400,000 outstanding. This stock is paying \$4, is earning at the rate of \$7, and its earnings are steadily increasing. It is felt by Clarke, and rightly so, that the stock should command a normal market of between \$50 and \$60 per share and he greatly desires that the present weakness in this stock should cease and the stock sell at a price which would make it possible to refund the \$55,000,000 One Year Notes, maturing on April first, as cheaply as possible for the Company. That is to say, if a long-time debenture is sold to refund these notes, and needs a convertible feature, this conversion should be as high as possible. Present market conditions would make such financing very expensive for the stockholder, and he therefore feels that, in conjunction with the above plans for General Theatres, some constructive plan should be put through for curing the Fox "A" situation. He is favorably considering the suggestion that General Theatres purchase in the market, in such a way as to first stabilize and then advance the price for the stock, between 225,000 and 250,000 shares of Fox "A" stock. He would expect it to be good business for General Theatres, first, for the return on the money would be around 9% in dividends and over 16% on a consolidated earnings statement basis, and, second, as the acquisition of this stock would give General Theatres the actual majority of the Fox "A" stock.

It was pointed out to Harley Clarke that under present market conditions General Theaters could not put out a long-time security, as its debentures were selling at a considerable discount, owing to the weakness in the stock, and that, under the terms of the indenture securing the debentures the Company could only borrow for less than one year and that the only security that it could give as collateral for such a loan would be the Fox "A" stock which was nonvoting and not the stock of a subsidiary. Clarke is considering the advisability, if it is possible, of arranging a loan of \$10,000,000, maturing in slightly less than a year, and secured by the Fox "A" stock, to be purchased with additional stock owned by the Company. This would give him a buying power in Fox "A" stock up to \$50 per share on approximately 225,000 shares of stock. It is felt that the purchase of this size block would stabilize and improve the market value.

At the time that the General Theaters issued its \$30,000,000 of debentures, it was anticipated that the Company would own approximately 1,000,000 shares of Fox "A" stock, an additional 160,000 shares of this stock being reserved under the right of William Fox to purchase. There was considerable controversy between Clarke and Fox as to the amount of stock that he had a right to purchase at \$30 per share, which, after three months' negotiations was concluded by an agreement on the part of General Theaters to buy out Fox's rights, thus effecting a complete settlement with Fox and his lawyer, Samuel Untermeyer, and ending the controversy which threatened to throw the Company again into innumerable court proceedings. To purchase this stock, General Theaters has borrowed \$4,000,000, secured by Fox "A" stock, so that the total loans of the Company, secured by Fox "A" stock, would be \$14,000,000 if the \$10,000,000 loan was made.

With the present market of Fox at 40, the Company's holdings in Fox "A" stock are worth about \$45,000,000, which, with new stock to be purchased, would be increased to \$55,000,000, so it would seem that a perfectly safe and desirable loan could be arranged to cover the \$14,000,000. Mr. Clarke wishes to talk this matter over with Mr. Wiggin, Thursday morning around 10 o'clock, and I wish to say that I believe that he will go through with the above plan, provided this loan is procured. In regard to the safeguarding of the General Theatres common-stock syndicate, which is having difficulty in meeting calls for margin, I believe that this is not only a generous proposition on Clarke's part, but in every way meets any moral responsibility he may have, of course realizing that it would be deplorable from his own personal standpoint, as well as that of the Company, if the syndicate holdings had to be liquidated in a market such as the present one. I also believe that the above plan, in its entirety, should cure the present weakness in the two companies' stocks, and, given any pronounced change in conditions for the better, during the next year, it will not be difficult to liquidate the whole situation in a satisfactory manner. I am quite sure in any event that indications point to increasing earnings for both General Theatres and Fox Film Company, which will be of great assistance in this liquidation.

(Signed) M. W. D.

OCTOBER 8, 1930.

P.S.—The General Theatres Equipment, Inc., will probably have many different ways of paying this loan, even through Common stock if the market was right or through the sale of Preferred stock which would be reserved for this purpose if the market conditions became right within a year; or partly through sale of debentures, or, if as anticipated, the market for the Fox "A" stock is higher than the cost to the company, this stock could be liquidated to pay the loan.

Another phase of this situation is that with the present stock syndicate being through sale of debentures, or, if as anticipated, the market for the Fox be sold out and sued for the amount due without affecting the loan to the balance of the syndicate.

(Signed) M. W. D.

Now, Mr. Dodge, is it fair to say that the scheme generally proposed by you in this memorandum was afterward carried out?

Mr. DODGE. Yes, sir; to a large extent.

Mr. PECORA. To a large extent. In what respect did the plan as consummated, or the scheme as actually consummated, depart from the proposals described in this memorandum?

Mr. DODGE. In two ways, Mr. Pecora. The amount of stock which Mr. Clarke was able to deliver out of the new preferred stock after the reclassification was not 400,000 shares. It was reduced to approximately. [After conferring with associates.] He ultimately delivered, I am informed, approximately 258,000 shares.

Mr. PECORA. A little louder, please.

Mr. DODGE. Mr. Clarke is talking over his plan for the acquisition of additional Fox A stock with Mr. Wiggin arranged that the total loan should be 10 millions of dollars, not increased by 10 millions of dollars. So that at that time the 4 million dollars which the General Theatres was borrowing from the Chase Bank was increased from 4 millions to 10 millions and not from 4 millions to 14 millions.

The CHAIRMAN. May I ask a question right there: I had the impression that Fox was paid 2 million dollars for his right to purchase that block of shares. It would seem from this that he was paid 4 million. Is that correct? What sum was he paid? The suggestion here is that you needed 4 million to clear out his interest, and I thought we had testimony heretofore that Fox was paid 2 million dollars.

Mr. DODGE. It was approximately 3 millions. If I remember it, it was the difference between the market price of 160,000 shares of stock and \$30 per share.

Mr. PECORA. Have you answered Senator Fletcher's question fully?

Mr. DODGE. Does that answer your question, Senator?

The CHAIRMAN. I think so. You said practically 3 million.

Mr. PECORA. This 4 million dollar loan that you have referred to was really the sum total of two loans, was it not: One for \$2,500,000 and the other for \$1,500,000?

Mr. DODGE. Yes, sir.

Mr. PECORA. Wasn't a new loan for 10 million dollars made on or about October 10, 1930, after you gave Mr. Wiggin this memorandum last offered in evidence?

Mr. DODGE. Yes, sir.

Mr. PECORA. And out of that 10 million dollar new loan the 4 million dollars evidenced by those two prior loans of \$2,500,000 and \$1,500,000, respectively, were paid back?

Mr. DODGE. Yes, sir.

Mr. PECORA. Was this new 10 million dollar loan ever repaid to the Chase National Bank?

Mr. DODGE. No, sir.

Mr. PECORA. It has not been paid at all?

Mr. DODGE. No, sir.

Mr. PECORA. And it was made for 6 months, wasn't it?

Mr. DODGE. Yes, sir.

Mr. PECORA. Came due on about April 10, 1931?

Mr. DODGE. Yes, sir.

Mr. PECORA. Do you know why it was not paid?

Mr. DODGE. I think the answer to that would be that they hadn't the money at the time.

Mr. PECORA. Who hadn't the money?

Mr. DODGE. General Theatres Equipment.

Mr. PECORA. This loan of 10 million dollars was really made to enable the General Theatres Equipment to conduct a market operation in the stock of Fox Film, wasn't it?

Mr. DODGE. Well, if by "market operation" you mean the accumulation of stock; yes.

Mr. PECORA. Well, that is a fair way to describe it, that is, as a market operation?

Mr. DODGE. At that time there was no idea of a distribution of stock. It was accumulation of stock.

Mr. PECORA. Wasn't there some idea of a distribution at a higher point eventually?

Mr. DODGE. If it was necessary to distribute the stock in order to pay the loan, it could not be done in any other way.

Mr. PECORA. Wasn't that exactly what you had in mind in proposing the plan set forth in the memorandum marked "Exhibit No. 180"?

Mr. DODGE. I refer in that to several ways that the General Theaters might be able to pay the loan.

Mr. PECORA. Well, let me recall to your mind what you said in the postscript portion of this memorandum.

Mr. DODGE. That is right.

Mr. PECORA. Which reads as follows:

The General Theaters Equipment, Inc., will probably have many different ways of paying this loan, either through common stock if the market was right or through the sale of preferred stock, which would be reserved for this purpose if the market conditions became right in a year, or partly through the sale of debentures, or if, as anticipated, the market for the Fox A stock is higher than the cost to the company, this stock could be liquidated to pay the loan.

You had definitely in mind then a market operation whereby, through the medium of this loan of 10 million dollars, General Theatres Equipment would have a fund with which it could go into the market and operate in Fox Film A stock?

Mr. DODGE. I think, Mr. Pecora, that that part of the sentence, "this stock could be liquidated to pay the loan", if you put the accent on the "could" it would mean that in case it could not be paid in any other way then stock could be liquidated. But there was no intention of selling the stock at that time.

Mr. PECORA. You say "or if, as anticipated, the market for the Fox A stock is higher than the cost to the company, this stock could be liquidated to pay the loan."

Mr. DODGE. The stock could be liquidated if it was necessary. That is what I meant.

Mr. PECORA. That the stock to be purchased with the 10 million dollars that was borrowed by General Theatres from the Chase National Bank could be liquidated?

Mr. DODGE. Six million dollars.

Mr. PECORA. Well, the new loan was a loan of 10 million dollars, and out of it an existing indebtedness of 4 million dollars was repaid to the Chase?

Mr. DODGE. Yes, sir; and the increase in the loan was 6 million dollars.

Mr. PECORA. All right; then with this additional sum of 6 million dollars it was contemplated, among other things, that the General Theatres would go into the market and conduct a stock market operation in the stock of the Fox Film Co. A stock?

Mr. DODGE. The intention of the General Theatres, of Mr. Clarke, as outlined in this memorandum, and the background of the situation was that the markets had been falling very heavily.

Mr. PECORA. Yes.

Mr. DODGE. And there had been just at that time an especial attention paid to the Fox A stock. The 55 millions of 1-year notes were maturing within 5 months. It was felt by everybody connected with the situation that intrinsically the Fox A stock was worth more than it was selling for in the market.

Mr. PECORA. What was it then selling for in the market?

Mr. DODGE. Around \$40 a share. And it was also anticipated by everybody connected with the company that after the maturity of the 55 millions of notes of the Fox Film Co. it would be necessary to have attached to any new debentures or securities issued some sort of warrants, option warrants. Now, the higher those option warrants were the better it was for the stockholder, and vice versa, and if, at the time that those 55 millions came due, the Fox stock had been selling at 30 or 25, it would have been a great deal more expensive for stockholders of the Fox Film Co., which of course

meant that it would be more advantageous to the General Theatres Equipment, who owned a large amount of it.

Mr. PECORA. Those stockholders were principally Harley Clarke and the syndicate headed by Pynchon & Co., were they not?

Mr. DODGE. No, sir. The General Theatres at that time owned 1,160,000 shares out of 2,425,000 shares, I think, of the Fox Film A stock.

Mr. PECORA. It would have been the principal beneficiary from this stock market operation in the Fox Film A stock, would it not, the General Theatres?

Mr. DODGE. Put it this way, then: If, at the time of the financing of the 55 million 1-year notes the new securities could be sold with a warrant which was higher, say around \$50 a share, it would be better for all the stockholders, including the principal beneficiary, as you say, and if those option warrants had to be at a lower price in order to effect the financing—

Mr. PECORA. Would it have been better for the purchasers of the new securities which were designed to be issued in 1931 to refund the 55 million dollars of notes to have had that done? Wouldn't they be buying the security on a false measure of value due to the stock-market operation?

Mr. DODGE. The measure of value at the time that the senior security was put out, the funding security was put out, as far as the warrants were concerned, was the market at the time they were put out.

Mr. PECORA. It was proposed by means of the market operation contemplated in this memorandum of yours to Mr. Wiggin to conduct a market operation that would keep up—not only keep but stabilize, as you call it—the market price of Fox Film A stock, but it would also cause it to advance so that when the time came, in April 1931, to issue new securities to refund the 55 million dollars of notes then falling due, the new securities would be more attractive, would seem more attractive, to the investing public because of the increasing market values that it was hoped Fox Film A stock would be given as a result of this market operation? Wasn't that what you had in mind?

Mr. DODGE. It was felt by those interested in the Fox Film Co. and the General Theatres Co. at this particular time that the true value of the Fox A stock was higher than the market. That answers your first question.

Now, as to the second question, I can only reiterate, Mr. Pecora, that no one could tell what the market for bonds or debentures would be 5 months hence, but we did know enough to know that they would undoubtedly need some warrants attached to them.

Mr. PECORA. That is, stock purchase warrants?

Mr. DODGE. Stock purchase warrants, and that the price of those warrants would be regulated or fixed by the market price of the Fox A stock at that time.

Mr. PECORA. And in order to make the acquisition of those warrants attractive to the investing public you had in mind a stock market operation by means of which the market price of Fox Film A stock would be so increased as to give that attractiveness to the stock purchase warrants that were to accompany the notes

or debentures that were to be issued to help refinance the 55 million dollars?

Mr. DODGE. The attractiveness of the warrants to the purchaser of the new securities to be issued could only be based on the market price at that time. Now, naturally, if the stock was selling at 40 and the warrants were 30, ten points below the market, they would be more attractive to the buyers of the securities.

Mr. PECORA. We know that.

Mr. DODGE. On the other hand, such a price of 30 when the stock was selling at 40 was felt by those—

Mr. PECORA (interposing). Would not be attractive?

Mr. DODGE. Would be against the best interests of the stockholders.

Mr. PECORA. Of the stockholders, and would be in favor of the interests of the subscriber to the warrants?

Mr. DODGE. But against the interests of the stockholders?

Mr. PECORA. What you had in mind when you prepared this memorandum in October 1930 was some means of enabling General Theatres to meet the obligation of 55 million dollars coming due in April 1931?

Mr. DODGE. But assist, first, in the stabilization of the market, which was at that time subject to drives, and then if possible to have the stock attain a price which everybody felt was more near its value.

Mr. PECORA. When you say "which everybody felt" you mean those that were concerning themselves with preparation of a plan of refinancing, don't you?

Mr. DODGE. That is correct, sir.

Mr. PECORA. You do not mean the general public?

Mr. DODGE. No, sir.

The CHAIRMAN. Was this new syndicate set up that you suggested in this memorandum? Was that syndicate set up to sell preferred stock?

Mr. DODGE. In the preferred stock?

The CHAIRMAN. Yes.

Mr. DODGE. Yes, sir.

The CHAIRMAN. Who composed that syndicate?

Mr. DODGE. The members of that syndicate were practically the same members of the common-stock syndicate which was in existence at that time. There were about 42 different firms and members.

Mr. PECORA. Now let me read this excerpt from your memorandum [reading]:

Clarke is considering the advisability if it is possible of arranging a loan of 10 million dollars maturing in slightly less than a year and secured by Fox A stock to be purchased with additional stock owned by the company. This would give him a buying power in Fox A stock up to \$50 per share on approximately 225,000 shares of stock. It is felt that the purchase of this size block would stabilize and improve the market value.

Mr. DODGE. Yes, sir. That is just what I said a little while ago.

Mr. PECORA. The purpose that the proposers of this plan had in mind was to so "improve the market value" of Fox Film A stock that it would be at a figure in April 1931 so high that the stock purchase warrants which it was contemplated were to be issued as additional inducement to the public to buy the debentures in 1931 would make the debentures an attractive investment?

Mr. DODGE. Yes, sir.

Mr. PECORA. Isn't that another way of saying that an arrangement was effected as a result of this discussion and consideration of the refinancing problem in October 1930 under which the Chase Bank furnished a fund of 6 million dollars net to the General Theatres to enable the General Theatres, then headed by Harley Clarke, to conduct a market operation in the A stock of the Fox Film Co. which would boost the price of that stock in the market by April 1931 to a figure that would enable General Theatres to float its new loan in April 1931 to refinance or refund the 55 million dollars of debentures? Doesn't it amount to the same thing?

Mr. DODGE. Mr. Pecora, I do not want to play with words in this, but the word "boost" was not in the company's mind. They felt that the stock at that time selling at \$40 a share was less than its true value. There was a large amount of selling in the stock.

Mr. PECORA. You would substitute for the word "boost" the word "improve", is that it?

Mr. DODGE. Yes, sir; I would.

Mr. PECORA. What actually happened eventually which has caused this loan to remain unpaid?

Mr. DODGE. The market conditions did not improve and all securities sold lower, and when the 55 millions of Fox Film notes came due it was necessary to have those warrants which were attached to the new Fox Film 5-year debentures convertible at \$30 a share, which was below the price at which it had been in October.

Mr. PECORA. Then \$40?

Mr. DODGE. It did not work out the way that we hoped.

Mr. PECORA. With the result that the Chase Bank is out the amount of that loan, 6 million dollars?

Mr. DODGE. It is still unpaid.

Mr. PECORA. And to that extent it is out that amount of money?

Mr. DODGE. I do not know how much they have written off against it. I think the whole amount.

Mr. PECORA. Mr. Wiggin approved this plan with the modifications that you have referred to, didn't he?

Mr. DODGE. Yes, sir. He had a talk with Mr. Clarke.

The CHAIRMAN. Did the earnings fall off?

Mr. DODGE. Yes, sir.

Mr. PECORA. In other words, he approved of his bank making a loan to General Theatres to be used for stock-market purposes, to be used avowedly for stock-market purposes?

Mr. DODGE. To be used by the company for purchasing an additional amount of shares in the company in which it already had the largest ownership.

Mr. PECORA. So that it was using the funds of the bank in a stock-market operation in an endeavor to strengthen the market value of a stock which it held in large blocks as collateral for existing loans and obligations?

Mr. DODGE. No, sir. I do not think the bank held large blocks of the Fox A stock as collateral except the 4 million dollar loan to the General Theatres.

Mr. PECORA. What reclassification was actually made of the capital stock of General Theatres Equipment under this plan that was proposed in this memorandum of October 8, 1930?

Mr. DODGE. The plan went through as suggested at that time.

Mr. PECORA. It went through as of December 1, 1931, didn't it?

Mr. DODGE. Yes, sir.

Mr. PECORA. And as a result of that reclassification the authorized capital stock of the General Theatres Equipment was changed from 5 million shares of common without par value to 2 million shares of \$3 dividend convertible preferred without par value and 4 million shares of common which had the voting power without par value—is that right?

Mr. DODGE. Yes, sir.

Mr. PECORA. And in order to carry out that classification an exchange of stock was adopted whereby the holder of one share of the old common stock received for that share a third of a share of the new preferred, this \$3 cumulative stock, and two thirds of a share of the new common?

Mr. DODGE. Yes, sir.

Mr. PECORA. What benefits was it considered accrued from that reclassification of stock plan?

Mr. DODGE. There are two benefits, one of which was minor to the stockholders which were direct to all of the stockholders. That was that General Theatres at that time was paying no dividends on its common stock. On one third of a share of preferred stock \$3 preferred stock, it was felt that it should pay under the circumstances that existed at that time a dividend on the preferred stock, so that the stockholders would receive some return on their money. The second advantage was not to all the stockholders but to the members of the syndicate.

Mr. PECORA. Who were those members?

Mr. DODGE. Those members—

Mr. PECORA. That was the syndicate headed by Pyncheon & Co.?

Mr. DODGE. Yes, sir; and there were some forty in the syndicate, and the stock of the General Theatres, with all other stocks, had fallen in the market. The stock had not been distributed, and there was some difficulty at the time in getting all of the different members to respond to the calls for margin. By Mr. Clarke making a voluntary offer out of his personal stock to exchange the preferred stock which he would receive for the common stock, which the syndicate would receive, the syndicate would be left not with one third of a share of preferred stock and two thirds of a share of common stock, but all preferred stock; and in that way they would have, it was felt at the time and as the market quotations showed at that time, a higher market value of the stock which they received and would be in a better position to temporarily withstand the storm until conditions changed. In other words, it would be unnecessary after that for margins to be called unless there was an additional break in the market. It really meant, when the exchanges were actually made, that the difference in actual market price between the stock which Mr. Clarke voluntarily gave up and the stock which he received was somewhere around 5 million dollars of market value. That is approximately correct.

Mr. PECORA. Let me read this following brief excerpt from the memorandum of October 8, 1930, marked "Committee's Exhibit 180" in evidence [reading]:

He—

Meaning Harley Clarke—

was favorably considering the suggestion that General Theatres purchase in the market in such a way as to first stabilize and then advance the price of the stock between 225,000 and 250,000 shares of Fox A stock.

Whose suggestion was that?

Mr. DODGE. That suggestion was worked out in a conference between Mr. Clarke and myself; but the suggestion of the General Theatres borrowing additional money and buying additional Fox stock did not come from me.

Mr. PECORA. From whom did that suggestion come?

Mr. DODGE. From Mr. Clarke and his advisers.

Mr. PECORA. And his suggestion, as you phrase it here, was that this market operation would be designed, first, to stabilize the then weak market for Fox Film A stock, and then advance the price for the stock?

Mr. DODGE. If possible.

Mr. PECORA. So that we have three terms used here: One, "improve", one "advance", and the one that I used, "boost"?

Mr. DODGE. Yes.

Mr. PECORA. They all three mean virtually the same thing in this operation?

Mr. DODGE. I would not quarrel with that.

Mr. PECORA. Now, we will go on to April, 1931, the refinancing of General Theatres Equipment and Fox Film. You have told this committee, in substance, that Fox Film Corporation sold in April, 1931, \$30,000,000 principal amount of five-year 6-percent convertible gold debentures to a group headed by Chase Securities Corporation at a price of about 92 and accrued interest, which yielded the sum of \$27,665,000 to the Fox Film Corporation. You said, also, that the Fox Film Corporation at the same time sold to Film Securities Corporation 660,900 shares of the common stock of Loews, Incorporated, and that it received 462,000 shares of the Class A stock and the sum of \$28,800,000 in cash, thereby giving to the Fox Film Corporation total cash of \$56,465,000?

Mr. DODGE. Yes, sir.

Mr. PECORA. You have also told us that at the same time the Wesco Corporation sold at 96 and accrued interest to the Chase Securities Corporation \$15,000,000 principal amount of two-year 6-percent gold notes, receiving therefor the sum of \$14,432,500 in cash, making a total net amount received in cash of \$70,897,500. What were the other steps taken in this financing? One first step you have already mentioned.

Mr. DODGE. \$55,000,000 out of the \$56,465,000 received by Fox Film Corporation was paid by it on April 14 to the Central Hanover Bank and Trust Company, trustee under the collateral note debent-

tures securing 1-year 6-percent gold notes maturing on April 15, or the following day, and the balance was placed to the credit of the account of the Fox Film Corporation with the Chase National Bank. \$10,013,333.33 out of the \$14,432,500 received by Wesco Corporation from the sale of these \$15,000,000 of 2-year notes was paid by it on April 14 to the Chase National Bank in settlement of the \$10,000,000 loan to the corporation then held by the bank, and the balance was placed to the credit of the account of the Wesco Corporation with the bank.

Mr. PECORA. With reference to the \$30,000,000 of 5-year debentures issued by Fox Film Co. and sold at 92 and accrued interest to a purchasing group headed by the Chase Securities Corporation, what was the nature of the conversion privilege given to the holdings of the purchasers of those debentures?

Mr. DODGE. They had the right to receive 30 shares of class A common stock for each \$1,000 principal amount of debentures; and in relation to that I will have to change my testimony that I gave a little while ago from memory, that the price was  $33\frac{1}{3}$  a share, and not 30 a share as I stated then.

Mr. PECORA. Well, it became necessary, did it not, to offer those debentures first to the stockholders of Fox Film Corporation?

Mr. DODGE. Yes sir.

Mr. PECORA. Was that done?

Mr. DODGE. Yes, sir; and it was necessary under the rules of the stock exchange that that offer should be open for a period of 30 days, that is 10 days for notice of record date and 20 days for subscription.

Mr. PECORA. Now, Mr. Dodge, you have produced here this morning a typewritten statement comprising 11 typewritten sheets entitled "Statement of Mr. Dodge in regard to financing of Fox Film Corporation in April 1931." Was this statement prepared by you?

Mr. DODGE. It was prepared by me, with the assistance of Mr. Mudge and Mr. Hagen.

Mr. PECORA. Insofar as you know, are all the facts embodied in this statement true and correct, and complete with reference to the subject or subjects to which they relate?

Mr. DODGE. Yes, sir.

Mr. PECORA. You are familiar with its contents, are you?

Mr. DODGE. Yes, sir.

Mr. PECORA. So that you would be willing to have it go into the record here under your oath as to its correctness and truthfulness?

Mr. DODGE. Yes, sir.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. Let it be admitted and entered in the record.

(The statement referred to, entitled "Statement of Mr. Dodge in regard to financing of Fox Film Corporation in April, 1931", was received in evidence, marked "Committee Exhibit No. 181, November 27, 1933", and will be found in the record at the end of today's proceedings.)

Mr. PECORA. Now, Mr. Dodge, is it not a fact that in July 1933, there was a reorganization affecting the Fox Film Corporation?

Mr. DODGE. Yes, sir.

Mr. PECORA. Did you have anything to do with that?

Mr. DODGE. No, sir.

Mr. PECORA. You were not connected with the Chase Co. or the Fox Film Co. at that time, were you?

Mr. DODGE. In July?

Mr. PECORA. Yes.

Mr. DODGE. I was not connected with the Fox Film or the Chase; no, sir.

Mr. PECORA. Or with the Chase Corporation?

Mr. DODGE. No, sir. I was a director up until, I think, the 14th of July.

Mr. PECORA. Do you know who handled the reorganization of Fox Films in July of this year?

Mr. DODGE. Mr. Place.

Mr. PECORA. Is Mr. Place here?

A Voice. Yes, sir.

Mr. PECORA. I think I will excuse Mr. Dodge, Mr. Chairman. (Witness temporarily excused)

Mr. PECORA. Mr. Place, will you take the stand, please?

#### TESTIMONY OF HERMANN G. PLACE, NEW YORK CITY

The CHAIRMAN. You solemnly swear that the evidence you will give in this hearing will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. PLACE. I do.

Mr. PECORA. Mr. Chairman, there is just one thing I want to recall Mr. Dodge for. You may sit right there, Mr. Dodge [indicating a chair at committee table].

Do you recall, Mr. Dodge, a transaction whereby the General Theatres Equipment Co. issued to Halsey, Stuart & Co. 300,000 stock purchase warrants?

Mr. DODGE. At what date, sir, and in connection with which financing?

Mr. PECORA. I think it was in connection with the \$55,000,000 in April 1930.

Mr. DODGE. Fox Film issued 300,000.

Mr. PECORA. Were you connected with the Fox Film Corporation at that time?

Mr. DODGE. No, sir.

Mr. PECORA. Were you a director of it at any time?

Mr. DODGE. Yes, sir.

Mr. PECORA. What affiliation did you have with it in April 1930?

Mr. DODGE. None, except through the General Theatres purchase of the Fox Film—

Mr. PECORA. That is what I am coming to. Do you recall that the General Theatres Equipment repurchased from Bancamerica-Blair 70,000 of those 300,000 stock purchase warrants for a consideration of \$1,660,000 cash?

Mr. DODGE. Yes, sir.

Mr. PECORA. You were a director of the General Theatres Equipment when that transaction appears to have first been reported to the directors of General Theatres Equipment in May 1931?

Mr. DODGE. Yes, sir.

Mr. PECORA. Was that the first time you had heard of the transaction, when it was reported at the meeting of the board of directors of the General Theatres Equipment in May 1931?

Mr. DODGE. No, sir.

Mr. PECORA. When did that transaction take place; how long before May 1931?

Mr. DODGE. About 1 year, I should think.

Mr. PECORA. What was the reason for it, Mr. Dodge?

Mr. DODGE. For the delay in reporting?

Mr. PECORA. First, for the delay in reporting and, secondly, for the transaction itself.

Mr. DODGE. I do not know what the reason for the delay in reporting was, except that possibly it was something which had not been brought, through some slip-up, to the attention of the directors; I mean, formally at a meeting. It was brought up later on so as to have it formally on the records of the company. That is the only reason I can think of. I think all the directors, however, knew about the transaction at the time. I know I did.

Mr. PECORA. What was the reason for the transaction, if you knew about it?

Mr. DODGE. As I remember the transaction, Halsey, Stuart & Co. were to receive these warrants in connection with the purchase of the \$55,000,000 of 1-year notes. That transaction took place and was closed on the 17th of April, 1930. From the time of the closing of that transaction—no; I will say that the closing was on the 18th; the contract, I believe, was entered into on the 17th. From the time of the actual closing, at which time Halsey, Stuart & Co. paid for the \$55,000,000 of these notes with their own check and took them up, there was a constant endeavor on the part of Mr. Clarke, and he had my sympathy and assistance in that, to get the Halsey, Stuart & Co. and Bancamerica groups together so that they would both join in the offering of these \$55,000,000 of notes. As events turned out, that consolidation of banking interests did take place, and the Bancamerica group, I think I testified last week, had 45 percent of the issue of the \$55,000,000 of 1-year notes. They also received their share of the Fox Film warrants. The original understanding with Halsey, Stuart & Co. was that those warrants would not be issued—I mean, would not be exercised by them for considerable time.

Mr. PECORA. For what period of time?

Mr. DODGE. I cannot remember that, Mr. Pecora, but I think it was at least a reasonable time.

Mr. PECORA. Was that understanding reduced to writing?

Mr. DODGE. I don't think so. We have no record of it; I have not been able to find any. The settlement between Halsey, Stuart & Co. and the other banks having been effected, the other bankers stated that they did not intend not to exercise those warrants at that time at \$30 a share—

Mr. PECORA. \$35; was it not?

Mr. DODGE. \$35; yes. That meant that they would be obliged to pay dividends at the rate they were paying on the other shares, \$4 a share; and the General Theatres Equipment felt that in view of the large holdings they had it would be better for them to own

those warrants and at a proper time, when the Fox Film Co. needed the money to exercise this right, rather than do it at that time. That is my memory of it.

Mr. PECORA. Will you carry your memory back to April 28, 1930? That is the date when these \$55,000,000 of gold notes were issued by Fox Film Co. to Halsey, Stuart & Co.

Mr. DODGE. May I correct that? They were actually issued on the 18th of April and paid for.

Mr. PECORA. Well, the loan agreement itself was made on April 28; was it not?

Mr. DODGE. No, sir; I don't think so, because the actual certificates or notes were issued on the 18th and paid for by Halsey, Stuart & Co.

Mr. PECORA. That was the time when these 300,000 stock-purchase warrants were issued to Halsey-Stuart. Why was that done?

Mr. DODGE. As additional compensation.

Mr. PECORA. In view of the fact that Halsey, Stuart & Co. got those 1-year 6-percent notes at 97¾, why were they also given 300,000 warrants, option warrants, to purchase the common stock of Fox Film at \$35 a share?

Mr. DODGE. Well, the background of that, Mr. Pecora—I will have to carry my memory back a little further to the two plans which were presented, one by the Bancamerica group and the other by the so-called trustees, John Otterson and Harry Stuart, for the financing in which there were to be long-time debentures issued, and with those long-time debentures were to go, in both of the plans, as I remember it, a considerable number of warrants as additional compensation. The final financing as arranged by Mr. Clarke in 1930 did not include the long-time debentures, but only a 1-year loan, a 1-year note at 97¾ in which there was probably, and I think it turned out to be, a very small margin of profit. Halsey, Stuart & Co. in agreeing to that and Mr. Clarke thinking it was to be the best interests of the company at that time to have a 1-year instead of long-time debentures, asked for additional compensation, and it was part of the agreement between them and Mr. Clarke that they issue the warrants.

Mr. PECORA. These warrants were issued at a time when the market price of the Fox Film A stock was considerably in excess of \$35 a share?

Mr. DODGE. Yes.

Mr. PECORA. Did the bankers insist on the issuance of those additional warrants before they would take over the 1-year debentures?

Mr. DODGE. The 1-year notes?

Mr. PECORA. The 1-year notes.

Mr. DODGE. Yes, sir.

Mr. PECORA. That was then taken by them as an additional compensation or commission or profit?

Mr. DODGE. Yes.

Mr. PECORA. Were any of these option warrants ever exercised?

Mr. DODGE. I don't think so.

Mr. PECORA. That is all, Mr. Dodge. Thank you.

(Mr. Dodge resumed his seat in the body of the hearing room.)

Mr. PECORA. Now, Mr. Place, will you give your full name and address to the reporter for the record?

Mr. PLACE. Hermann G. Place, 941 Park Avenue, New York City.

Mr. PECORA. What is your business or occupation?

Mr. PLACE. Vice president, Chase National Bank.

Mr. PECORA. Were you at any time connected with the Fox Film Co.?

Mr. PLACE. In what capacity?

Mr. PECORA. In any capacity.

Mr. PLACE. I am presently a director of the Fox Film Co.

Mr. PECORA. Were you president and director of it in July of this year?

Mr. PLACE. No, sir.

Mr. PECORA. Were you a director of it in July of this year?

Mr. PLACE. No, sir; I was not.

Mr. PECORA. As vice president or one of the vice presidents of the Chase National Bank, did you have anything to do with plans or the consummation of plans whereby a reorganization was effected of the Fox Film Corporation in July of this year?

Mr. MUDGE. Just a moment, Mr. Pecora. Did the reporter understand Mr. Place to say that he was president and director of the Fox Film Corporation?

(The reporter replied that he had recorded the witness as saying "Presently a director of Fox Films.")

Mr. PECORA. I thought you said, "president."

Mr. PLACE. Oh, mercy, no; I was not president of the Fox Film at the present time. I became director in connection with the reorganization which took place this summer; and prior to that time, as vice president of the bank, I had been engaged in trying to look after the bank's interest in the Fox Film Corporation and working with them in connection with their problems.

Mr. PECORA. What were the bank's interests in Fox Film Corporation and what problems did those interests present?

Mr. PLACE. Well, the interest of the bank in the Fox Film Corporation was principally as a large holder of debentures and also as sole owner of \$15,000,000 of notes of the Wesco Corporation; and it also had an interest in the matter of certain loans which had been advanced to Fox Film Corporation and the Wesco Corporation. In other words, we had a large sum of money loaned to Fox Film and Wesco Corporations.

Mr. PECORA. Do you recall the aggregate amount of those loans?

Mr. PLACE. The aggregate amount of loans?

Mr. PECORA. As they existed just prior to the reorganization.

Mr. PLACE. The aggregate amount of the loans was the principal amount of \$8,100,000. We actually had at that time \$31,683,600 face amount of debentures and bank loans. Take \$8,100,000 from that, and it gives you the net amount of our interest in the principal amount of the debentures.

Mr. PECORA. Were those the 5-year debentures issued in April 1931, as testified to by Mr. Dodge this morning?

Mr. PLACE. That is correct.

Mr. PECORA. What were the problems presented by those interests that the bank had in Fox Film just prior to the reorganization of last summer?

Mr. PLACE. We were naturally interested in the progress of the company and its ability to repay the loans which had been advanced by us to the company and its subsidiaries, and we were consequently in touch with the company from time to time. May I ask you, Mr. Pecora, would you like to have me just tell you the progress of events?

Mr. PECORA. Yes, in order to shorten the examination. At the same time, get all the essential facts on the record here. Tell me in your own way just what the problems were, and how they were met, if they were met, by this process of reorganization that was put into effect last summer.

Mr. PLACE. During the early part of 1933 the company continued to operate and also to require certain additional sums of money. During the early part of 1933 the company indicated to us that unless they had substantial additional amounts of money they would probably find it impossible to meet the interest payment coming due on April 1, on the \$30,000,000 of 5-year debentures. At that time the amount of money which the Chase Bank had invested in the corporation was substantially as I stated, and we indicated to them that we did not feel that we could put any more money into it. The management of the company was told that they would have to work out their own salvation in some way or other. They were extremely anxious, of course, to avoid a default on April 1, with the consequent result of a receivership, and it was their feeling that a receivership for the company would be disastrous not only to the stockholders but to creditors. They felt very strongly that a receivership in the motion picture business, with its consequent difficulties of management and character of business, would result in much more unfortunate consequences to all security holders than many other types of receiverships.

Senator COUZENS. When you refer to "they" who were the individuals?

Mr. PLACE. Mr. Kent, principally, as president of the Fox Film Corporation—Sidney Kent. He was then president, and is today.

Mr. PECORA. When had he become president?

Mr. PLACE. Mr. Kent had become president, I believe, about a year earlier.

Mr. PECORA. Whom had he succeeded in that office?

Mr. PLACE. He succeeded Mr. E. R. Tinker who, in turn, had succeeded Mr. Clarke.

Senator COUZENS. When you said "they", outside of Mr. Kent, who were the others?

Mr. PLACE. In the management of the corporation?

Senator COUZENS. Yes.

Mr. PLACE. Mr. Michel, executive vice president; Mr. Richardson, vice president and treasurer; and Mr. Towell, comptroller.

Senator COUZENS. Were they exclusively occupied in this business, or did they have other connections?

Mr. PLACE. No; they were exclusively in the management of Fox Film at that time.

Mr. PECORA. Mr. Kent had previously been, for a number of years, executive vice president of the Paramount Pictures Corporation, had he not?

Mr. PLACE. I believe so. I am not certain whether he had the title of executive vice president, but he was a vice president in charge of sales, and had been with them for a great many years.

The CHAIRMAN. Who succeeded Mr. Clarke?

Mr. PLACE. Mr. E. R. Tinker.

Mr. PECORA. Mr. Tinker who, at one time, was a member of Blair & Co.?

Mr. PLACE. I do not think so. He was at one time connected with the Chase Securities Corporation.

Mr. PECORA. That is right. I meant the Chase Securities Corporation.

The CHAIRMAN. About what time was that? When did he become president?

Mr. PLACE. I think in the fall of 1931, November or December.

Senator COUZENS. Was he then connected with Chase, when he became president of Fox?

Mr. PLACE. No; he was not.

Senator COUZENS. He had resigned from Chase?

Mr. PLACE. Yes, sir. He had not been connected with Chase for some time. He was independent and retired.

Mr. ALDRICH. Mr. Chairman, may I say a word about Mr. Tinker in that connection? Mr. Tinker had been connected with the Chase Securities Corporation some years earlier, and when he became president of the Fox Film Co., as successor to Mr. Clarke, he became president at the suggestion of Mr. Clarke, not at our suggestion. I may say that we had come to the conclusion, just prior to his election, that Mr. Clarke was not the man that we felt should run that company properly. He did not have enough experience in the motion-picture field, but it was necessary for us to substitute somebody else for him who would be satisfactory both to us and to him, because it was impossible for us—and, moreover, as a matter of policy we did not want to insist upon any particular individual going in there, but Mr. Tinker was suggested by Mr. Clarke, and he was satisfactory to us.

Subsequently we came to the conclusion that it was essential to have somebody in as the head of that corporation who understood the motion-picture business from top to bottom, and very fortunately we were able to obtain the services of the present head of the corporation.

Mr. PECORA. That is Mr. Kent?

Mr. ALDRICH. Mr. Sidney Kent, who has just been referred to by Mr. Place.

Mr. PECORA. That is the gentleman who had had actual experience for a number of years in the motion-picture industry, and has been vice president of Paramount Pictures Corporation.

Mr. ALDRICH. He was recommended to us, Mr. Pecora, as the best man in the motion-picture business, and I personally believe he is. I think we have now got the best management of any company in that business, with all modesty.

Senator COUZENS. Mr. Tinker had had no moving picture experience, had he?

Mr. ALDRICH. No; he was simply put in there because of the fact that he was the man suggested by Mr. Clarke, and we had come to the conclusion that Mr. Clarke was not the right man for the job. We were not able at that time to get a person with whom we were really satisfied, and I had at all times felt that the man needed for the job was somebody who was very familiar with the motion-picture business.

Senator COUZENS. Was Mr. Tinker an improvement over Mr. Clarke, after you secured him?

Mr. ALDRICH. I do not like to characterize these gentlemen, so far as their management is concerned. To my mind it is essential at all times to have a motion-picture man to run that company. The best I could do, as an interim management, after consultation with Mr. Clarke at the time, was to agree with him that Mr. Tinker should go in. As a matter of fact, Mr. Kent was not then available, at the time Mr. Tinker went in. I should say, to be entirely fair to Mr. Clarke, that Mr. Clarke himself when we were able to obtain the services of Mr. Kent, was enthusiastic to have him. That, again, was an arrangement made by agreement.

Mr. PECORA. Go ahead, Mr. Place, with your narration of the reorganization of Fox Film.

Mr. PLACE. The management addressed itself to the problem in hand, namely, to see what they could do to reorganize the company without going through possible receivership. At that time they were faced with the immediate payment of interest due on the \$30,000,000 of debentures on April 1. In order to have enough time to work out a plan, they came to the Chase Bank and to the principal holders of those debentures, who were a relatively small group, and asked that group if they would waive that interest, in other words, not collect their coupons on that particular date, thereby relieving the company pending the presentation of a plan, of most of the \$900,000 payment which was due at that time.

Mr. PECORA. Who were the members of that small group that held those debentures?

Mr. PLACE. There was the Chase National Bank; the First of Boston Corporation, of Massachusetts, which was an affiliate of the First National Bank of Boston; the First National Bank of Boston; Hayden, Stone & Co.; Dillon, Read & Co.; and Bancamerica-Blair Corporation. Those are the principal ones. In the aggregate, the holders of \$28,107,600 participated in this arrangement out of a total of \$30,000,000. That meant that the company had to pay out in cash on April 1 only \$56,000 instead of \$900,000. Having gotten by that critical date, the company presented to the bank and the other principal creditors who were comprised within this list which I just read to you, a plan of reorganization. The plan of reorganization was simple. It provided for the offering, in effect, to stockholders of new stock in an amount sufficient to retire substantially all of the debts of the corporation, and, in the alternative, if the stockholders did not take up the stock sufficient to retire those debts, an undertaking, from a sufficiently large group of debt holders to

underwrite a large amount of that stock, or, in effect, take stock in place of their debts.

Mr. PECORA. At the time that was proposed, what was the market value of the Fox Film A stock?

Mr. PLACE. My recollection is that the market value was about \$3.50.

Mr. PECORA. That is just prior to the reorganization.

Mr. PLACE. Yes. In order to accomplish this plan the management undertook, or was prepared to reclassify this stock. There was proposed a reduction in the number of outstanding shares of both classes of stock on the basis of 1 for 6. In other words, the broad principle was taken, which the creditors agreed to, that the old stockholders should, in effect, be given two rights: One, an absolute right to retain, if the plan was successful, an interest in the company, which they might have lost entirely, and probably would, I should say, had there been a receivership. They were given that absolutely, and they were given the second right to retain their position in the company in full if they chose to pay off its debts.

That resulted in a reduction in the number of outstanding shares on the basis, as I said, of 6 for 1. That means that 2,425,600 shares of class A stock were to be exchanged into 404,276 $\frac{2}{3}$  shares of such stock, and the 99,900 shares of B stock were to be exchanged into 16,650 shares.

The stock was then to be increased through authorizing a total class A common stock issue of 2,800,000 shares. Out of that there was offered to the stockholders for subscription five shares of class A common stock for each share of class A and B stock which they held, at \$18.90 a share.

Mr. PECORA. Was that about on a parity with the value of the old stock in the market at that time?

Mr. PLACE. Just about. It was an arbitrary figure that was taken.

Now, along with that offer to stockholders, it was arranged that a certain number of the holders of the debts of the company, both bank loans and debentures, should agree that in the event that the stockholders did not subscribe to the necessary amount of stock to repay those debts, they would take over the stock at that price. In other words, a price of \$18.90 was put on it. That is actually, very briefly, what happened.

The corporation went through the necessary procedure to have its stockholders' meetings to reduce the stock on a 1-for-6 basis, and then to authorize the lifting of it, and then to make an offer to the stockholders permitting them to subscribe, and at the same time it secured the underwriting or agreement on the part of a very large percentage of its debt holders to take stock in lieu of debt, if the stockholders did not take it up. The offering was made to stockholders, and a small proportion only subscribed. Consequently the underwriters took up stock and canceled their debts. So that in the aggregate, almost all of the debt of the corporation was retired.

Senator ADAMS. What was the aggregate amount of debt that was canceled in that way, roughly?

Mr. PLACE. I can tell you exactly [after consulting an associate]. The total amount of debt which was retired as a result of this under-

writing agreement was \$37,818,814.75. That includes accrued interest up to August 1.

Mr. PECORA. That was retired through the acceptance almost entirely, by the members of this syndicate headed by the Chase Securities Corporation—

Mr. PLACE. That is correct; the members of this group which included the Chase Bank.

Mr. PECORA (continuing). Of the new stock at \$18.90 a share.

Mr. PLACE. That is correct. We simply turned in our obligations and took stock back. The company, therefore, was reconstituted with substantially the same capitalization as it had before, without the debt.

Senator ADAMS. How much debt remained outstanding after that?

Mr. PLACE. Very little. Senator Adams, the situation was this: \$8,100,000 of bank loans—

The CHAIRMAN. The remaining debts were \$8,000,000?

Mr. PLACE. I was just going to show what was paid off, and then I will show you the remaining debt. \$8,100,000 principal amount of bank loans were retired. Certain current obligations were funded, due to Electrical Research Products, and Eastman, and \$28,216,400 of debentures were retired. The result of that was that there was left outstanding only current liabilities in the amount of \$2,564,374.80; sundry liabilities due after one year of \$564,515.79; and \$1,783,600 debentures. Then there was also outstanding funded debt of subsidiary real estate companies of \$2,403,432.50. Those are all subsidiary companies, and were not affected by these figures.

Senator COUZENS. Was the Wesco Co. affected by this financing?

Mr. PLACE. No; the Wesco Co. was not affected in any way by this financing.

Senator COUZENS. Is it still operating?

Mr. PLACE. Yes. The Wesco situation is still operating—the chain of theatres. There are a number of bankruptcies in that situation, but the Fox Film Corporation was not liable under the Wesco organization. In fact, they are creditors.

Senator COUZENS. Are they in receivership?

Mr. PLACE. Wesco is not in receivership.

Senator COUZENS. They are in default on some of their securities, however.

Mr. PLACE. That is correct; the \$15,000,000 2-year notes which matured on April 1 were not paid, nor was the interest paid.

Senator COUZENS. What is being done with those now?

Mr. PLACE. They are being held by the bank. The Wesco situation—when I say the Wesco situation I refer to the chain of theatres, of which they are the holding company—is being dealt with through the medium of certain bankruptcies and reorganizations of the subsidiary groups of theaters.

Senator COUZENS. And the Chase is not interested in those at all?

Mr. PLACE. Yes, indeed; we are interested. We own the \$15,000,000 notes, and are consequently very much interested in the outcome of the procedure.

Mr. PECORA. It is a fact, is it not, Mr. Place, that for the fiscal year ended December 26, 1931, the Fox Film Corporation and its wholly owned, subsidiary, controlled, or affiliated companies, sus-

tained a loss of \$5,560,304.84? Nevertheless they declared dividends amounting to \$4,104,035.

Mr. PLACE. I do not recall that, Mr. Pecora. I can check that up.

Mr. PECORA. Let me show you what purports to be a copy of the annual report of the Fox Film Corporation for the 52-week period ended December 26, 1931, which has been furnished us by the Chase Corporation. Please look at page 8 of the printed report in question. Does not that appear to have been the fact [handing a document to the witness]?

Mr. PLACE. That would appear to be correct, Mr. Pecora.

Mr. PECORA. At that time who were the principal stockholders of Fox Film Corporation?

Mr. PLACE. General Theatres Equipment.

Mr. PECORA. In a year when they incurred losses of over five and a half million dollars they declared dividends of over four million dollars, which dividends went principally to the General Theatres Equipment; is that right?

Mr. PLACE. Yes. If my memory serves me correctly, I think you will find that if you go back to that, dividends were progressively reduced in 1931 on the part of Fox Film, as it became apparent that the company was going to have a substantial loss. I might say—

Mr. PECORA. I am just wondering why any dividend was declared at all.

Mr. PLACE. I might say with regard to that, Mr. Pecora, that I think that the motion-picture business is a business which is extremely difficult to—

Mr. PECORA. Forecast?

Mr. PLACE. To know, to forecast. The reason is that, unlike an automobile factory, where a car comes off the line every 5 minutes, or something of that kind, and you know its precise price, and it immediately goes into a precise market and is liquidated, the motion-picture business has to determine its profits against calculated mortality, based upon experience, of the films which it puts out, and films are constructed months ahead of the time that they get to the market, and then it takes months to liquidate them. Until the final liquidation, I suppose it could be said you do not absolutely know what your profit or loss is going to be.

Senator ADAMS. Mr. Place, do you happen to know, when those dividends were declared, whether they were declared approximately when they were paid, or whether there was a prior declaration which these dividends were carrying out?

Mr. PLACE. I will have to look that up, Senator. I fancy they were declared 2 weeks, or something of that kind, before they were paid.

Senator COUZENS. What I am curious about is this. I notice, in reading this statement—

Mr. PLACE. I find that what I said is correct, Mr. Pecora. In other words, there was a progressive and rather rapid toning down of the dividend situation, as it became apparent that the profits were declining, or were going to run into losses. One dollar was declared April 1, and the next dividend was cut to 62½ cents, and that was the last dividend paid.

Mr. PECORA. It was not even earning that dividend, was it, after it was reduced to 62½ cents a share?

Mr. PLACE. I do not know whether the accounts of the company at that time indicated whether they were earning it or not. I would have to look that up. I was not in touch with the actual accounts.

Mr. PECORA. The balance sheet as of December 26, 1931, would show that it was not.

Mr. PLACE. That would not show, Mr. Pecora, that the accounts of the company as of May, June, or July, as accounted for currently under the amortization tables, did not show earnings. As a matter of fact, all the motion-picture companies in these last 3 years had the sad experience or necessity, at the year ends, of writing off, revising, and revaluing their inventories because of failure to catch up with the increased mortality of films. So that gradually they have gotten the amortization tables down to the point now where probably, if we have any improvement in business, they may be very conservative, and probably are today very conservative. In other words, all the companies today are giving a shorter life to their films.

Senator ADAMS. Mr. Place, Fox Film is not the only large corporation in the country that has declared dividends during periods when they have been operating at a loss, is it?

Mr. PLACE. I should say not. What I wanted to say with regard to these particular dividends is that without going back to the books and records at the time, I would not be able to say that even then, on the books, or information available, they declared the dividend without having shown it earned.

Senator ADAMS. What was their status as to having on their books a surplus?

Mr. PLACE. I think they had a surplus.

Senator COUZENS. May I point out, while Mr. Place is looking that up, Senator Adams, that it seems to show a very close affiliation between the General Theatres Equipment and the management of the Fox Film Corporation, because it will be observed that at the time they were paying these dividends there were notes payable in the banks alone of six and a quarter million, and there were notes payable to others of \$2,812,000, and there were accounts payable and current expenses of \$4,255,000. I do not think it is safe to say that concerns of that financial standing have been paying dividends during these times. They may have had reserves, but they were not of that financial standing, I take it.

Mr. PECORA. Mr. Place, can you identify this printed copy of the report of the Fox Film Corporation for the year ended December 26, 1931, as a true and correct copy of the report issued to stockholders for that period of time?

Mr. PLACE. Yes, sir.

Mr. PECORA. I am going to offer that in evidence.

Senator ADAMS. What I had in mind, of course, was this, that the mere fact that the corporation was paying dividends while it had a loss was not the whole story. You pointed out the rest of the story. It depends on the rest of its financial picture.

Senator COUZENS. I quite agree that corporations do not have to earn dividends because they pay them, but they should not be in current debt.

Senator ADAMS. There was a sort of inference from the situation that any corporation which would pay dividends without earnings

would be guilty of bad financing, when so many corporations do carry dividends along out of surplus, over the bad days, and that is one reason they accumulate these surpluses.

Mr. PLACE. That appears to be the published report of the company, based upon a complete audit by Touche, Niven & Co., and I presume it is correct.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. It will be admitted.

(The document referred to, annual report Fox Film Corporation, December 26, 1931, was received in evidence, marked "Committee's Exhibit No. 182," November 27, 1933, and the same is not printed in this record.)

Mr. PLACE. I think you, Mr. Pecora, asked or Senator Couzens asked whether there was any surplus when the last dividend was paid.

Senator COUZENS. Senator Adams asked.

Mr. PLACE. Oh; it was Senator Adams. The balance sheet as of the end of the year, subsequent to the date when the last dividend was paid, does show a surplus.

Senator ADAMS. How much?

Mr. PLACE. \$1,954,102.64.

Senator ADAMS. The ice was getting pretty thin.

Mr. PLACE. Well, that was after the payment of such dividends as were made.

Senator COUZENS. And also that surplus would be wiped out several times if the current debts alone were paid.

Mr. PLACE. What is that, Senator?

Senator COUZENS. I say, that surplus would be wiped out if the current debts were paid.

Mr. PLACE. I do not think the payment of the debts would affect the surplus at all.

Senator COUZENS. That was as far as any available cash to pay dividends was concerned?

Mr. PLACE. Yes.

Senator COUZENS. In other words, when you were paying the dividends you were owing the banks and current debts much in excess of any accumulated surplus?

Mr. ALDRICH. May I say at this point that Mr. Place was not on the board of the Fox Film Co. at this time, and when you say—

Senator COUZENS. Just a minute, Mr. Aldrich. I am not questioning Mr. Place. I am making some observations with respect to the trial balance.

Mr. ALDRICH. Yes.

Senator COUZENS. And I am not charging the Chase Bank or you at this particular time. And I do not expect to have any interposition of your statement while I am commenting on the trial balance.

Mr. ALDRICH. What I said, Senator—

Senator ADAMS. May we just pursue this in a regular, orderly way now. Mr. Place is on the stand. Unless Mr. Pecora wants a substitution I think that we will go on as we were.

Mr. PECORA. No; he is still on the stand.

Senator ADAMS. I suggest that if Mr. Aldrich has any corrections that he make them later.

Mr. PECORA. Well, Senator Couzens was making some observations in the record, which were interrupted.

Senator ADAMS. Yes; which were not concluded.

Senator COUZENS. I was not commenting on Mr. Place's statements but on a trial balance that was submitted and made an exhibit; and it did not require any comment from anyone, because the statement speaks for itself. And I do not charge that Mr. Place had any connection with it whatsoever.

Mr. ALDRICH. Senator, may I make a statement?

Senator COUZENS. Senator Adams is acting as chairman.

Mr. ALDRICH. I apologize if I am intervening improperly, but I understood Senator Couzens to say to Mr. Place, who was the vice president of the Chase National Bank: "In other words, you were paying dividends out of"—I do not know what. Now, it seems to me that that carried with it an implication that Mr. Place knew that the Fox Film Co. was doing something improper, and that that was a statement that involved Mr. Place in connection with that, and I just wanted to point out he had nothing to do with it. I am sorry, Senator, if I—

Senator COUZENS. Well, I want to point out that Mr. Aldrich feels at liberty to interpose his observations whenever he wishes to do so, and I resent it in the conduct of an examination made by this committee. Mr. Aldrich has been reminded before that this committee will conduct its own investigation in its own way, and will not be dictated to by Mr. Aldrich or anyone else.

Mr. ALDRICH. Well, Senator—

Senator COUZENS. Just a moment, please. Now, Mr. Place had testified to the time that he became connected with the Fox, and that it was subsequent to the issuing of the statement, the observations concerning which I just made. I do not see any occasion or reason for any interposition by Mr. Aldrich or any comment from the Chase National Bank at this time. However, it is over now. Let us proceed.

Mr. PECORA. Mr. Place, I want to show you another document purporting to be a printed copy of the Annual Report of the Fox Film Corporation for 53 weeks ended December 31, 1932, which is signed by Mr. Sidney R. Kent, president, and is dated June 19, 1933. Will you please look at it and tell me if you can identify it as a true and correct copy of such annual report? [Handing same to Mr. Place.]

Mr. PLACE (after examining same). Well, Mr. Pecora, I would say as I did in the case of the other one, that this appears to be the published statement of the company.

Senator ADAMS. You do not have any doubt about it, do you?

Mr. PLACE. I do not have any doubt about it.

Senator ADAMS. Do you offer it as an exhibit, Mr. Pecora?

Mr. PECORA. Yes; but it need not be spread in full on the record.

Senator ADAMS. It may be received and marked as an exhibit.

(Annual Report of the Fox Film Corporation for 53 weeks ended Dec. 31, 1932, was received in evidence, marked "Committee Exhibit No. 183 of Nov. 27, 1933", but is not printed in the record.)

Mr. PECORA. In this annual report for the 53 weeks ending December 31, 1932, it appears that the company for that period of time

operated at a loss of \$16,964,498.33. That appears on page 6 of the printed copy of the report, does it not, Mr. Place?

Mr. PLACE. That appears to be correct. That includes the operation of the Wesco Corporation.

Mr. PECORA. That is as the result of the operation of the Fox Film Corporation and any wholly-owned subsidiary, controlled or affiliated company?

Mr. PLACE. That is correct.

Mr. PECORA. So that when they anticipated improvement in business conditions and they declared this dividend the preceding year their anticipations went entirely astray?

Mr. PLACE. Yes. In company with a great many other hopes and anticipations.

Mr. PECORA. Now, when Mr. Clarke was succeeded by Mr. Tinker as president of Fox Films, Mr. Clarke was made chairman of the board of directors, was he not?

Mr. PLACE. You mean when Mr. Tinker succeeded Mr. Clarke?

Mr. PECORA. I say when Mr. Clarke was succeeded by Mr. Tinker—

Mr. PLACE. I beg your pardon.

Mr. PECORA (continuing). Mr. Harley Clarke was made chairman of the board of directors?

Mr. PLACE. I believe he was.

Mr. PECORA. As the result of this reorganization that was effected last summer of the Fox Film Corporation the company came practically not only in the control but in the ownership of the group of the members that composed that banking syndicate headed by the Chase Securities Corporation, did it not?

Mr. PLACE. Correct. A very large percentage.

Mr. PECORA. And all the original stockholders were practically wiped out?

Mr. PLACE. Well, all of the original stockholders, as I pointed out earlier, were given one absolute right to retain an interest in the company, namely one sixth, which they did. And, secondly, to retain their complete interest in the company if they chose to do so by putting up money.

Mr. PECORA. That is, by buying the new issue of stock?

Mr. PLACE. Precisely. So that they were not wiped out.

Mr. PECORA. And buying it at a price—

Mr. PLACE (interposing). The creditors were willing to take the stock at—

Mr. PECORA (continuing). That the creditors were willing to take the stock at. The creditors were presumably in a better position to do it?

Mr. PLACE. Well, obviously the creditors' lien was senior to the stock.

Mr. PECORA. The only point I am making is that by this reorganization, which took the place of a receivership, the result so far as the original stockholders was concerned was about the same as a receivership might have had the effect—it wiped them out?

Mr. PLACE. I would not agree with that, Mr. Pecora, because I think had there been a receivership probably they would have lost everything.

Mr. PECORA. Well, have they not practically lost everything?

Mr. PLACE. Well, I do not think—

Mr. PECORA. Has not the company passed into the control and ownership as well, of the creditors, the banking creditors?

Mr. PLACE. No, it has not entirely. One sixth remains with the old stockholders.

Senator ADAMS. They lost five sixths?

Mr. PLACE. They lost five sixths.

Mr. PECORA. That is why I said "practically" instead of "entirely".

Senator COUZENS. Well, that is a large salvage for bankers.

Mr. PLACE. What?

Senator COUZENS. One sixth I say is a large salvage from a banker's point of view.

Mr. PLACE. I do not get you, Senator.

Senator COUZENS. It was just a comment. It was not a question.

Mr. PLACE. I see. Now I might say also that one sixth holding in the reconstructed company I believe is and over a period of time should be worth substantially more than a one sixth holding in the company before the reconstruction. In other words, by virtue of the reconstruction of the company a very large amount of debt which was senior to the old stock has been eliminated. So that the one sixth means more today than it would have meant had the debt not been paid off.

Mr. PECORA. Well, the salvaging has been to the extent of one sixth the original interests held by the public?

Mr. PLACE. Well, I would say certainly one sixth, and from the point of view of intrinsic value possibly a good deal more.

Senator ADAMS. Well, of course, it was one sixth, and the company owed 38 million dollars.

Mr. PLACE. That is correct. I would say from the point of view of reasonable prospects that it was a better prospect than if it continued to have that debt outstanding.

Mr. PECORA. Do you know what the present condition is of the General Theatres Equipment, Incorporated?

Mr. PLACE. It is in receivership.

Mr. PECORA. And that receivership was ordered in February of last year, 1932, was it not?

Mr. PLACE. I think the end of February, as I recall it.

Senator COUZENS. Who are the receivers? Are there more than one?

Mr. PECORA. Senator Hastings.

Senator COUZENS. Is he the sole one?

Mr. PECORA. How many receivers are there?

Mr. PLACE. One receiver.

Mr. PECORA. That is Senator Hastings?

Mr. PLACE. Only one receiver. Senator Hastings of Wilmington, Del.

Mr. PECORA. I have no further questions of Mr. Place, unless you have any statement you want to make to the committee by way of amplification of any testimony you have given.

Mr. PLACE. I haven't anything else, Mr. Pecora.

Mr. PECORA. All right.

(Thereupon Mr. Place left the committee table.)

Mr. PECORA. I wanted to ask Mr. Clarke a few questions before we took a recess, about some matters brought out in the examination of Mr. Place.

### TESTIMONY OF HARLEY L. CLARKE—Resumed

Mr. PECORA. Mr. Clarke, according to the testimony of Mr. Place, and documentary evidence consisting of Committee's Exhibit 182, which is a copy of the annual report of the Fox Film Co. for the 52-week period ending December 31, 1931, a loss was sustained by that company during that period of time, of \$5,560,304.84. And cash dividends aggregating \$4,104,035 were declared and paid to the common stockholders. Which depleted the assets of the company by the total sum of \$9,664,339.84. During that period of time you were the executive head of the Fox Film Corporation, were you not?

Mr. CLARKE. Up to November of that year.

Mr. PECORA. Up to November 1931?

Mr. CLARKE. Yes, sir.

Mr. PECORA. That is for practically all but one month?

Mr. CLARKE. That is correct.

Mr. PECORA. Of this 52-week period.

Mr. CLARKE. Yes. That is correct.

Mr. PECORA. And for that one month you were chairman of the board of directors?

Mr. CLARKE. Yes. I was chairman until the following May or June.

Mr. PECORA. Now you were the executive head of the company as well as a director thereof when this dividend of over 4 million dollars was declared and paid, were you not?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Will you tell the committee why that dividend was declared at that time in view of the business condition of the company?

Mr. CLARKE. If I may be allowed a little latitude I think I can clear up a lot of things by explaining them to you. May I?

Mr. PECORA. Go ahead.

Mr. CLARKE. That dividend of \$1.62 was declared that year because the management of the company and the directors of the company did not anticipate an extra 4 million dollars being charged off as amortization of film. And had they had it in mind at the time I do not think they would have declared any dividends.

Mr. PECORA. Well, why did they not have it in mind at the time?

Mr. CLARKE. For the reason that the policy of the company for many years had been continued to be carried out, that is writing off film on the basis of 78 weeks, the then considered life of a film by most companies. Some companies used a longer time. If I may I should like to refer back to the year preceding.

Senator ADAMS. Let me ask at this point: Your company's policy had been to write off a film 100 percent at the end of 78 weeks?

Mr. CLARKE. That is correct.

Senator ADAMS. Had there been any depreciation during that period, or did they wait until the end of the 78 weeks and write it off?

Mr. CLARKE. Oh, no; it was progressively written off, because experience had told all companies that that was about the life of a film, considering both domestic and foreign releases. Now every one had hopes, even if any increased amortization were entered upon the books of the company. And if I may, I will call your attention to this same report wherein on the first page is shown that increased amortization of film.

In 1927 the picture costs were 14 million dollars—I am not giving you the odd figures—and the amortization was 13 million dollars.

In 1928 the picture costs were 16 million dollars and 13 million dollars amortization.

In 1929 the picture costs were 22 million dollars and the amortization 21 million dollars.

In 1930 the picture costs were 26 million dollars and the amortization 21 million dollars.

In 1931 picture costs had been cut down to 19 million dollars and the amortization increased to 24 million dollars.

You will notice in that particular year the amortization is all out of line with other amortization figures. But it was a wise thing to do. And the reason that everyone made this mistake is very apparent, if I can be permitted to give you some general figures which are nearly authentic, and they are so large that a small percentage would make no difference.

The peak of this business was in 1929, and the theater receipts throughout the United States were about one billion three hundred million dollars.

The following year, 1930, those receipts had dropped to one billion one hundred million dollars.

In 1931 they had dropped to 900 millions dollars.

In 1932 they had dropped to slightly over 700 million dollars. Nearly half of the original peak in 1929.

Mr. PECORA. In 1931 you knew at the time this dividend was declared of the steadily declining amount of business that was being done by the motion pictures?

Mr. CLARKE. It was always considered that it could not go any further by everyone in the business.

Mr. PECORA. There had been for sometime before the declaration of this dividend a steady decline in business?

Mr. CLARKE. From 1930?

Mr. PECORA. From 1930 down.

Mr. CLARKE. From 1930 on?

Mr. PECORA. All right.

Mr. CLARKE. The first 6 months of this year I am informed the total revenue in the motion-picture business was about \$275,000,000, and on the basis of the increased revenue in the last quarter of this year—about 3 months—not the calendar quarter, but the last 3 months—it is estimated that the last 3 months will bring the total for the half year up to about \$425,000,000, which, added to the first 6 months will make something over \$700,000,000. A most rapid rise, if it is maintained. That, I believe, is the fundamental reason of the great losses in this company and all other companies.

Senator COUZENS. Mr. Clarke, going back to the comment that I made a while ago that Mr. Aldrich objected to. Is it not a fact

that when these dividends were paid you were owing large amounts in current debts and notes to the bank?

Mr. CLARKE. That is correct.

Senator COUZENS. Why do you pay dividends when such large amounts are owing in current debts? That is what I was trying to get out before.

Mr. CLARKE. Well, the debts were largely created because of the outgrowth of the original acquisition of the Fox Film by General Theatres and its original financing in Fox Film itself, and it was never considered that the debts of Fox Film were really operating expenses. And I agree that it was very bad policy, as it turned out.

Senator COUZENS. It seems to me that you ought to have known it was bad policy, because at the time you were paying these dividends your statement showed that there were accounts payable and accrued expenses in excess of the amount of the dividend paid. And Mr. Aldrich objected to that comment, and I now ask you why it was good judgment to be paying dividends and having the bank hold the bag?

Mr. CLARKE. Senator, the justification for it is simply that the last six months of the year 1931 dropped off in revenue tremendously compared with the first six months, and the dividends were cut down from \$4 to \$1.62 for the year. Had anyone supposed that the earnings would not have been maintained during the last six months certainly no dividend would have been paid. Particularly with these liabilities outstanding, as you point out.

Senator ADAMS. May I ask this question? Mr. Clarke, in 1931 the revenues were greater the first six months than in the latter six months?

Mr. CLARKE. Yes. The revenues were greater the first six months. The revenues continued to go down until in June 1933.

Senator ADAMS. And in 1933 you are going to have larger revenues the last six months than in the first six months?

Mr. CLARK. Yes.

Senator ADAMS. That interests me. I was wondering if that same condition would apply not only to the motion-picture industry but generally.

Mr. CLARKE. I have been told that the earnings are greater in the later period due to the rise in the last 3 months.

Senator COUZENS. That is due to the Roosevelt administration.

Mr. CLARKE. That is due to the partial inflation we have now and the large inflation hoped for by some people.

Mr. PECORA. As a matter of fact, Mr. Clarke, at the time this dividend was declared in July 1931 is it not a fact that the company did not even have enough cash with which to pay the dividend to all the stockholders?

Mr. CLARKE. That may have been true. I do not recall.

Mr. PECORA. Well, was it not true?

Mr. CLARKE. Well, large sums of money were handled, Mr. Pecora, and the in and out of money was so large that I could not tell you at the moment whether they needed some money or not.

Mr. PECORA. Let me ask you if you do not recall that in order to pay its share of the dividends to the General Theatres Equipment, Inc., which was the principal stockholder of Fox Films, the Fox

Film Corporation gave its note to General Theatres Equipment for \$817,072 dated August 12, 1931, in either full or part payment of dividend? Do you recall that?

Mr. CLARKE. Yes, I do.

Mr. PECORA. So that you do recall the fact that at the time this dividend was declared it did not have enough cash by nearly one million dollars with which to pay it?

Mr. CLARKE. The conservation of cash by that method was used because the General Theatres greatest interest was Fox Film, and to conserve its cash was their principal object in life at that time.

Mr. PECORA. And that might have been conserved by passing a dividend, might it not?

Mr. CLARKE. That is true. And that is what should have been done.

Mr. PECORA. Well, you knew that at the time, that that is what should have been done, did you not?

Mr. CLARKE. Certainly not.

Mr. PECORA. With declining business already apparent for a year before; with cash resources depleted to the point where it did not have the cash with which to pay the dividend, you did not at the time know that the preferable, that the wise thing to have done would have been to pass the dividend?

Mr. CLARKE. Mr. Pecora, I have already stated that everyone that I know of connected with this business, including all the bankers, believed that the bottom had been reached always, and our prospects were such that we felt that it would be bad for the company to pass the dividend if we had the surplus and could legally pay it.

Mr. PECORA. You were not paying it out of current earnings, were you? You were drawing upon your surplus with which to pay the greater part of it?

Mr. CLARKE. We were not drawing upon the cash. The amortization figure of course, as I explained to you, for an extra 4 million dollars, was put in that year.

Mr. PECORA. At the time this dividend was declared did the General Theatres Equipment, Inc. have any interest obligations to meet?

Mr. CLARKE. General Theatres?

Mr. PECORA. Yes.

Mr. CLARKE. Oh, yes.

Mr. PECORA. Was this dividend declared in order to enable the General Theatres Equipment, Inc. to acquire through the payment of that dividend to it the cash with which to meet these obligations?

Mr. CLARKE. I do not know that it was tied up to that specifically. Of course it did assist it, naturally.

Mr. PECORA. It did assist it?

Mr. CLARKE. Certainly.

Mr. PECORA. You were the president of General Theatres at that time?

Mr. CLARKE. I was.

Mr. PECORA. You were the president of the Fox Film Corporation at that time?

Mr. CLARKE. Yes, sir.

Mr. PECORA. You had knowledge of the requirements of General Theatres at that time, did you not?

Mr. CLARKE. Certainly.

Mr. PECORA. Did you not have it in mind when you as the executive head of both corporations voted to have the Fox Film Corporation declare this dividend?

Mr. CLARKE. I probably did.

Mr. PECORA. I think that is all at this time.

Senator ADAMS (acting chairman). If it is agreeable to the committee we will recess until 2 o'clock.

(Thereupon, at 1 o'clock p.m., a recess was taken until 2 o'clock p.m. the same day, Monday, November 27, 1933.)

#### AFTER RECESS

The subcommittee resumed at 2 o'clock p.m. on the expiration of the recess.

The CHAIRMAN. The subcommittee will resume Mr. Pecora, you go ahead.

#### TESTIMONY OF HARLEY L. CLARKE—Resumed

The CHAIRMAN. Mr. Clarke, when did you cease to be president of the Fox Film Corporation?

Mr. CLARKE. In November of 1931.

The CHAIRMAN. Did you say in 1931?

Mr. CLARKE. Yes, sir.

The CHAIRMAN. What salary were you receiving then as president?

Mr. CLARKE. I did not receive any salary. My interest was so large in General Theatres Equipment that it was not thought wise to give me a salary there.

The CHAIRMAN. When did you cease to be president of the Fox Theatres Corporation?

Mr. CLARKE. Some time later but I do not know the date.

The CHAIRMAN. But it was some time later?

Mr. CLARKE. Yes, sir.

The CHAIRMAN. What salary did you receive as president of that corporation?

Mr. CLARKE. I did not receive any salary.

The CHAIRMAN. When did you cease to be president of General Theaters Equipment, Inc.?

Mr. CLARKE. General Theaters Equipment, as you know, went into receivership February 29, 1932, and no action was taken about the presidency.

The CHAIRMAN. But you were president of it then?

Mr. CLARKE. I was president at that time; yes, sir.

The CHAIRMAN. And what salary did you receive there?

Mr. CLARKE. I did not receive any salary in General Theaters Equipment.

Senator TOWNSEND. And you were president of Fox Theaters Corporation until Mr. Tinker was elected, were you not?

Mr. CLARKE. Do you mean Fox Film Corporation?

Senator TOWNSEND. Well, Fox Film Corporation.

Mr. CLARKE. Yes, sir. That was in November of 1931.

Senator GOLDSBOROUGH. Do you know whether suit has been entered by Fox Film Corporation against Mr. Fox for an accounting of the affairs of that corporation?

Mr. CLARKE. Yes, sir.

Senator GOLDSBOROUGH. Will you state what you know about it?

Mr. CLARKE. It is a very detailed and a very complex matter, and I would not attempt to give you the statement that the attorneys could give you, because they have made a detailed study of it. And even if I had the information I should ask the privilege of not disclosing it while the suit is in court.

Senator GOLDSBOROUGH. When was the suit instituted?

Mr. CLARKE. About 8 or 9 months ago, I believe.

Senator GOLDSBOROUGH. Was it instituted by the stockholders or by the Fox Film Corporation?

Mr. CLARKE. By the Fox Film Corporation.

Mr. PECORA. Mr. Clarke, referring to the declaration of this dividend by Fox Films in July of 1931, which was the subject you were being examined on prior to the recess today, at the time of the declaration of that dividend a number of bankers who had been interested in financing Fox Films and General Theatres Equipment, as well as Fox Theatres, were operating and conducting a number of trading accounts in the stock of the Fox Film Corporation and General Theatres Equipment; were they not?

Mr. CLARKE. The only account I am conversant with was the purchase of the Fox Film stock, on which was borrowed 6 million dollars of the 10-million-dollar loan referred to this morning.

Mr. PECORA. Well, that loan was made, as I recall it, in October of 1930, October 10th; was it not?

Mr. CLARKE. That is right.

Mr. PECORA. This dividend that I speak of was declared in July of 1931, this dividend at the rate of 62½ cents a share on the capital stock of Fox Film Corporation.

Mr. CLARKE. That is right.

Mr. PECORA. We have already seen that the dividend accruing to General Theaters Equipment, Inc., as a large stockholder of the Fox Film Corporation, was paid to it, in whole or in part, by the note of the Fox Film Corporation rather than by cash. Is that right?

Mr. CLARKE. That is correct.

Mr. PECORA. And at that time you have testified General Theaters Equipment had some obligations falling due.

Mr. CLARKE. Oh, yes; they had plenty of obligations.

Mr. PECORA. And it was unable to pay those obligations in whole or in part by means of this dividend?

Mr. CLARKE. I do not know that they were falling due at that time, Mr. Pecora, but they had plenty of obligations.

Mr. PECORA. Yes; they had plenty of obligations. Now, don't you recall whether or not there were then in existence and actually operating in the market, one or more stock-trading syndicates, of which Pynchon & Co. were managers?

Mr. CLARKE. I have been told that there were, but of my own knowledge I do not know.

Mr. PECORA. Had that dividend in July of 1931 been passed, the effect on the market quotation of the Fox Film stock would have been very unfavorable, wouldn't it?

Mr. CLARKE. Unquestionably, it would have been.

Senator COUZENS. What did General Theatres Equipment do with that dividend they got from Fox Film, do you know?

Mr. CLARKE. Senator, it would be difficult for me to tell you, because I do not know that that money was especially earmarked for any purpose. It paid—

Senator COUZENS (interposing). Well, you ought to know.

Mr. CLARKE. It paid its debts, of course.

Senator COUZENS. Well, what was the form of the debts you refer to?

Mr. CLARKE. Well, the main form of the debt, of course, was interest, because at that time we were paying our current bills, and did for some time afterward.

Senator COUZENS. What was the holding company's current bills? Do you mean borrowed money and outstanding obligations?

Mr. CLARKE. Yes.

Senator COUZENS. Did it declare any dividend itself?

Mr. CLARKE. It did not.

Senator COUZENS. When was the last dividend of General Theatres Equipment declared?

Mr. CLARKE. General Theatres Equipment never declared a dividend.

Mr. PECORA. Why, Mr. Clarke, didn't it declare one dividend in February of 1931, of 75 cents a share, to its preferred stockholders?

Mr. CLARKE. Do you mean General Theatres Equipment?

Mr. PECORA. Yes.

Mr. CLARKE. Do you mean after the split-up of the stock?

Mr. PECORA. Well, I do not recall whether it was before or after the split-up of the stock, but in February of 1931 it declared a dividend of 75 cents a share on its preferred stock, and that was the only dividend it ever paid.

Mr. CLARKE. Let me ask counsel if he knows that. (Inquiring of Mr. Rogers.) It would be easy to ascertain that if I had the record, but I haven't them.

Mr. PECORA. Well, the records are here. The minute book is here. They have it.

Mr. CLARKE. I haven't it.

Mr. PECORA. Mr. Dodge, do you know about that, whether there was such a dividend? You were a director of General Theatres Equipment.

Mr. DODGE. That dividend was paid.

Mr. PECORA. A dividend of 75 cents a share to the preferred stockholder?

Mr. DODGE. Yes, sir.

Mr. PECORA. In February of 1931?

Mr. DODGE. I understand so.

Mr. PECORA. And that was the only dividend it ever declared in its history, wasn't it?

Mr. DODGE. Yes, sir.

Mr. PECORA. Do you recall the correct amount of that dividend?

Mr. DODGE. No, sir.

Mr. PECORA. They had about 1 million shares of preferred stock, wasn't it?

Mr. DODGE. I think so.

Mr. PECORA. Well, that would make around \$750,000.

Senator TOWNSEND. Mr. Clarke, who held the preferred stock?

Mr. CLARKE. Well, the preferred stock, I believe, was largely held by the bankers, who had the interest in the common stock, which they had purchased and had been unable to sell.

Mr. PECORA. Now, Mr. Clarke, according to the memorandum that was put in evidence this morning during the examination of Mr. Dodge, which memorandum is marked "Committee Exhibit No. 180", and which was dated October 8, 1930, there was a common stock syndicate, managed by Pynchon & Co., operating in the market, which had accumulated approximately 345,000 shares at a cost of around \$46 per share. And there was a second trading account which had accumulated 200,000 shares at a cost of approximately \$48 per share. And there was a third trading account which had accumulated approximately 50,000 shares at a cost of around \$30 per share. And this memorandum goes on to say:

"These three accounts were the result of the purchase of the common stock from the company to enable the purchase of the Fox Film Company stock, and amounted in all to approximately 600,000 shares."

So you know, as a matter of personal knowledge, don't you, Mr. Clarke, that there were a number of these trading accounts operating in the market in Fox Film stock during the latter part of 1930 and during the year 1931?

Mr. CLARKE. I testified that I knew there were accounts, and heard about them, but I do not know the details about them.

Mr. PECORA. Did you have any interest in any of those accounts, as a participant either directly or indirectly?

Mr. CLARKE. When the General Theatres Equipment financed its portion of the purchase of the Fox Film Corporation I participated in the acquisition of over 100,000 shares of stock at \$40, less \$2.50, or \$37.50, the same as the bankers paid. That amounted to something like 5 million dollars.

Mr. PECORA. Now, when April of 1931 came around and it was necessary for Fox Films to do some refinancing in order to take care of the 55 million dollars of debentures issued the preceding year, Pynchon & Co., who managed nearly all, if not all, of those trading syndicates, got into financial embarrassment, didn't they?

Mr. CLARKE. Yes; they did.

Mr. PECORA. Do you recall that you were appealed to to help them out of their embarrassment with a loan of about a million dollars?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Who made that appeal to you?

Mr. CLARKE. Mr. George Pynchon and Mr. W. F. Ingold.

Mr. PECORA. Who else?

Mr. CLARKE. The only other person I remember talking to about it—oh, I suppose I talked to many people about it, but the only other person I talked to you might say, was Mr. Wiggin.

Mr. PECORA. Did you also talk to Mr. Allen L. Lindley, who was then the chairman of the Business Conduct Committee of the New York Stock Exchange?

Mr. CLARKE. Yes; I did.

Mr. PECORA. You had a telephone talk with him from Chicago, didn't you? That is, you were in Chicago and he was in New York?

Mr. CLARKE. That is right.

Mr. PECORA. Do you recall that conversation, Mr. Clarke?

Mr. CLARKE. In substance it was this: Mr. Lindley wanted to know if I was going to furnish them this money.

Mr. PECORA. Furnish who what money?

Mr. CLARKE. Furnish Pynchon & Co., that you referred to.

Mr. PECORA. Yes.

Mr. CLARKE. A million dollars. I told him I was making every effort to do so, and thought I could.

Mr. PECORA. Didn't you make a specific promise to loan a million dollars to Pynchon & Co. the following morning?

Mr. CLARKE. I am very glad to say I did not.

Mr. PECORA. To prevent that firm from being suspended?

Mr. CLARKE. I am very glad to say to you that I did not.

Mr. PECORA. What was that answer?

Mr. CLARKE. I am glad to say to you I did not.

Senator COUZENS. Do you mean that you are glad to say that you did not make the loan or did not make the promise?

Mr. CLARKE. That I did not make the promise.

Senator ADAMS. And also, I take it, very glad that you did not make the loan?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Now, Mr. Clarke, there has been placed in my possession a stenographic transcript of that long-distance telephone conversation with you on that occasion with Mr. Allen L. Lindley. The conversation was held about 10 o'clock a.m. on Friday, April 24, 1931, between Allen L. Lindley, chairman of the Committee on Business Conduct of the New York Stock Exchange and Mr. Harley Clarke, of Chicago. I am going to read this transcript to you, and will you follow me closely and see if it refreshes your recollection with regard to the conversation:

The following conversation took place over the long distance telephone between New York and Chicago about 10 o'clock a.m., Friday, April 24, 1931, between Allen L. Lindley, Chairman, Committee on Business Conduct, New York Stock Exchange, and Harley Clarke, of Chicago:

Mr. LINDLEY. Good morning, Mr. Clarke. Mr. Clarke, this is Allen Lindley, Chairman of the Committee on Business Conduct of the New York Exchange.

Mr. CLARKE. Yes, sir.

Mr. LINDLEY. Mr. Clarke, I understand that you are going to advance a million dollars to Pynchon & Co.

Mr. CLARKE. I am advancing them a million and a half collateral, Mr. Lindley, and the arrangement has been made for a loan on it of a million dollars this morning.

Mr. LINDLEY. Can you borrow that money yourself and make that capital contribution to Pynchon?

Mr. CLARKE. Make what?

Mr. LINDLEY. Could you borrow that money in your own name and put that money in the firm?

Mr. CLARKE. Can I borrow on my own name?

Mr. LINDLEY. Yes, sir.

Mr. CLARKE. Well, I don't know whether I can or not. We made the other arrangement and I wouldn't want to answer that question; I probably can; but we made this arrangement about 3 o'clock this morning, that I advance a million and a half in collateral.

Mr. LINDLEY. Yes.

Mr. CLARKE. And the arrangement has been made for part of the loan, and the plan was consummated, and so they are going to get a million dollars this morning on that collateral.

Mr. LINDLEY. Yes; I understand that to be the case.

Mr. CLARKE. Yes.

Mr. LINDLEY. We would like, however, if you could borrow that money in your own name; that would enable Pynchon not to have the responsibility connected with the securities, and it would reduce their securities position by that amount.

Mr. CLARKE. If you borrow a million dollars on the million and a half, I understood that the million and a half of securities would (?) for them, and an extra half million as far as the balance is concerned.

Mr. LINDLEY. But we would rather have you——

Mr. CLARKE. Have what?

Mr. LINDLEY. ——Have you borrow the money, and Pynchon could take that million dollars and pay off loans; in other words, this is a matter of liquidation, and this would only increase Pynchon's loans a million dollars, do you see?

Mr. CLARKE. This would increase their loans a million dollars; that is right.

Mr. LINDLEY. And if you borrowed it yourself, and advanced the money to Pynchon——

Mr. CLARKE. What would I get from Pynchon?

Mr. LINDLEY. You are going to put in the money anyway; are you not?

Mr. CLARKE. We are going to put in some more money. In my opinion, this thing will all be cleared up in very few days; I think we will get plenty of money.

Mr. LINDLEY. So I understand.

Mr. CLARKE. I wouldn't like to disturb, this morning, these other arrangements because they are made.

Mr. LINDLEY. I wonder whether in the course of the day——

Mr. CLARKE. I think you will be better satisfied, because they need another million or million and a half in there next week to get the thing straightened out.

Mr. LINDLEY. Yes, sir.

Mr. CLARKE. And I think it will be done.

Mr. LINDLEY. In other words, as I understand it, you are willing, next week, the first part of next week, to advance another million or million and a half dollars?

Mr. CLARKE. Now, you are asking me for a direct application, and I am telling you that I think it will be done; I am almost positive that it will be done but I am not saying it will be done.

Mr. LINDLEY. But we have your assurance there will be a million dollars in today?

Mr. CLARKE. That is right; that is correct.

Mr. LINDLEY. Of course, we expect there will be a million and a half in the fore part of next week.

Mr. CLARKE. I expect that will be done anyway by Wednesday or Thursday of next week, and I think it will be done before; but I want you to understand this is not consummated but it is promised.

Mr. LINDLEY. Of course, we can't give you any definite assurance that the firm can continue until Wednesday or Thursday, because unforeseen circumstances might cause trouble.

Mr. CLARKE. I understood this last night, that it would be agreeable if they kept their loans collateraled.

Mr. LINDLEY. That is the arrangement with the bankers.

Mr. CLARKE. That satisfies the bankers?

Mr. LINDLEY. Yes, sir.

Mr. CLARKE. If they keep their loans collateraled, and they are able to meet their obligations, I assume you would let them go on?

Mr. LINDLEY. As long as they meet all obligations, that is all that is necessary.

Mr. CLARKE. I am awfully glad to hear you say that; because putting this money in there I want to go through with them with the whole thing, and there are certain friends of mine out here who are going to help us—just now we have time to turn around—and we will have that, you see, if they keep the loans margined and meet their obligations.

Mr. LINDLEY. Right; and if they meet all obligations as they come in, of course they can go along; but we can never tell them from where we are what is going to happen the next minute.

Mr. CLARKE. I guess that is right.

Mr. LINDLEY. Now, I wonder would you try to see during the day if you could make this a personal obligation instead of a Pynchon loan.

Mr. CLARKE. If I make it a personal obligation they won't have a million and a half collateral.

Mr. LINDLEY. No; the bank would have a million and a half collateral and you would give them your check for a million dollars.

Mr. CLARKE. That would please you better than this arrangement?

Mr. LINDLEY. Yes, sir.

Mr. CLARKE. They would just have a million dollars in their business and no further collateral.

Mr. LINDLEY. Right; that would enable them to reduce loans a million dollars instead of adding to them.

Mr. CLARKE. And having reduce dthe loans a million dollars, it would fix those loans up much better—would that, in your opinion, ride them along for several days?

Mr. LINDLEY. I would say it would make it so much better they could continue in business temporarily.

Mr. CLARKE. You think they would be in better shape?

Mr. LINDLEY. Yes.

Mr. CLARKE. I want to help them, and if that wouldn't involve me in any other way, which I would have to consult somebody here about—do I become a million dollar partner in the firm by that?

Mr. LINDLEY. I don't think so, at all; that is up to your attorney; but I don't think you are a partner at all; you are a depositor with Pynchon; I think you would be a creditor.

Mr. CLARKE. A creditor?

Mr. LINDLEY. I am no lawyer but I think you would be.

Mr. CLARKE. I see. All right, if you would like that arranged I will try to do it. There may be other arrangements. I assume you would like to have me do it so they could open on time this morning?

Mr. LINDLEY. Yes.

Mr. CLARKE. It is only 8 o'clock here.

Mr. LINDLEY. There is no hurry about this.

Mr. CLARKE. There is no hurry about that?

Mr. LINDLEY. When I said you are a creditor, of course the million dollars you put in will be put in at the risk of the business?

Mr. CLARKE. Oh, I understand.

Mr. LINDLEY. That is a personal matter between you and Mr. Pynchon.

Mr. CLARKE. But I wondered whether there would be any further liability.

Mr. LINDLEY. That would be up to your lawyers.

Mr. CLARKE. I am no lawyer, either, and I know so damn little about the stock exchange.

Mr. LINDLEY. But that money would be in there at the risk of the business?

Mr. CLARKE. At the risk of the business; oh, yes, sir; I understand that.

Mr. LINDLEY. All right, Mr. Clarke.

Mr. CLARKE. All right; I will go ahead and consummate what I said I would do.

Mr. LINDLEY. All right; thank you.

Mr. CLARKE. Thank you.

Do you recall that conversation?

Mr. CLARKE. I do.

Mr. PECORA. And do you recall it in substance as I have read it from this transcript?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Then you did promise to negotiate a loan in your own name for a million dollars and turn it over to Pynchon & Co. to help them in their difficulty?

Mr. CLARKE. I don't so understand the conversation.

Mr. PECORA. Don't so understand it?

Mr. CLARKE. No, sir.

Mr. PECORA. Let me see. Let me repeat this part of the conversation:

Mr. CLARKE. Now you are asking me for a direct application, and I am telling you I think it will be done. I am almost positive it will be done, but I am not saying it will be done.

That was referring to the million and a half you were to make available the following week. Then Mr. Lindley said:

But we have your assurance there will be a million dollars in today?  
Mr. CLARKE. That is right. That is correct.

Mr. CLARKE. Yes, sir. And that does not conflict at all with my statement, as I see it.

Mr. PECORA. Well, does that mean that you promised Lindley—

Mr. CLARKE (interposing). No.

Mr. PECORA (continuing). You would loan or obtain a million dollars if necessary by making a loan in your own name—

Mr. CLARKE (interposing). No, sir.

Mr. PECORA (continuing). To Pynchon & Co. by 10 o'clock on the morning of April 24, 1931.

Mr. CLARKE. No, sir; it distinctly does not. I promised Pynchon to give them a million and a half collateral on which they were borrowing a million dollars in Chicago. I was told that they could get the million, and I believed that that was true. I do not know that they were promised a million on the collateral, but I believe that they were.

Mr. PECORA. Well now, Mr. Lindley said: "But we have your assurance there will be a million dollars in today?" And your answer was: "That is right. That is correct."

Mr. CLARKE. Yes, sir.

Mr. PECORA. What did you mean by that, if you did not mean that you were assuring Mr. Lindley there would be a million dollars made available to Pynchon that day?

Mr. CLARKE. Well, the preceding conversation shows plainly that I was loaning a million and a half collateral on which they were getting a million dollars.

Mr. PECORA. Did you loan the collateral?

Mr. CLARKE. How?

Mr. PECORA. Did you loan them that collateral?

Mr. CLARKE. No. They could not get the million.

Mr. PECORA. They could not get it if they did not have the collateral?

Mr. CLARKE. I know, but it was available for them if they wanted it.

Mr. PECORA. Did you send it to them?

Mr. CLARKE. I had it there in Chicago to give them and they could not get the loan the next day.

Mr. PECORA. They needed a million that day in order to be continued in business—you knew that, didn't you?

Mr. CLARKE. Oh, yes. I was up with them all night that night in Chicago, with the Chicago partners, and they were trying to arrange this loan and said they had it arranged and could get it.

Senator COUZENS. Who were they to get it from?

Mr. CLARKE. I think they were going to get it from two Chicago banks, Senator, but I had nothing to do with those arrangements.

Senator TOWNSEND. What you were to do was to furnish the collateral, is that it?

Mr. CLARKE. That is right.

The CHAIRMAN. What was the collateral?

Mr. CLARKE. It was going to be General Theatres stock.

Mr. PECORA. Now, do you recall having had a second conversation, while you were in Chicago on the afternoon of April 24, 1931, with Mr. Allen L. Lindley, who then was in New York?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Do you recall the substance of that conversation, or would you prefer to have me refresh your recollection of it by reading you that conversation from a transcript thereof which I have before me now?

Mr. CLARK. I would like to have you read it.

Mr. PECORA. All right (reading):

TELEPHONE CONVERSATION BETWEEN MR. ALLEN L. LINDLEY, CHAIRMAN, COMMITTEE ON BUSINESS CONDUCT, NEW YORK STOCK EXCHANGE, AND MR. HARLEY CLARKE, OF CHICAGO, FRIDAY, APRIL 24, 1931, COMMENCING AT 1:47 P.M.

Mr. LINDLEY. Hello, Mr. Clarke?

Mr. CLARKE. Hello?

Mr. LINDLEY. Yes, Mr. Clarke.

Mr. CLARKE. Yes, Mr. Lindley. I am sorry I have been so long calling you; but I just got back to the office this minute.

Mr. LINDLEY. Yes, Mr. Clarke.

Mr. CLARKE. Now, the situation is this: That collateral I have is in New York; but it is still available for Pynchon in 5 minutes if they can borrow a million dollars on it, with a couple of repurchase agreements on my part; but the other interests out here have fooled around all morning and say now they won't go on. That isn't out here.

Mr. LINDLEY. In other words, you can't borrow any money on that collateral?

Mr. CLARKE. Not out here.

Mr. LINDLEY. You can't borrow any in New York either, can you?

Mr. CLARKE. I don't know, I haven't tried; whether or not Pynchon can or not, I don't know.

Mr. LINDLEY. Then the agreement you had last night is no good?

Mr. CLARKE. The agreement we had last night about this collateral was that we were to get the money here.

Mr. LINDLEY. Right.

Mr. CLARKE. First we were going to get \$500,000 from the bankers there, and they turned us down, and we thought we could get another five here; but the bankers won't go along with their part, the other interests; so there you are.

Mr. LINDLEY. So you can't get the money?

Mr. CLARKE. That is right. We might be able to get it during the day, if I could get a little more time; but I have to tell you the situation as it exists now.

Mr. LINDLEY. Mr. Clarke, you will deliver those securities today?

Mr. CLARKE. If Mr. Pynchon can borrow a million dollars on them with a repurchase agreement; I won't contribute them without my being able to get them back for a million dollars.

Mr. LINDLEY. In other words, you are not going to make the contribution you spoke of this morning?

Mr. CLARKE. The contribution you spoke of; but I didn't speak of it that way; I spoke of using this collateral for a million dollars, which I told you was arranged out here; but apparently it has been upset.

Mr. LINDLEY. But you said you would deliver those securities?

Mr. CLARKE. Yes, for a million dollars, to borrow a million dollars; that is right; but I didn't tell you I would give you the securities without a million dollar loan.

Mr. LINDLEY. But you said he could borrow a million dollars on those securities?

Mr. CLARKE. That is right; we had an arrangement made to get a million dollars out here but the arrangement didn't finish.

Mr. LINDLEY. Which money was going to in the business?

Mr. CLARKE. That is right.

Mr. LINDLEY. And now you can't borrow it?

Mr. CLARKE. I can't get the money, Mr. Lindley; I am sorry but that is the situation. Maybe we could get it if we got more time; but I put in a call for you the minute I got back to the office. They told me you have been calling me and you talked to Mr. Koegel.

Mr. LINDLEY. There isn't any time because we have only got 15 minutes now.

Mr. CLARKE. Yes, it is ten minutes to two.

Mr. LINDLEY. Our delivery time is two-fifteen.

Mr. CLARKE. Well we have done everything we could out here; but things don't function the way you think they are.

Mr. LINDLEY. And you are not going to make delivery of those securities to Pynchon at all?

Mr. CLARKE. I will be glad to make delivery if he can borrow money of a million dollars against the securities.

Mr. LINDLEY. I see.

Mr. CLARKE. I am not going to give securities just to put them in the "pot" unless he can go on.

Mr. LINDLEY. I see; but if he can borrow a million dollars on those securities, all right?

Mr. CLARKE. All right, with a repurchase on my part, so that I can repurchase them for a million dollars; in a minimum time of 6 months I can purchase them; that I have a right to purchase them back for a million dollars; because I can't afford to lose the securities; they are way down.

Mr. LINDLEY. You certainly misled me this morning.

Mr. CLARKE. I beg your pardon?

Mr. LINDLEY. You certainly misled me this morning.

Mr. CLARKE. I had no intention of misleading you, sir.

Mr. LINDLEY. I am afraid you have.

Mr. CLARKE. If I have, I am sorry, I had no intention of doing it. The securities are there in New York, and we thought we could get this money out here; but apparently we can't.

Mr. LINDLEY. All right, Mr. Clarke.

Mr. CLARKE. All right, Mr. Lindley.

Does that refresh your recollection as to that conversation, Mr. Clarke?

Mr. CLARKE. Yes, sir.

Mr. PECORA. And your recollection is that such a conversation was held?

Mr. CLARKE. Yes, sir.

Mr. PECORA. You called up Mr. Lindley on the occasion of this talk?

Mr. CLARKE. Yes, sir.

Mr. PECORA. That same day Pynchon & Co. were suspended, were they not, because of their financial embarrassments?

Mr. CLARKE. I believe they were; yes, sir.

Mr. PECORA. And apparently they had been relying upon you either to find a million dollars for the use of Pynchon & Co. or to turn over to them a million and a half dollars' worth of securities to enable them to raise a loan of a million dollars on them; is that right?

Mr. CLARKE. There was no suggestion from Pynchon & Co. that I borrow a million dollars on this collateral which I was to loan them. The suggestion came entirely from Mr. Lindley of the New York Stock Exchange.

Mr. PECORA. Didn't you make a suggestion that you would borrow the million dollars in Chicago?

Mr. CLARKE. I told them that I would if I could.

Mr. PECORA. And you notified them just before 2 o'clock that day that you could not borrow the money in Chicago?

Mr. CLARKE. I did.

Mr. PECORA. And they did ask you to deliver the securities to Pynchon & Co. in New York so that they might see what they could do about borrowing the money?

Mr. CLARKE. Yes; and I still told them that I would give them the securities on the arrangement that I had made with them.

Mr. PECORA. That is, provided the loan arrangement were coupled with a repurchase agreement?

Mr. CLARKE. That is correct.

Mr. PECORA. Up to the time that you had this telephone talk about 1:47 p.m. with Mr. Lindley on April 24, 1931, had you notified anybody at all that you had not been able to raise a million dollars in Chicago?

Mr. CLARKE. I was busy all the time.

Mr. PECORA. How?

Mr. CLARKE. I was busy all that time trying to negotiate a loan and help Pynchon out on the basis that Mr. Lindley wanted it done, not on the basis that we had arranged the night before, and as soon as I knew that I could not do it I informed him.

Mr. PECORA. Well, apparently Mr. Lindley thought that in his talk with you at 8 o'clock that morning you had definitely agreed to let them have the million dollars with no "if's", "and's", or "but's."

Mr. CLARKE. It is very apparent from Mr. Lindley's pressing the matter that that is what he wanted me to say, but it was not said.

Mr. PECORA. Unless it was said by the answer or two that you made which I read to you before?

Mr. CLARKE. Which referred entirely to the arrangement I had with Pynchon & Co.

Mr. PECORA. Well, Mr. Lindley specifically asked you that question:

But we have your assurance there will be a million dollars in today.

And your answer was:

That is right. That is correct.

Mr. CLARKE. Yes. At that time Pynchon & Co., according to my understanding had arranged for a loan of a million dollars. That was no business of mine. They were arranging it on this collateral. They said they had it arranged. I was simply telling him why, because I had been in negotiation with them all night trying to find the way out for them.

Mr. PECORA. Where were the million and a half of collateral that you spoke of in these two conversations at that time?

Mr. CLARKE. Apparently it was in New York; the collateral was in New York.

Mr. PECORA. Under your control?

Mr. CLARKE. Yes.

Mr. PECORA. You had not turned it over to Pynchon & Co.?

Mr. CLARKE. No.

Mr. PECORA. Or to anybody in behalf of Pynchon & Co.?

Mr. CLARKE. No.

Mr. PECORA. It remained under your control?

Mr. CLARKE. That is right.

Senator ADAMS. What was your interest in Pynchon & Co. that led you to be willing to put up a million and a half securities collateral? I do not mean to inquire into your personal affairs.

Mr. CLARKE. No, Senator; no personal connection at all, other than the struggle that they had had to keep this financing in shape which had been done, and I foresaw that if Pynchon failed it would not be good for the General Theatres or Fox Film, which I think is apparent, and I had rather take the risk if they were able to get the money on the collateral than to have that happen.

Mr. PECORA. Now, Mr. Clarke, you said this morning that the General Theatres Equipment Co. went into receivership in February 1932; I think the date was February 29?

Mr. CLARKE. Yes.

Mr. PECORA. How long prior to that date had there been any conversations or communications or conferences with respect to the making of an application to appoint a receiver for General Theatres Equipment, Inc.?

Mr. CLARKE. For at least a couple of months.

Mr. PECORA. For at least a couple of months?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Were there not conversations on that subject as far back as in the month of August 1931?

Mr. CLARKE. I said, at least a couple of months.

Mr. PECORA. Well, that takes us back to December 1931. You say it was as far back as August 1931. The subject was a subject of conference or discussion among the various officers of General Theatres Equipment, Inc.?

Mr. CLARKE. Yes; I would say that it might have been discussed at that time with the management of General Theatres and bankers.

Mr. PECORA. Discussed also with counsel?

Mr. CLARKE. Possibly.

Mr. PECORA. What discussion did you have on the subject as early as August 1931, and with whom did you have such discussion?

Mr. CLARKE. I do not recall, Mr. Pecora, any discussions back in August. There may have been.

Mr. PECORA. I show you what purports to be a photostatic reproduction of a memorandum dated August 11, 1931, addressed as follows:

For Mr. Clarkson, Chase Securities Corporation, re General Theaters Equipment, Inc.

Will you look at it and tell us if it serves to refresh your recollection as to whether or not you had any conversations or conferences at about the date of that memorandum with any one on the subject of having a receiver appointed for General Theaters Equipment, Inc.? [Handing a document to the witness.]

What is your answer having read this document which I have shown you?

Mr. CLARKE. I never saw it before.

Mr. PECORA. I did not ask you if you had ever seen the memorandum before. I asked you whether it served to refresh your recollection as to whether or not you were having conferences on or about August 11, 1931, with any one on the general subject of having a receiver appointed for General Theaters Equipment, Inc.

Mr. CLARKE. No; it does not.

Mr. PECORA. What is that?

Mr. CLARKE. No; it does not refresh my recollection.

Mr. PECORA. You do recall having had some conferences some time prior to the appointment of a receiver in February 1932?

Mr. CLARKE. Yes, sir.

Mr. PECORA. With whom did you have such conferences?

Mr. CLARKE. With Mr. Aldrich, Mr. Dodge; with Hughes, Sherman & Dwight—Mr. Dwight, particularly.

Mr. PECORA. What was the general course of the discussion on that subject?

Mr. CLARKE. My belief was that it would be unnecessary.

Senator COUZENS. Who was urging the receivership?

Mr. CLARKE. Well, the condition of Fox was getting so that it could not pay the full dividends, anyway, and it looked as though unless it was quickly revived, as we had hoped it would be, there would not be money in the treasury of the General Theatres because of lack of payment of Fox Film dividends to the amount we had thought it would never go below, \$4,800,000 a year, and if those dividends could not be paid on the Fox stock owned by General Theatres, obviously General Theatres would be forced into a receivership.

Mr. PECORA. That does not answer the Senator's question.

Senator COUZENS. You said you did not think it was necessary or did not think it would be necessary to go into receivership. I asked you who was urging it at the time you took that position?

Mr. CLARKE. I think, principally, Mr. Aldrich felt that we would not be able to continue the Fox dividends, and therefore the receivership would be necessary.

Senator COUZENS. He was taking an opposite view from you about it?

Mr. CLARKE. Well, yes. I was not unmindful of the circumstances, however.

Senator COUZENS. I am not asking you that. You said you did not think a receivership was necessary, and I understand that Mr. Aldrich thought it was.

Mr. PECORA. Who else took part in those discussions besides you and Mr. Aldrich?

Mr. CLARKE. I discussed the matter many times with Mr. Dwight.

Mr. PECORA. Was his firm then counsel for General Theatres Equipment or for Fox Film?

Mr. CLARKE. Yes sir; counsel for both.

Mr. PECORA. Was he urging a receivership for General Theatres Equipment, Inc.?

Mr. CLARKE. Neither he nor Mr. Aldrich were urging it if it could be avoided, but I believe that as time went on it was apparent in February, in the latter part of February, that it would be impossible to go on with paying the interest on the debentures of General Theaters, so it was thought advisable to put the company into receivership.

Mr. PECORA. You said before that these conversations about a receivership of General Theaters commenced at least 2 months before the company was actually put into receivership.

Mr. CLARKE. Yes; I believe that is correct.

Mr. PECORA. In the course of those conferences at least two months prior to the actual receivership, did any one urge the course of a receivership?

Mr. CLARKE. No one urged the receivership at any time, if it could be avoided.

Mr. PECORA. Was it suggested as a possible means of solving some pressing problems?

Mr. CLARKE. There was nothing else to do if Fox Film could not rebound quickly enough to resume payment of dividends. That seemed to be the only problem.

The CHAIRMAN. If Fox Films had paid dividends, how much would it have yielded to General Theaters?

Mr. CLARKE. For the stock we had at the time, I believe about 1,200,000 shares, at \$4, the rate we had hoped to always maintain, it would have yielded \$4,800,000.

Mr. PECORA. Do you recall that the day before the date of this memorandum that I have shown you and permitted you to read there was a meeting of the board of the General Theaters Equipment at which action was taken to create a voting trust agreement?

Mr. CLARKE. There was action taken; I don't recall the date.

Mr. PECORA. According to the minute book of General Theatres Equipment, Inc., a special meeting of the board of directors of the General Theatres Equipment was held on August 10, 1931, at which the following directors appear to have been present: Messrs. Dodge, Burns, Michel, Koegel, Greene, and Carroll. Mr. Koegel acted as chairman of the meeting and Mr. Burns acted as secretary of the meeting. And reading from pages 267, 268, and 269 of the minute book, the following business was transacted at that meeting:

The chairman then stated that pursuant to resolutions of the board adopted April 8, 1931, the corporation had entered into a voting trust agreement dated June 10, 1931, with Albert H. Wiggin, Harley L. Clarke, and Frank O. Watts as trustees, and the Chase National Bank of the City of New York as depository, under which the corporation has deposited or agreed to deposit all the shares of the Fox Film Corporation class A common stock and class B common stock owned by it. An original counterpart of said voting trust agreement was presented to the meeting and directed to be filed among the records of the corporation.

The chairman stated that it seemed desirable for the board to ratify the action of the officers as described, and further to authorize the officers of the corporation to sell, assign and transfer or to endorse for transfer any voting trust certificates representing the shares of stock of the Fox Film Corporation owned by this corporation, whether said sale, assignment or transfer be in connection with the pledge of such stock or of voting trust certificates representing the same under any bank loans of the corporation or otherwise.

After consideration the following resolution was, upon motion duly made and seconded, adopted (M. W. Dodge not voting):

*Resolved*, That the action of the officers of this corporation in signing with Messrs. Albert H. Wiggin, Harley L. Clarke, and Frank O. Watts, as trustees, and the Chase National Bank of the City of New York as depository, a voting trust agreement dated as of June 10, 1931, relating to Class A common stock and Class B common stock of Fox Film Corporation, be and hereby is approved, ratified and confirmed.

Et cetera.

Does that recall to your mind the action in forming this voting trust agreement?

Mr. CLARKE. The voting trust agreement was arranged at the time of the refinancing of our 1-year notes of Fox Films, amounting to \$55,000,000.

Mr. PECORA. That was in April 1931?

Mr. CLARKE. Yes, sir; and the voting trust agreement was consummated in June and ratified, I believe, as per that minute.

Mr. PECORA. What was the reason for creating that voting trust?

Mr. CLARKE. Well, it was one of the conditions of the bankers in refinancing.

Mr. PECORA. They laid it down as a condition to refinancing?

Mr. CLARKE. Yes.

Mr. PECORA. Do you know what advantages accrued to them by it?

Mr. CLARKE. Well, as you already know, there were great difficulties in doing this refinancing, and it has been common practice in financing to have voting trusts. There was a voting trust of General Theatres in existence, so there was no necessity of that when this financing was done. There was not time to get up a voting trust by the time the refinancing was done in April 1931, and it was not consummated until later, in June. But as to any advantages I have nothing to suggest as to that. The agreement speaks for itself.

Mr. PECORA. What reason did the bankers give for wanting this voting trust arrangement effected before they would do the refinancing?

In asking you that question, Mr. Clarke, which you are hesitating about answering, I am assuming that some reason was given by the bankers which appealed to you among others.

Mr. CLARKE. You recall that it had been suggested by Halsey-Stuart that a voting trust be entered into some time previously, and it was not done. I imagine that Halsey-Stuart in this refinancing also wanted a voting trust. I was in no position to object to it had I wished to; but I did not wish to.

Mr. PECORA. The voting trust named you as one of the three trustees, did it not?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Mr. Wiggin was the second one and Mr. Watts the third. What did the bankers say was the reason why they wanted this voting trust effected?

Mr. CLARKE. It was customary to have voting trusts for a long time, especially large financing as this was.

Mr. PECORA. This was not long-time financing; it was only financing for 1 year, was it not—2 years at the most?

Mr. CLARKE. No; it was for 5 years.

Mr. PECORA. Well, they issued 5-year debentures, and they also made 2-year loans.

Mr. CLARKE. That is right. Had they been able to make them long time I am sure they would have if the market could absorb the securities.

Mr. PECORA. Can you not give the committee a reason advanced by the bankers for wanting this voting trust?

Mr. CLARKE. I do not think they had any other reason than the usual reason.

Mr. PECORA. What is the usual reason?

Mr. CLARKE. To be able to dominate the management of the company if they thought it necessary.

Mr. PECORA. Why didn't you say that in the first instance—

Mr. CLARKE. I thought everybody understood that.

Mr. PECORA (continuing). Instead of having me ask a dozen question to bring it out? Give the reason. Go ahead.

Mr. CLARKE. That is all.

Mr. PECORA. In order to enable them to dominate, is that right?

Mr. CLARKE. Certainly.

Mr. PECORA. They were going to dominate because the three trustees were you, Mr. Watts, and Mr. Wiggin.

Mr. CLARKE. By "dominate" I mean perpetuating the management, and a board of directors satisfactory to the bankers.

Mr. PECORA. Are we to understand by that that the bankers had assurances from you, among others, that you would hold yourself amenable to their wishes in the handling of stock?

Mr. CLARKE. I do not think so. I was as anxious as they were to have a good board of directors.

Mr. PECORA. To have a good board of directors?

Mr. CLARKE. To have a representative board of directors, yes, sir.

Mr. PECORA. Which, at that time, did not include anybody connected with or familiar with or experienced in the moving-picture industry, isn't that so? This good board of directors you were desirous of having did not include any persons with experience in the moving-picture industry?

Mr. CLARKE. Mr. Pecora, I think I had had considerable experience in the motion-picture industry, and have had since 1920.

Mr. PECORA. In the production of films and the exhibition of them?

Mr. CLARKE. No; I have never had any experience in the production of films.

Mr. PECORA. Or the exhibition of them?

Mr. CLARKE. Yes; in the exhibition of them.

Mr. PECORA. Is not that practically the sum and substance of the moving picture business, producing and exhibiting films?

Mr. CLARKE. Certainly it is, but the—

Mr. PECORA. And you have not had any experience in those fields?

Mr. CLARKE. The production of the films and the exhibition of films, and the sale of films, were not disturbed by any management that ever went into Fox, and the only reason that Fox Film did not succeed is the same reason that applies to all the industry, which reason I gave you in giving you some figures this morning.

Mr. PECORA. Was one of those reasons the declaration of a \$4,000,000 dividend in a year when there was a \$5,000,000 operating loss?

Mr. CLARKE. No; I do not think that is a reason.

Mr. PECORA. You do not think that is a reason. Neither do I.

So long as Mr. Clarke has stated that he never saw the memorandum which I had him read a few minutes ago, I want to recall Mr. Place to the stand and question him about this memorandum.

Senator ADAMS. Who was Mr. Watts, who was the other member?

Mr. PECORA. He was vice president, I think, of General Theaters.

Mr. CLARKE. Chairman of the board of directors of the First National Bank of St. Louis.

Mr. PECORA. He also was one of the officers and directors of the International Projector Corporation that you caused to be organized in 1925, was he not?

Mr. CLARKE. No; Mr. Watts never held any other office than a director of the Fox Film, and acted as trustee.

Mr. PECORA. Mr. Place, will you resume the stand please?

#### TESTIMONY OF HERMANN G. PLACE—Resumed

Mr. PECORA. Were you connected with the Chase Securities Corporation on August 11, 1931?

Mr. PLACE. Yes, sir; I was.

Mr. PECORA. In what capacity?

Mr. PLACE. As vice president.

Mr. PECORA. I show you what purports to be a photostatic reproduction of a memorandum dated August 11, 1931, addressed to Mr. Clarkson, Chase Securities Corporation, re General Theatres Equipment, Inc., and, at the foot thereof, containing this inscription: "Copies to Messrs. Stern and Place." Will you look at it and tell us if you received a copy of that memorandum [handing paper to the witness]?

Mr. PLACE. I do not recall the memorandum, Mr. Pecora. I might very well have received it, particularly as it is noted on there.

Mr. PECORA. Have you read the memorandum?

Mr. PLACE. I have read the memorandum.

Mr. PECORA. Does it refresh your recollection concerning any discussions or conferences that were being held at or about the date of that memorandum, namely, August 11, 1931, on the subject of a receivership for General Theatres Equipment, Inc.?

Mr. PLACE. My recollection is that about that time there were informal discussions going along as to the possibility of a receivership.

Mr. PECORA. Don't you recall that memorandum at all?

Mr. PLACE. I do not recall the memorandum. I very likely received it.

Mr. PECORA. Do you recall the subject-matter of that memorandum, or do you recall having had any discussions with any one on the subject of this memorandum?

Mr. PLACE. As I say, my recollection is that there were a good many discussions going along more or less currently, in the day-to-day business that went on as to the theaters situation, and the possibility of a receivership.

Mr. PECORA. Did you take part in those discussions?

Mr. PLACE. I took part in some of them.

Mr. PECORA. You note that this memorandum, among other things, contains the following (reading):

The following is a brief summary of the points raised and discussed at the conference today.

And a copy of this is specifically addressed to you.

Mr. PLACE. I very likely was there, Mr. Pecora. I simply tell you that I do not particularly recall the memorandum. I am not trying to say that I did not get the memorandum.

Mr. PECORA. After having read this memorandum, tell the committee what you recall about any discussions at or about that time,

in which you participated, on the subject of a receivership for General Theatres Equipment, Inc.

Mr. PLACE. The substance of discussions, as I recall, at that time was simply that, as things stood in the General Theatres situation, dividends from Fox Film being stopped, if they were stopped, would put the company in a position where it would not have enough revenue to service the \$30,000,000 of debentures which were outstanding, and that inasmuch as the question of dividends from Fox Film was uncertain, it might be that the company would run into a situation where it could not meet its obligations, and obviously that would result in receivership, and I think that in connection with those discussions there were discussions, just as indicated in that memorandum, as to possible set-ups of committees.

Mr. PECORA. Possible set-ups of what?

Mr. PLACE. Protective committees and things of that kind, as set forth in that memorandum.

The CHAIRMAN. Who was "J. L. H."?

Mr. PECORA. This memorandum is signed with the initials "J. L. H." The chairman wants to know who is "J. L. H."

Mr. PLACE. Julian L. Hagen, of counsel, of the firm of Rushmore, Bisbee & Stern, counsel.

The CHAIRMAN. Was he representing interests in connection with this?

Mr. PLACE. Rushmore, Bisbee & Stern were counsel, and are counsel for the Chase Bank, and were counsel for the Chase Securities Corporation.

The CHAIRMAN. And he had to do with this matter of the General Theatres Equipment, Inc.?

Mr. PLACE. Yes, sir. He had been in touch with that for some time.

The CHAIRMAN. Where do you find this paper, Mr. Pecora? Where does it come from?

Mr. PECORA. It comes from the files of the Chase Corporation, as appears upon the face thereof.

Senator ADAMS. Mr. Place, did the General Theaters Equipment Company operate any theaters, or did it have any manufacturing plants, or was it peculiarly a holding company?

Mr. PLACE. It was two things. Its major interest was the large holding which it had in Fox Film stock. Then, in addition to that, it had its original business, which was put together at its inception, namely, the ownership of a group of companies which sold supplies and technical services to the motion picture industry.

Senator ADAMS. But it was holding company as to those also?

Mr. PLACE. Yes; but those subsidiaries included the National Theater Supply Company and the International Projector Company, and this group of lamp companies that have been discussed here. Those companies conducted a very substantial business with all the motion picture industry, the theaters, principally, also the studios, in giving them or selling them supplies, and had had a very considerable earning power on its own account, which had been a very important source of revenue for General Theaters.

Senator ADAMS. Did this company own anything other than shares of stock in various companies?

Mr. PLACE. I do not think it did.

Senator ADAMS. You have said that the fact that it could not meet an obligation would obviously require a receivership. I am curious as to why it should be so obvious, if that was the only character of the company.

Mr. PLACE. I should think that if any company, whether a holding company or an operating company, was unable to meet the interest or the principal—the principal was not due, but the interest on outstanding public securities, it would be in default.

Senator ADAMS. You think that a receiver should be appointed for every company that could not pay its debts? Is that the theory you go on?

Mr. PLACE. I would not admit that for a minute, Senator, because I think that would put a very large percentage of the companies in this country into receivership.

Senator ADAMS. That is exactly what I am getting at.

Mr. PLACE. On the other hand, I think that when a company sees, or thinks that it will be unable to meet an interest payment to public holders of its securities, it can then figure that it may have a receivership, and that was the situation in this company. It had out \$30,000,000 of debentures which were held widely scattered by the public.

Senator ADAMS. But what purpose would the appointment of a receiver serve in that respect? I really want to know why it was obvious in this case.

Mr. PLACE. Some remark was made here earlier, or some question asked to the effect, Would the appointment of a receiver constitute a solution? I would like to say in that connection that I do not think the appointment of a receiver is ever a solution of anything. It may be a means to the accomplishment of a solution. In other words, when a contract is defaulted on, namely, the contract to pay interest, it is customary and usual to go to the courts for general protection of everybody, to see that everybody gets the same ratable deal.

Senator ADAMS. You are also aware, are you not, that many receiverships have resulted very disastrously to the holders of securities?

Mr. PLACE. Quite right. On the other hand, it is not always possible to avoid receivership, although those that may be, we will say, closest to a company may feel that if it can be avoided it will be in the interest of security holders to avoid it.

Senator ADAMS. In many cases receivership is a means of evading responsibility, rather than carrying it out, is it not?

Mr. PLACE. No; I would not agree with that, either in theory or principle, or in practice.

Mr. PECORA. It often has worked out that way, has it not?

Mr. PLACE. Are you asking me for my general judgment on the results of receiverships?

Mr. PECORA. Judgment and experience; yes.

Mr. PLACE. I think that in many cases receivership does work out adversely to the interests of security holders, and that it is extremely desirable under most circumstances to avoid it if possible. That depends, I think, also—

The CHAIRMAN. Were there any suits brought against this corporation at that time, and were there any judgments had against it?

Mr. PLACE. I do not recall, Senator. I would like to say, Mr. Pecora, that as I testified this morning, I think that there is a considerable difference between different kinds or characters of companies, as to whether or not receiverships are advantageous to them and the security holders, or disadvantageous. In other words, some businesses can suffer less under receivership, and it is easier to find the way out in a reorganization than others.

Senator ADAMS. It is very obvious, with certain kinds of companies that are conducting active operations, that a receivership may be the means of keeping them going—for instance, a railroad company or public utility.

Mr. PLACE. Quite right.

Senator ADAMS. But here is a simple holding company, whose whole business was holding stocks in other corporations. As I say, I could not understand why it was so obvious that you must necessarily have a receiver if it was not able to pay its interest on a particular day.

Mr. PLACE. I think, Senator, perhaps the explanation of the way in which I approached that, is that downtown, in the banking business, I think it is usually felt that the failure to meet a contractual obligation on public securities is almost certain to result in a receivership.

Senator ADAMS. That is just one of the things I am asking you. Why should it be almost certain, in view of the fact that in so many instances it results so disastrously?

Mr. PLACE. I think the answer is that it is practically a certainty that suits will be brought when the interest is not paid, to have a receivership. Some holder of the obligations will bring an action to put the company in receivership and under the protection of the court.

Senator ADAMS. Of course, I do not know anything about the law in New York, but ordinarily it is not a sufficient allegation to present to a court that there has been a failure to meet a financial obligation. It requires something more than that to get a court to take hold and appoint a receiver.

Mr. PLACE. True; but public securities are usually issued under carefully drawn contracts or indentures, and there are various events of default specified in those, and one of them is always failure to pay punctiliously the interest, and in the event of default, the holder of an obligation is theoretically in a position to go to the court and demand payment of the principal and interest, and that precipitates receivership.

Senator ADAMS. You could hardly go to the court and demand the appointment of a receiver, however, that being within the discretion of the court.

Mr. PLACE. They demand it, and then the court, in its wisdom, decides. I am not a lawyer, Senator.

The CHAIRMAN. One of the objects is to prevent one creditor from getting the advantage over other creditors.

Mr. PLACE. That is quite right.

The CHAIRMAN. But if there are no suits pending, and no judgments obtained, it would seem unnecessary to have a receiver.

Mr. PLACE. There are some instances which could be pointed to where receivership has been staved off and avoided, and perhaps completely avoided, although in one case I happen to have in mind there are suits to create a receivership, and they have been contested.

Mr. PECORA. Mr. Place, after having read this memorandum, it refreshes your recollection, does it not, that in August, 1931 conversations or discussions or conferences had been held on the part of persons interested in the General Theatres Equipment, Inc., which indicated that at that time an application for a receivership was being considered or contemplated by the officers of the corporation, and that the consideration given to the subject at that time had proceeded to the point where very definite suggestions had been advanced, not only for the time of the making of the application for the appointment of a receiver, but also for the formation of various committees representing the debenture holders, preferred stockholders, and counsel for the debenture holders, counsel for the General Theatres receiver, and counsel for the General Theatres common stock committee. Is that right?

Mr. PLACE. I think so. I would not say, Mr. Pecora, that that was unusual. I think it is rather customary that when there is a discussion of the possibility of receivership, thought is given to the setting up of groups of people who can fairly and properly represent the several classes of security holders.

Mr. PECORA. In this case, up to August 11, 1931, had suggestions been definitely made and advanced for the naming of committees to represent the debenture holders, the preferred stockholders, and the common stockholders?

Mr. PLACE. I do not recall that prior to the meeting following which that memorandum appears to have been written, there were any particular or definite suggestions made. There may have been various people talked about informally. I do not recall.

Mr. PECORA. Well, now, let us see. This memorandum includes, among other things, the following statement:

The following is a brief summary of the points raised and discussed at the conference today:

1. Receiver for General Theaters. Irving Trust Co. is suggested as satisfactory to the Chase Bank, which is agreeable to having Irving Trust Co. act alone. If a receiver, either in equity or in bankruptcy, is to come it would be desirable for reasons with which you are familiar to postpone the appointment until September or later.

Does not that recall to your mind that conversations and conferences had proceeded to a point where a receiver in the person of the Irving Trust Co. of New York had been virtually agreed upon?

Mr. PLACE. No; it does not, Mr. Pecora.

Mr. PECORA. Well, what does this statement that I have just read mean, then?

Mr. PLACE. Do you mean about postponing it?

Mr. PECORA. No; about—

Irving Trust Co. is suggested as satisfactory to the Chase Bank, which is agreeable to having Irving Trust Co. act alone."

Mr. PLACE. Well, I do not think that means anything more than just what it says.

Mr. PECORA. It means exactly what it says; does it not?

Mr. PLACE. I should think so.

Mr. PECORA. Which meaning is quite obvious?

Mr. PLACE. I would think so. I do not see why we would particularly object to the Irving Trust Co.

Mr. PECORA. Well, what does this mean to you—

If a receiver, either in equity or in bankruptcy, is to come it would be desirable for reasons with which you are familiar to postpone the appointment until September or later?

What does that mean?

Mr. PLACE. Frankly, I do not recall.

Mr. PECORA. Does it mean that it had been considered, as a result of discussion and conference, that if a receiver, either in equity or in bankruptcy, was to be appointed the application should be postponed to some time subsequent to August 1931 in order that it might then be addressed to any particular judge?

Mr. PLACE. No; I do not recall that, Mr. Pecora.

Mr. PECORA. Well, what were the reasons with which you are familiar, according to this memorandum, that made it desirable to postpone the appointment until September or later?

Mr. PLACE. I do not recall, Mr. Pecora. I so testified.

Mr. PECORA. How?

Mr. PLACE. I do not recall.

Mr. PECORA. All right. Now the second item embodied in this memorandum reads as follows:

2. Counsel for General Theatres receiver. Messrs. Hughes, Schurman & Dwight have been suggested as attorneys for the receiver and they of course want to act. There is some question as to the propriety of their acting inasmuch as they are counsel also for Fox Film Corporation and for General Theatres itself. Messrs. White & Case have also been suggested as counsel for the receiver. This matter is being discussed with Mr. Aldrich.

What recollection does that inspire in you?

Mr. PLACE. None beyond what you have just read.

Mr. PECORA. Well, do you recall the suggestion of having Hughes, Schurman & Dwight act as counsel for the receiver if a receiver was then to be appointed?

Mr. PLACE. I think they were suggested at the time.

Mr. PECORA. By whom?

Mr. PLACE. I do not recall.

Mr. PECORA. And the suggestion of the propriety of their acting as such attorneys or counsel for the receiver in view of the fact that they were not only counsel for General Theatres Equipment but also for Fox Film Corporation, was also brought up for discussion, was it not?

Mr. PLACE. Probably was.

Mr. PECORA. How?

Mr. PLACE. Probably was.

Mr. PECORA. Do you not recall whether it was or not?

Mr. PLACE. No; I do not in so many words, any more than is in that memorandum. I have not any doubt it was brought up. It says that in the memorandum. That was dictated directly after the—

Mr. PECORA. After the conference?

Mr. PLACE. Yes.

Mr. PECORA. And a copy apparently was furnished to you?

Mr. PLACE. Yes.

Mr. PECORA. A copy of this summary of the conference was apparently furnished to you?

Mr. PLACE. Yes.

Mr. PECORA. That is correct?

Mr. PLACE. Yes.

Mr. PECORA. You were present at this conference, were you not?

Mr. PLACE. Yes; I was.

Mr. PECORA. Who were the others present at it?

Mr. PLACE. Well, Mr. Pecora, I do not recall who the others were.

Mr. PECORA. Was Mr. Clarkson there?

Mr. PLACE. Probably he was.

Mr. PECORA. Was Mr. Stern there?

Mr. PLACE. That I do not know.

Mr. PECORA. Mr. Stern is a lawyer connected with the law firm of Rushmore, Bisbee & Stern, is he not?

Mr. PLACE. That is correct. Partner of Rushmore, Bisbee & Stern.

Mr. PECORA. And so was Mr. Julian L. Hagen?

Mr. PLACE. Yes, that is correct; he is.

Mr. PECORA. Now eventually when the receiver was appointed who became counsel to the receiver?

Mr. PLACE. The counsel to the receiver was Hughes, Schurman & Dwight. [Mr. Place consulted with associates.]

Mr. PECORA. Hughes, Schurman & Dwight, is that not so?

Mr. PLACE. I think they are consulting counsel.

Mr. PECORA. And they were counsel for General Theaters and also for Fox Film?

Mr. PLACE (after consulting with associates). I understand that Mr. Ward's firm in Wilmington is counsel of record for the receiver.

Mr. PECORA. Well, the reason that Mr. Ward's firm of Wilmington is counsel of record is because the application was made to the courts of Delaware?

Mr. PLACE. I fancy that is correct.

Mr. PECORA. General Theatres Equipment being a Delaware corporation?

Mr. PLACE. Yes.

Mr. PECORA. But Hughes, Schurman & Dwight are really the active counsel and advisers to the receiver, are they not?

Mr. PLACE. They are active in it, I suppose both technically and in a consulting capacity.

Mr. PECORA. Yes. Now the third item mentioned in this memorandum of that conference of August 11, 1931, reads as follows:

3. General Theatres Ten-Year Debenture Committee. The following are the suggested members for this committee: Charles Hayden (Hayden, Stone), chairman; Halsey, Stuart & Co., representative; Chase Securities Corporation, representative; Seton Porter (Sanderson & Porter); C. I. Stralem (Hallgarten & Co.).

Do you recall that discussion, or that part of the discussion that involved the suggested members for the 10-year debenture committee?

Mr. PLACE. Yes; I recall discussions, and I suppose they were right then, as to people who could properly represent the debenture holders, and undoubtedly those names were discussed.

Mr. PECORA. And 3 of the 5 names here are of persons that represented or were affiliated with the banking interests that had financed General Theatres Equipment?

Mr. PLACE. Yes. I think they were all interested. And that, I might say, is the usual practice, to have on the committees people who did put these securities out. Halsey, Stuart and Chase Securities were the only two that were active in putting out the securities. I think that is correct.

The CHAIRMAN. Was Fox a stockholder?

Mr. PLACE. William Fox a stockholder of General Theatres?

The CHAIRMAN. Yes.

Mr. PLACE. Well, I do not know, Senator.

Mr. PECORA. The fourth item embodied in this memorandum of and summary of the points raised and discussed in the conference held on August 11, 1931, reads as follows. [Reading:]

4. Counsel for debenture committee. Messrs. Chadbourne, Stanchfield & Levy have been suggested as probable counsel if Mr. Hayden is to act as chairman.

Do you recall that as a subject of discussion or conference on that day?

Mr. PLACE. Not in so many words, but that would be natural, because I believe they were acting for Hayden, Stone & Co. as counsel. That would tie up that with Mr. Hayden.

Mr. PECORA. The fifth item [reading]:

5. General Theatres preferred stock committee. The following are the suggested members for this committee: Grayson M. P. Murphy, chairman; Paul Shields (Shields & Co.), John W. Prentiss (Hornblower & Weeks), Elton Parks (Dominick & Dominick), Lester Perrin (Lazard Freres).

Do you recall that part of the discussion?

Mr. PLACE. Well, in just the same way, Mr. Pecora. I am sure those people must have been mentioned, and a good many others, and that was the residuum of probably a good deal of discussion.

Mr. PECORA. Now who made the suggestions that are embodied in this memorandum?

Mr. PLACE. Well, I do not recall. There were a number of people in the meeting, I suppose. I think Mr. Callahan was quite active at the time.

Mr. PECORA. Mr. Callahan was then president of the Chase Securities Corporation?

Mr. PLACE. No; he was vice president.

Mr. PECORA. Vice president?

Mr. PLACE. Executive vice president.

Mr. PECORA. The sixth item set forth in this memorandum reads as follows. [Reading:]

Counsel for preferred stock committee, Messrs. Winthrop, Stimson, Putnam & Roberts have been suggested as counsel for the preferred stock committee

inasmuch as they are already acting as counsel for the receiver of Pynchon & Co. and there would not be any conflict of interest.

Do you recall that part of the discussion at which that suggestion was made?

Mr. PLACE. I do not recall the precise moment and time or that that particular thing was discussed, but it evidently was, and it speaks for itself, I think, just as stated.

Mr. PECORA. The seventh item in this memorandum reads as follows:

General Theatres common stock committee. The following have been suggested as members of this committee: Stephen Millett (Millett, Roe & Co.), Chairman; H. L. Clarke's representative; Hugh G. M. Kelleher (Joseph Walker & Sons); George P. Smith (Smith & Gallatin).

Do you recall that part of the discussion?

Mr. PLACE. Not any more than the others. I do not think as a matter of fact that any such committee was formed.

Mr. PECORA. The eighth item. [Reading:]

Counsel for common stock committee. The only suggestion made in this connection is as to Mr. Gordon Auchincloss.

Do you recall that?

Mr. PLACE. No; not that way. They must have been running out of ideas.

The CHAIRMAN. It seems to have been a case of parceling out business for the lawyers.

Mr. PLACE. Well, Senator, I would not put it just that way. After all, somebody has to sit down and try to plan some of these things, I suppose, otherwise——

The CHAIRMAN. Well, it looks like the document is the substance of discussion and suggestions made at that time.

Mr. PLACE. Quite correct. And I do not think it needs an apology.

Mr. PECORA. Were all these suggestions eventually carried out when the receivership was accomplished?

Mr. PLACE. No, not in detail. There were, I think, substantial changes when they were carried out. I think the personnel of the debenture committee was different when it occurred. And the preferred stock committee. And I do not think that there was any committee set up for the common stock. That is my recollection. I mean, the record would show, and I am quite certain that is correct.

The CHAIRMAN. Who is that memorandum addressed to?

Mr. PECORA. Addressed to Mr. Clarkson of the Chase Securities Corporation. Copies to Messrs. Stern and Place. The witness is Mr. Place, and he has identified Mr. Stern as a member of the law firm of Rushmers, Bisbee & Stern with which the author of this memorandum, Mr. Hagen, was then also connected.

The CHAIRMAN. Who addressed the memorandum?

Mr. PECORA. Mr. Hagen, J. L. Hagen. I offer the memorandum in evidence. I have read a substantial portion of it in questioning the witness.

The CHAIRMAN. It may be received in evidence and placed in the record.

(Memorandum from J. L. Hagen to Mr. Clarkson, Chase Securities Corporation, dated August 11, 1931, was received in evidence,

marked "Committee Exhibit 184 of Nov. 27, 1933", and is here printed in the record in full as follows:)

JLH/HD/JK—R. B. & S., MEMORANDUM

August 11, 1931.

For Mr. CLARKSON,  
*Chase Securities Corporation.*

Re GENERAL THEATRES EQUIPMENT, INC.

The following is a brief summary of the points raised and discussed at the conference today.

1. *Receiver for General Theatres.*—Irving Trust Co. is suggested as satisfactory to the Chase Bank which is agreeable to having Irving Trust Co. act alone. If a receiver either in equity or in bankruptcy is to come it would be desirable, for reasons with which you are familiar, to postpone the appointment until September or later.

2. *Counsel for General Theatres receiver.*—Messrs. Hughes, Schurman & Dwight have been suggested as attorneys for the receiver and they, of course, want to act. There is some question as to the propriety of their acting inasmuch as they are counsel also for Fox Film Corporation and for General Theatres itself. Messrs. White & Case have also been suggested as counsel for the receiver. This matter is being discussed with Mr. Aldrich.

3. *General Theatres 10-year debenture committee.*—The following are the suggested members for this committee:

Charles Hayden (Hayden, Stone), chairman, Halsey, Stuart & Co. representative, Chase Securities Corporation representative, Seton Porter (Sanderson & Porter), C. I. Stralem (Hallgarten & Co.).

4. *Counsel for debenture committee.*—Messrs. Chadbourne, Stanchfield & Levy have been suggested as probable counsel if Mr. Hayden is to act as chairman.

5. *General Theatres preferred stock committee.*—The following are the suggested members for this committee: Grayson M. P. Murphy, chairman, Paul Shields (Shields & Co.), John W. Prentiss (Hornblower & Weeks), Elton Parks (Dominick & Dominick), Lester Perrin (Lazard Bros.).

6. *Counsel for preferred stock committee.*—Messrs. Winthrop, Stimson, Putnam & Roberts have been suggested as counsel for the preferred stock committee inasmuch as they are already acting as counsel for the receiver of Pynchon & Co. and there would not be any conflict of interest.

7. *General Theatres common stock committee.*—The following have been suggested as members of this committee: Stephen Millett (Millett, Roe & Co.), chairman, H. L. Clarke's representative, Hugh G. M. Kelleher (Joseph Walker & Sons), George P. Smith (Smith & Gallatin).

8. *Counsel for common stock committee.*—The only suggestion made in this connection is as to Mr. Gordon Auchincloss.

In addition to the foregoing points the following matters were also raised today and should be kept in mind:

1. Nine hundred thousand dollars is due tomorrow (Aug. 12) from Fox Film Corp. to Messrs. Guggenheimer, Untermeyer & Marshall. The suggestion was made that Mr. Alvin Untermeyer be approached with a view to putting off settlement of the note until Mr. Samuel Untermeyer returns.

2. Three million dollars is due at 3 o'clock tomorrow (Aug. 12) from General Theatres to Mr. William Fox and Messrs. Koegel and Harris were endeavoring today to work out an arrangement with Mr. Fox for an extension or renewal of the note.

3. In addition Fox Film Corp. owes on notes payable \$150,000 to Messrs. Beekman, Bogue & Clark, \$261,000 to Messrs. Price, Waterhouse & Co. and Touche, Niven & Co., and approximately \$150,000 to Matthews & Koegel.

4. The Chase Bank is to lend Fox Film \$3,000,000 for running expenses to be paid into a special account for use only against the counter-signature of Mr. Richardson. None of this loan is to be available to pay any of the present notes payable of Fox Film Corp. Mr. Michel and Mr. Richardson are now endeavoring to set up this loan and the existing board authorization therefor is being looked into.

J. L. H.

Copies to Messrs. Stern and Place.

Mr. PECORA. I want to show you a photostatic reproduction of another memorandum, Mr. Place, which I now hand you, which was furnished to me by the Chase Corporation as a copy of a memorandum from its files. Will you look at it, read it, and tell us if it serves to refresh your recollection with respect to the matters stated in it? [Handing same to Mr. Place.]

Mr. PLACE (after reading same). I have read that. I do not think I ever saw it before.

Mr. PECORA. Well, does the reading of it by you serve to refresh your recollection as to the subject matter of this memorandum?

Mr. PLACE. Well, what do you mean by the subject matter?

Mr. PECORA. Well, having read the memorandum you know what it deals with? You know what it relates to?

Mr. PLACE. Yes.

Mr. PECORA. Had you as an officer of either the Chase Bank or the Chase Securities Corporation in March 1932 had any discussions or conferences or participated in any with regard to the subject matter of this memorandum?

Mr. PLACE. I do not think so. That was very shortly after the receivership, was it not?

Mr. PECORA. Within about a week after the receiver was actually appointed.

Mr. PLACE. I do not think so.

Mr. PECORA. May I ask you, Mr. Aldrich, if you can identify that memorandum?

Mr. MUDGE. I can explain it, Mr. Pecora.

Mr. PECORA. What is that?

Mr. MUDGE. I think I can explain it.

Mr. PECORA. All right; if you will.

Mr. MUDGE. The author of this memorandum was Mr. Wing of Wing & Russel.

Mr. PECORA. Yes.

Mr. MUDGE. And I believe that they were counsel for the preferred stock committee—protective committee. And it simply was a memorandum which he dictated and sent a copy of it to the Chase Securities.

Mr. PECORA. It was sent to the Chase Securities was it not?

Mr. MUDGE. It was taken from the files of the Chase Securities, so I assume it was sent by Mr. Wing or perhaps by the chairman of the preferred stockholders committee to the Chase Securities Corporation.

Mr. PECORA. I offer it in evidence.

The CHAIRMAN. It may be received in evidence and placed in the record.

(Memorandum dated Mar. 8, 1932, headed "Protective Committee for Deferred Stock Voting Trust Certificates of General Theatres Equipment, Inc.," was received in evidence and marked "Committee Exhibit 185 of Nov. 27, 1933.")

Senator COUZENS. Were there any fireworks created as suggested in the memorandum?

Mr. PLACE. Not that I recall.

Mr. PECORA. I will read it. The memorandum just received in evidence, as committee's exhibit no. 185, reads. [Reading:]

PROTECTIVE COMMITTEE FOR PREFERRED STOCK VOTING TRUST CERTIFICATES OF  
GENERAL THEATRES EQUIPMENT, INC.

MEMORANDUM, MARCH 8, 1932

The company is in receivership; owes currently \$24,000,000; has outstanding \$30,000,000 of debentures maturing by default April 1; and has assets worth perhaps \$12,000,000 at current prices but practically all pledged on current debt. The preferred stock represents an investment of upwards of \$40,000,000.

Normally, the assets would be liquidated for account of the pledges, paying them possibly 50 cents on the dollar and leaving nothing for either debentures or preferred. Neither debentures nor preferred are likely to submit quietly to the normal course. The facts suggest a basis for and (without regard to merit or result) the certainty of unpleasant and expensive litigation instigated surely by preferred stockholders and also probably by debenture holders. Such litigation would be directed primarily at the bank and will be referred to here as "outside fireworks."

Again, normally, the debentures would expect nothing until after the secured claims are paid; and the preferred nothing until after the debentures are paid. The facts suggest strong equitable reasons for brushing aside any questions either of priority or collateral. With unusual speed and under circumstances which promoters of outside fireworks would find inviting, three things happened almost simultaneously, namely, the creditors put up, and lost a major fraction of, \$24,000,000; the debenture holders put up and lost \$30,000,000 and the preferred stockholders put up and lost a much larger sum. Ample justification can be found for the view that they are all entitled to be treated as equal co-adventurers in an enterprise that failed, leaving \$12,000,000, or whatever larger amount it can be nursed into, for pro-rata division among them.

Indications are that preparation for outside fireworks is going forward and that the fact of receivership will neither suppress nor delay them. Entirely apart from universal shrinkage in values there can be no doubt that the preferred has a genuine grievance nor that the debentures have a genuine claim for breach of covenant in respect of pledged assets. Both of these claims will find support and expression in well advertised litigation through competent counsel; and the chief target will be the bank.

We believe the foregoing is to be a fair, perhaps a restrained, statement of the essential facts and implications, from which it appears that the situation is not only serious but unique and requires special handling.

The thing sought is a plan that will head off hostile litigation and the first essential of any such plan is that it command prompt acceptance. Therefore it must be one so obviously equitable as to silence opposition by the simple device of yielding more to the critics than they could expect to get through litigation. Therefore the question becomes whether a plan acceptable to the bank on these terms can be devised; and the answer would seem to be yes because of another unique fact, namely, that the bank's interest and its avenues for recovery are split almost equally three ways, that is, as creditor, as debenture holder and as preferred stock holder.

The only possible channel for salvage to any interest is through a come-back of the earning power of the equities which constitute the sole asset of this company; which in turn depends largely on the come-back of the whole industry. This is in the lap of the gods, but it is fair to assume this industry, along with all others, will gradually return to prosperity. There will be important questions relating to the control and management and life even, of the various equities, notably the Fox companies, but it is important to agree that that whole subject, although perhaps not second in importance, must be second in chronological order to a clean-up of General Theatres; and without question the quicker and simpler such clean-up can be the better for the whole situation.

Upon the premises thus sketched our suggestion is, and our effort will be directed toward, a plan to accomplish in whatever rapid and effective manner counsel may contrive the following result:

- (a) All existing equities, pledged or unpledged, to be returned to the company or to go into a new company, free and clear.
- (b) Capitalization to be changed to say 300,000 shares of common stock, no preferred stock, no debentures, no bonds, no debt.

(c) If it is determined that the present common stock is entitled to something, give it say 4 percent of the new common; and give the remaining 96 percent in equal thirds to creditors, the debentures and the preferred stock.

Such a set-up will give to the preferred stock and to the debentures considerably more than they could hope to get through outside fireworks; its effect on the secured creditors is chiefly one of postponement—substituting a fair chance of getting 100 percent of their claim plus a premium not now computable for what on the present outlook would be at the best a minor percentage of their claims and at the worst approximately nothing at all—plus expenses.

We should guess the bank might readily find the principle of this plan acceptable but might offer as fatal to it the objections of other secured creditors. It is perhaps fair to assume that the bank can deal effectively with all of these without cost except Fox; and if bringing him into camp even at a substantial cost becomes necessary our judgment is the bank should accomplish that.

Mr. PECORA. Now, Mr. Place, do you know anything about what was done with the suggestions advanced in this memorandum?

Mr. PLACE. I do not think anything was done, Mr. Pecora. And if I might just say so, I think that any preferred stockholder of a company that had gone into receivership ought to have immediately engaged Mr. Wing, because, he put them right up on a parity with secured creditors.

Mr. PECORA. Who put on a parity? Is it by the suggestion that they be given 4 percent and the other 96 percent be divided among debenture-holders, preferred stockholders, and the bank?

Mr. PLACE. Yes. In other words, his client, the preferred stockholders, are immediately moved up on a parity with secured creditors and unsecured creditors.

The CHAIRMAN. But nothing was done with that suggestion, did you say?

Mr. PLACE. Nothing was done.

The CHAIRMAN. I suppose it is just a part of the res gestae? [Laughter.]

Mr. PECORA. Mr. Place, why was the bank in August of 1931, at the time of the conferences to which committee exhibit no. 184 in evidence, relates, desirous of having friendly committees acting with it in the matter of the proposed receivership?

Mr. PLACE. Well, does that say "friendly committees" as such?

Mr. PECORA. I assume that they were being regarded as friendly committees because even their personnel was being discussed and suggested by the officers of the bank.

Mr. PLACE. Well, I don't recall anything in the exhibit which made use of the word "friendly." The bank was interested, yes.

Mr. PECORA. Well, were those committees friendly committees? Are not they so understood, and aren't you able to answer that?

Mr. PLACE. As a matter of fact, those committees were not constituted as suggested in the memorandum.

Mr. PECORA. But the committees suggested in the memorandum were looked upon as friendly committees, I mean if they had been appointed?

Mr. PLACE. I think it might be fairly said that it was thought those committees would be equitable committees. In other words, committees with which one could deal in a proper way, committees that would represent these security holders fairly and not unfairly, and see things in the actual light of the way they were. In other words, they were fair-minded, reputable people.

Mr. PECORA. That is, in the opinion of the bank?

Mr. PLACE. Certainly. We were the people who were discussing it, and—

Mr. PECORA (interposing). And not only the members of the committees but the counsel that were being suggested as those who would act for the committees.

Mr. PLACE. That is obvious in the memorandum. Nobody else was discussing it, because we were discussing it and no one else was there.

Mr. PECORA. Do you think my use of the word "friendly" in reference to those committees involved a distortion of the fact?

Mr. PLACE. Not necessarily. I merely wanted to make the point.

Mr. PECORA. Well, do you mean to make the point that they were friendly or unfriendly?

Mr. PLACE. I wanted to make the point that we did not look upon those committees, nor do I think that a bank or banking house in setting up committees, sets up committees from the point of view of special friendship. They try to set up committees, generally speaking, of high-class people, men that can be counted upon to keep the situation before them for a fair and clear handling.

Mr. PECORA. In other words, that could be counted upon to act in harmony?

Mr. PLACE. Not necessarily.

Mr. PECORA. Do you think they would act in conflict with the bank's interests?

Mr. PLACE. Certainly if the securities they were representing were in conflict with the bank.

Mr. PECORA. Why were the officers of the bank having conferences at which names or the personnel of these committees and their respective counsel were being discussed.

Mr. PLACE. Well, I think that every banking house that issues securities is under obligation to see that, if trouble comes to any security, that the security shall be represented by as high-class people as possible.

Mr. PECORA. Now, according to the memorandum received in evidence as committee exhibit no. 185, the bank at that time belonged in three categories. In other words, it was a creditor, a debentureholder, and a preferred stockholder. Is that right?

Mr. PLACE. That is correct. Or I do not think the bank was in all this business but the securities company was.

Mr. PECORA. Well, either the bank or its affiliate.

Mr. PLACE. That is right.

Mr. PECORA. So at one and the same time it was a creditor, a debenture holder, and a preferred stockholder of General Theatres Equipment, Inc.

Mr. PLACE. That is correct.

Mr. PECORA. In addition to that the bank was also trustee for the debentureholders, was it not?

Mr. PLACE. That is correct.

Mr. PECORA. That is all, Mr. Place.

(Thereupon Mr. Place left the committee table.)

Mr. PECORA. Mr. Clarke?

## TESTIMONY OF HARLEY L. CLARKE—Resumed

Mr. PECORA. Now, Mr. Clarke, with reference to the receivership that was arranged for General Theatres Equipment, Inc., on or about February 29, 1932, was that receivership one that is commonly called a friendly receivership?

Mr. CLARKE. Yes; I would say so.

Mr. PECORA. In other words, the corporation itself lent itself to the granting of the application?

Mr. CLARKE. Yes, sir.

Mr. PECORA. And the fact is that 2 days before the receiver was appointed there was a special meeting of the board of directors of General Theaters Equipment, Inc., was there not, at which the board, by resolution which it adopted, virtually authorized it to put in an answer that would admit its insolvency and would consent to the appointment of a receiver or receivers?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Now, at that meeting, which was held on February 27, 1932, in the office of Utilities Power & Light Corporation, on the twenty-eighth floor of no. 120 Broadway, New York City, according to the minute book, do you recall anything about the adoption of a resolution under and in pursuance of which there was voted to you a sum of upwards of \$200,000 to reimburse you for certain outlays you had claimed to have made in behalf of the corporation?

Mr. CLARKE. No; I do not recall that.

Mr. PECORA. Don't you recall that there was such a sum voted to you?

Mr. CLARKE. No.

Mr. PECORA. Did you ever file a claim or make any claim upon the company for reimbursement in the sum of \$228,000-odd dollars that you had laid out such moneys out of your own means for the company's benefit?

Mr. CLARKE. I believe there was a sum that had been neglected to be put on the books for some time, but I don't recall the amount at the present time.

Mr. PECORA. Well, was it a sum that you had laid out?

Mr. CLARKE. Yes, sir.

Mr. PECORA. For what?

Mr. CLARKE. In connection with certain expenses and underpayments that had been made. I do not recall the amount, or what it is, for the moment. If you will let me see the record it may refresh my memory.

Mr. PECORA. Did you ever make a claim against the company other than this one I am discussing, that you now have in mind, as reimbursement for any outlays you claimed you had made?

Mr. CLARKE. I think not.

Mr. PECORA. How is it you have forgotten the details of this one, if this is the only case of its kind.

Mr. CLARKE. Well, it has been going on for a long time.

Mr. PECORA. What has been going on for a long time?

Mr. CLARKE. The claim that I had.

Mr. PECORA. But you say it was the only claim you ever made upon the company of that nature; is that a fact?

Mr. CLARKE. I believe so.

Mr. PECORA. And it was allowed to you?

Mr. CLARKE. I believe it was.

Mr. PECORA. And you were fully reimbursed for those moneys you had claimed to have laid out for the benefit of the company?

Mr. CLARKE. I think so; yes, sir.

Senator COUZENS. What date was it?

Mr. PECORA. The date of the meeting of the board was February 27, 1932, two days before the receivership.

Senator COUZENS. What date was it paid?

Mr. CLARKE. It had already been paid out, and was a purely book-keeping transaction. There were no moneys transferred to me.

Senator COUZENS. Well, was it paid out over a long period of time or within the previous few months?

Mr. CLARKE. Over a long period of time.

Senator COUZENS. Over how long a period of time?

Mr. CLARKE. A couple of years.

Mr. PECORA. What were those payments for that you had laid out?

Mr. CLARKE. Mr. Pecora, I honestly do not remember or I would be glad to tell you.

Senator COUZENS. Are they itemized in the minutes there?

Mr. PECORA. There is some itemization, but I first wanted to test the witness' recollection. Mr. Clarke, don't you recall anything more than you have told us about it?

Mr. CLARKE. No; I do not.

Mr. PECORA. Well, then, let me refresh your recollection about it. I am reading now from pages 304 and 305 of the minute book of General Theaters Equipment, Inc., minutes relating to a special meeting of the board of directors held on February 27, 1932, not at the office of the corporation but at the office of another corporation called Utilities Power & Light Corporation.

Mr. CLARKE. Meetings were frequently held there because it was my office.

Mr. PECORA. The Utilities Power & Light Corporation was also your personal office, was it?

Mr. CLARKE. Yes, sir.

Mr. PECORA. And meetings of the board of directors of General Theaters Equipment were frequently held at your personal office and not at the office of the company; is that right?

Mr. CLARKE. They have no place for a directors' meeting, and we had room there, which was at no. 120 Broadway.

Mr. PECORA. Did you say that this General Theaters Equipment, Inc., that had issued hundreds of millions of dollars or more of securities, had no home of its own?

Mr. CLARKE. It had a home, but we were so crowded at the factory, no. 90-92 Gold Street, that there was no room there and it was purely as an accommodation.

Mr. PECORA. The factory was not the factory of General Theaters Equipment, was it?

Mr. CLARKE. Well, General Theaters Equipment had no offices except there. General Theaters Equipment was a holding company, owning securities, but not an operating company.

Mr. PECORA. And you carried its home around in your pocket, so to speak?

Mr. CLARKE. Oh, no; not at all.

Mr. PECORA (interposing). Well—

Mr. CLARKE (continuing). Frequently directors' meetings are held where convenient to the directors, isn't that so?

Mr. PECORA. I don't know. I am asking you.

Mr. CLARKE. I believe so.

Mr. PECORA. I always thought that a corporation that issued millions and millions of dollars of securities that the public bought at least had a home of its own. But apparently this one did not.

Mr. CLARKE. Yes; its main office was no. 90-92 Gold Street.

Mr. PECORA. Which was the office of the manufacturing company?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Now, let me read from the minutes of the special meeting of the board of General Theaters Equipment, held February 27, 1932:

The chairman—

And the chairman, according to the minutes, was Mr. H. L. Clarke.

The chairman stated that he had from time to time since the inception of the corporation personally expended substantial sums of money on its behalf to finance the carrying on of scientific investigations and research, and he presented a memorandum of the amount of such expenditures, which was as follows:

The Owens Development Corporation, New York, N.Y., \$162,602.45.

R. T. Cloud, Chicago, Ill., development through Orchestrphone Co., \$66,322.95.

Total, \$228,925.40.

The chairman stated that he had made these expenditures with the expectation that they would be repaid and with the understanding of the officers and directors of the corporation that at some proper time he would be allowed reimbursements for such expenditures.

On motion duly made by W. S. Hammons, seconded by Charles W. Higley, and by the unanimous vote of all present, H. L. Clarke not voting, the following resolutions were adopted:

*Resolved*, That the president of the corporation be allowed credit for the amounts of moneys advanced by him personally for the account of the corporation, as follows: Owens Development Corporation, New York, N.Y., \$162,602.45.

'R. T. Cloud, Chicago, Ill., development through Orchestrphone Co.: \$66,322.95; total----- \$228,925.40

it being understood that the accountants for the company shall verify that such expenditures were made.'

"There being no further business to come before the meeting, it was, on motion duly made and seconded, adjourned."

"S. R. BURNS, *Secretary*."

So it would seem that the very last business transacted by the board of directors before this company went into receivership was to vote to you payment in the sum of \$228,000-odd for sums that you claimed to have expended from the inception of the company in its behalf?

Mr. CLARKE. That is right.

Mr. PECORA. Why did you defer the making of any claim against the company during all that period of time?

Mr. CLARKE. As you already know, the company had not been in a position for some time to pay out much cash, and it was merely a matter of credit of my account with the company, and I do not remember the balance either way, what it was, but I think it was still a credit to me on the books of the company; and the auditors verified these amounts and the claim was allowed.

Mr. PECORA. Do you recall anything further concerning the purposes for which you expended the moneys?

Mr. CLARKE. Yes; I do.

Mr. PECORA. What were they?

Mr. CLARKE. The Owens Development Corporation was a corporation formed by a man by the name of Owens, a small corporation, and a contract was entered into by me with the knowledge of the officers of the General Theatres.

Mr. PECORA. Pardon me—Does the fact that they have such knowledge appear anywhere in the minute book of the corporation except this meeting of February 27, 1932?

Mr. CLARKE. I don't think so.

Mr. PECORA. Go ahead.

Mr. CLARKE. But there was a contract with the Owens Development Co. which is in the records, and under that contract this sum of money was expended in the development of special sound machines, entirely to do with that.

Mr. PECORA. Why should the holding company have been made responsible for the repayment of those moneys?

Mr. CLARKE. Because it was for the benefit of the General Theaters entirely, or its subsidiaries, I mean.

Mr. PECORA. Again I ask, why should the holding company have expended those moneys?

Mr. CLARKE. Because they would have owned all these developments, and do now own all of them.

The CHAIRMAN. In other words, the development was for their benefit?

Mr. CLARKE. Yes, sir.

Senator COUZENS. Why weren't the payments made direct? Why did you have to make the payments to the corporation?

Mr. CLARKE. I didn't have to, Senator, but these developments had been started some considerable time ago, especially the Orchestraphone development, which was also a development in sound, but especially sound synchronization with records rather than from film. There were the two methods of producing sound by motion pictures, the film method, either the area or density method on the film, and also by the synchronization of records with the picture machine.

Senator COUZENS. You said a while ago there was a contract made. Who was the contract made with?

Mr. CLARKE. The contract was made with me.

Senator COUZENS. Personally?

Mr. CLARKE. Yes, sir.

Senator COUZENS. Did you assign it to the General Theatres?

Mr. CLARKE. I did.

Senator COUZENS. Then after that why didn't the General Theatres pay their own bills?

Mr. CLARKE. Well, Mr. Owens was making this great development that he thought he had, and which later proved very useful, and he didn't want to make the development in our factory, didn't want any one to know about it. He thought it was much more valuable than we thought, and it seemed advisable to do it the way he wanted to do it, and we allowed him to do it in a shop of his own.

Mr. PECORA. With whom did you say that contract with the Owens company was made?

Mr. CLARKE. Myself.

Mr. PECORA. With you individually?

Mr. CLARKE. That is right.

Mr. PECORA. Well, why didn't you make it—if it was designed for the benefit of the General Theaters Equipment, why wasn't the contract made directly with the General Theaters Equipment?

Mr. CLARKE. The explanation is the one I just gave. Mr. Owens wanted to make his development by himself and did not want to make it in our factory, and Mr. Michel and one or two others were the only people that knew about it outside of the directors of the company. It was not taken up with any of our own mechanics in the factory.

Mr. PECORA. Couldn't Mr. Owens have made the development in his own place, even if the contract had been made with the General Theaters Equipment, instead of with you individually?

Mr. CLARKE. Yes, I think he could.

Mr. PECORA. Could you possibly have had this in mind when you made that contract with the Owens Co. in your individual name: That if the development work proved to be commercially successful it was to be your property?

Mr. CLARKE. No, sir; because I never had acquired anything that I kept.

Mr. PECORA. Well, you would have been entitled to keep it, in view of the fact that the contract with Owens was made with you individually.

Mr. CLARKE. No, I would not.

Mr. PECORA. Why not? There is nothing in the record of the company to show that you made this contract with Owens as agent for the company, is there?

Mr. CLARKE. Possibly not, but I should not have kept it.

Mr. PECORA. Mr. Clarke, were you interested in an insurance company or an insurance brokerage agency which placed the insurance for General Theaters and its subsidiaries?

Mr. CLARKE. No, I was not.

Mr. PECORA. Were you interested in the insurance company which placed insurance for the Fox Film Corporation?

Mr. CLARKE. No, I was not.

Mr. PECORA. Did you know a company called the Crescent Brokerage Corporation?

Mr. CLARKE. Yes, sir; I did.

Mr. PECORA. Did you have any interest in it?

Mr. CLARKE. I did not, but I will tell you the whole story about it if you want to have it.

Mr. PECORA. I wish you would. Tell us the whole story.

Mr. CLARKE. Mr. Blumenreiter, who used to be president of the Home Insurance Co., was known to some of my people as a good insurance man. I looked him up, found out that he was, and had an interview with him, and he needed \$25,000 to start a business, in which he claimed to me he could save some money for the Utilities Power & Light and its subsidiaries, and also for the Fox Film or any other thing that I had to do with.

His statements proved correct, and whatever money has been made out of it he has made, and the company did make money, and I understand now is making some money. But it was only the means

of getting cheap insurance, and I have no interest in it whatever other than a loan of \$25,000 to this man, on which he has paid the interest to date.

Mr. PECORA. Now, you remember that once before I asked you in the early part of your examination 2 or 3 weeks ago before this committee, whether you had a stock interest in the Nicholas Power Co., and you said no, and you came back a few days later and admitted that you were the only stockholder at the time that Nicholas Power Co. was purchased for and on behalf of the International Projector. Do you remember that?

Mr. CLARKE. Yes, I do, and I explained to you, Mr. Pecora, at the time that my answer to you was based on my understanding of your question, which was, Was I a stockholder prior to the time I started to acquire the stock put into the company?

Mr. PECORA. I know that that was your explanation.

Mr. CLARKE. That was the explanation.

Mr. PECORA. Now, do you know Mr. K. C. Bell?

Mr. CLARKE. Yes, sir.

Mr. PECORA. Who is he?

Mr. CLARKE. Mr. Bell was one of the stockholders of the Nicholas Power Co.

Mr. PECORA. Do you know anything about the following memorandum dated December 30, 1931, addressed by that Mr. Bell to Mr. Murray Dodge, executive vice president, Chase Harris Forbes Corp., Re: Fox Film Corp. (reading):

The matter of insurance for the various Fox properties and interests comes up repeatedly both from company and agency angles. The latest solicitation has been on the part of the Liverpool and London and Globe, who claim familiarity with special risks pertaining to the picture industry.

My understanding was that some time ago Mr. Harley Clarke organized the Crescent Brokerage Corporation to take care of insurance of his various interests. Do you know if he is controlling and directing the insurance in the Fox situation, and if so whether through the Crescent Brokerage Corporation or not? Would it, or would it not, be possible for us to make suggestions as to companies, and even may be as to brokers; and if possible to whom or through whom should these suggestions be relayed?

We appreciate that this is probably a delicate situation and possibly we can do nothing. On the other hand we have to make some reply when these insurance connections of the bank approach us directly for some of the business. The Liverpool and London and Globe is the one company at the moment we must reply to. Have you any suggestions?

K. C. BELL.

Do you know how Mr. Bell had acquired the understanding that you had caused the Crescent Brokerage Corporation to be organized?

Mr. CLARKE. I do not.

Senator COUZENS. What was Mr. Bell's interest in this matter?

Mr. CLARKE. I don't know.

The CHAIRMAN. He was some insurance agent.

Senator COUZENS. What was his business then, at the time he wrote that memorandum?

Mr. CLARK. I really don't know, Senator. First I ever heard of it.

Mr. PECORA. Now, let me see if the reading of this memorandum from L. W. Snow to Mr. Dodge, dated February 6, 1931, throws any light on the situation or serves to refresh your recollection as to whether or not you had any interest in the Crescent Brokerage Corporation [reading]:

MEMORANDUM FOR MR. DODGE

FEBRUARY 6, 1931.

Re: Fox Film and Utilities Power &amp; Light Insurance.

Some weeks ago Mr. Guild of Herrick, Berg & Co., a personal friend of mine, who owns a substantial amount of General Theatres stock told me that friends of his in the insurance business, not knowing of his interest in the Fox and General Theatres situation, had casually mentioned to him that gossip among insurance men indicated that the insurance on Mr. Clarke's companies was not being handled economically.

The above information was passed on to me and the individuals in question were introduced to me several weeks ago by Mr. Guild. They told me the story and have followed up by writing the attached letter, which is self-explanatory.

Mr. Kalpaschnikoff, who represents other insurance interests, has spoken to me several times about this situation along much the same line. He was in yesterday and seemed to know about the attached letter from John C. Paige & Co. although I had made no comment in regard to it. He said he was sure that the insurance of all of Mr. Clarke's companies except the British companies and certain of the California Fox properties could be written by his insurance people or several leading brokers (like John C. Paige & Co.) at a saving of 20 percent to 22 percent of the premium. He said that he believed this saving might amount to \$450,000 or \$500,000 per annum.

Kalpaschnikoff said that he had learned yesterday that the Crescent Brokerage Co. was in trouble with the insurance commissioner because of having accepted business early in October of 1930 before receiving a license to do business. Application had been made for a license and a hearing date set for November 7. Presumably the license was subsequently granted but the insurance commissioner was not until now aware that business had been done prior to the granting of the license. Kalpaschnikoff also said that Saul Rogers has made affidavit to the effect that the officers of the Utilities Power & Light Corporation and Fox Film Co. were connected in official capacity with the Crescent Brokerage Co. and in this manner receiving rebates on insurance effected for themselves. It was reported that the insurance commissioner was about to make an investigation of this situation.

L. W. SNOW.

Do you know anything about that?

Mr. CLARKE. No; I do not, but I assume that this gentleman who wrote the letter, Mr. Snow, to the Chase Bank, was desirous of getting insurance. There was at least one a day, and perhaps more, insurance people who wanted to get our insurance.

Mr. PECORA. Well, they wanted to get the insurance because they claimed they could save the Fox companies from \$450,000 to \$500,000 a year in premiums, which would have been a very desirable thing for the Fox Film Co.?

Mr. CLARKE. Yes; it would have, but my experience—

Mr. PECORA (interposing). But not so desirous for the Crescent Brokerage Corporation, which was placing the insurance at what was claimed to be excessive rates of premium?

Mr. CLARKE. That is not a fact, because the Crescent Brokerage cut our insurance down about 20 percent on the Utilities Power & Light. It cut down—

Mr. PECORA (interposing). Well then—

Mr. CLARKE. Just a moment, please, if I may answer the question.

Mr. PECORA. Go ahead.

Mr. CLARKE. It cut down the cost of insurance to Fox Film Corporation and the affiliated interests that it had over \$300,000, and the records of Fox Film will prove that. I do not believe that this gentleman could have saved any \$500,000 on about the same amount of insurance without giving it to them for nothing.

Mr. PECORA. Well now, what do you know about the statement that Saul Rogers, who is your present counsel, had made an affidavit to the effect that the officers of the Utilities Power & Light Corporation and Fox Film Co. were connected in official capacity with the Crescent Brokerage Co.?

Mr. CLARKE. I do not know anything about it. If Mr. Rogers made such an affidavit he might have thought so at the time, but we were not connected in any official capacity with the Crescent Brokerage Co.

Mr. ROGERS. Mr. Pecora, will you permit me to answer that question?

Mr. PECORA. Surely.

Mr. ROGERS. I never made any such affidavit.

Mr. PECORA. Well, Mr. Snow is here and we will examine him tomorrow.

Mr. Clarke, just one moment before you are finally excused. Is there any other statement or evidence that you want to place before this committee before being excused?

Mr. CLARKE. Not that I know of.

Mr. PECORA. All right.

Mr. CLARKE. Any information that I have is always accessible to this committee any time they request it.

The CHAIRMAN. We will take a recess until tomorrow at 10:30. So far as I know, Mr. Clarke is excused.

(Thereupon, at 4.28 p.m., the subcommittee stood adjourned until the following day, Nov. 28, 1933, at 10.30 a.m.)

COMMITTEE EXHIBIT No. 181, NOVEMBER 27, 1933

STATEMENT OF MR. DODGE IN REGARD TO FINANCING OF FOX FILM CORPORATION IN APRIL 1931

The plan for meeting the obligations of Fox Film Corporation maturing April 15, 1931, may be briefly summarized as follows:

Fox Film Corporation sold, at 92 and accrued interest, \$30,000,000 principal amount of its 5-year 6 percent convertible gold debentures, due Apr. 1, 1936, to a group headed by Chase Securities Corporation, realizing thereupon the net amount of...	\$27,665,000.00
Fox Film Corporation sold 660,900 shares of common stock of Loew's, Inc., to Film Securities Corporation for, subject to adjustment, 462,000 shares of the class A stock and sum of...	28,800,000.00
Total received by Fox Film Corporation.....	56,465,000.00
Wesco Corporation sold, at 96 and accrued interest, \$15,000,000 principal amount of its 2-year 6 percent gold notes, due Apr. 1, 1933, to Chase Securities Corporation realizing thereupon, including accrued interest, the amount of.....	14,432,500.00
Grand net total received.....	70,897,500.00
Film Securities Corporation on its part sold 51,333 shares of its common stock and \$20,000,000 principal amount of its 2-year 6 percent secured gold notes, due Apr. 1, 1933 and secured by the 660,900 shares of Loew's, Inc., common stock above mentioned, to a group headed by Chase Securities Corporation, realizing thereupon, including accrued interest, the amount of...	19,268,333.33
Film Securities Corporation also sold to General Theatres Equipment, Inc., at 97 flat, 100,000 shares of its \$7 dividend preferred stock, realizing thereupon the amount of.....	9,700,000.00
Total received by Film Securities Corporation.....	28,968,333.33

The sum of \$70,897,500 realized under the plan as above stated was disposed of as follows:

Fifty-five million dollars out of the \$56,465,000 received by Fox Film Corporation as above stated was paid by it on April 14, 1931, to Central Hanover Bank & Trust Co., the trustee under the collateral-note indenture securing the secured 6-percent gold notes maturing April 15, 1931, and the balance was placed to the credit of the account of Fox Film Corporation with the Chase National Bank.

Ten million thirteen thousand three hundred and thirty-three dollars and thirty-three cents out of the \$14,432,500 received by Wesco Corporation as above stated was paid by it on April 14, 1931, to the Chase National Bank in settlement of the \$10,000,000 loan of the corporation then held by the bank, and the balance was placed to the credit of the account of Wesco Corporation with the bank.

#### OFFERING OF \$30,000,000 DEBENTURE ISSUE OF FOX FILM CORPORATION

This \$30,000,000 debenture issue contained a conversion privilege entitling holders to convert their debentures at the rate of 30 shares of class A common stock for each \$1,000 principal amount of debentures. In view of this provision, it was necessary for these debentures to be offered to stockholders of the corporation for subscription, and under the rules of the New York Stock Exchange a period of 30 days (10 days for notice of record date and 20 days for the subscription period) was required for such an offer.

Compliance with these requirements was, of course, impossible before the maturity on April 15, 1931, of its \$55,000,000 of secured 6 percent notes. In order to assure to itself the necessary funds to retire the notes at maturity, Fox Film Corporation entered into an underwriting arrangement with Chase Securities Corporation, whereby the latter agreed, subject to consummation of the other arrangements hereinafter described, to take up and pay for, or to cause others to take up and pay for, all of the \$30,000,000 of debentures on April 14, 1931, at the same price at which such debentures were to be offered to the stockholders; that is, at 98 and accrued interest. The right was reserved to the corporation to repurchase from Chase Securities Corporation, at 98 and accrued interest to the date of repurchase, debentures to such amount as would be required to effect delivery against subscriptions received from stockholders upon the offering to be made to them. For its services in this connection Chase Securities Corporation was to receive an underwriting commission of 6 percent of the issue, and, in addition, stock-purchase warrants evidencing the right to purchase 150,000 shares of the class A common stock of Fox Film Corporation, exercisable at \$35 a share at any time prior to March 22, 1936.

The contract covering the foregoing underwriting arrangement was signed on April 9, 1931, by Chase Securities Corporation. Before entering into such contract Chase Securities Corporation signed an agreement with General Theaters Equipment, Inc., wherein that company, as a stockholder of Fox Film Corporation, requested Chase Securities Corporation to sign said contract and, in consideration of its doing so, agreed to waive its subscription rights in connection with any offering of debentures which might be made to stockholders of Fox Film Corporation. General Theaters Equipment, Inc., agreed also that in any event the waiver of its subscription rights would cover not less than 1,372,601 shares of the class A common stock and class B common stock of Fox Film Corporation. The waiver by General Theaters Equipment, Inc., gave assurance that, in any public offering of debentures which might be made, there would be available for delivery something more than 50 percent of the entire issue.

Immediately upon signing the contract for the underwriting of the \$30,000,000 debenture issue, Chase Securities Corporation formed an underwriting group, of which it was the manager, to take over its obligations in respect of said debentures. The underwriting group had eight participants, namely:

	<i>Percent</i>
Chase Securities Corporation.....	63%
Dillon, Read & Co.....	3%
Bancamerica-Blair Corporation.....	5
Harris Forbes & Co.....	10
Chatham-Phenix Corporation.....	5
Haystone Securities Corporation.....	5

	Percent
Central Illinois Co.....	5
First National-Old Colony Corporation.....	3
	100

Under this underwriting group agreement which was dated April 9, 1931, the entire underwriting commission, including the stock purchase warrants for 150,000 shares of the class A common stock of Fox Film Corporation, were to be received by the group and two thirds of such commission, and two fifths of said warrants were to be reserved for the banking group to be formed to offer the debentures to the public.

A banking group was formed on April 9, 1933, consisting of 15 members (including the underwriting group members), to take over the commitment of the underwriting group, and for its services was to receive the compensation above stated. The group had a \$3,000,000 trading account and was to expire on June 8, 1931, unless extended for a further period or periods not over 60 days in the aggregate. Chase Securities Corporation was appointed manager of the group. The group letter was signed by Dillon, Read & Co., Bancamerica-Blair Corporation and Harris Forbes & Co. as well as by Chase Securities Corporation.

The banking group formed a selling group on April 9, 1931, consisting of 66 members (including the underwriting group members), to offer the debentures to the public at 98 and accrued interest on a "when, as, and if issued" basis. The selling group was entitled to a selling concession of 2½ percent with the right to reallocate one fourth of 1 percent to investment dealers, banks and others.

On April 10, 1931, the debentures were offered to the public through the medium of the foregoing group, but the public offering was unsuccessful. Only a little over \$1,791,300 aggregate principal amount of debentures was taken by the public and only \$9,100 principal amount of debentures was repurchased by Fox Film Corporation to cover stockholder subscriptions, making the total principal amount of debentures distributed \$1,800,400.

On the closing date, that is April 14, 1931, the following transactions were consummated in accordance with the arrangements above referred to:

1. Chase Securities Corporation took up the \$30,000,000 of debentures and paid therefor \$29,485,000, including accrued interest.

2. Fox Film Corporation paid and delivered to Chase Securities Corporation the underwriting commission of \$1,800,000 in cash and stock purchase warrants covering 150,000 shares of its class A common stock.

3. Out of the funds thus provided, plus \$28,800,000 received from Film Securities Corporation, Fox Film Corporation retired its \$55,000,000 of notes due April 15, 1931, and obtained the release of the 660,900 shares of Loew's common stock for delivery to Film Securities Corporation.

Thereafter the \$1,791,300 of debentures taken by the public were delivered to selling-group members and the balance, or \$28,199,600 principal amount thereof, were taken up by the underwriting group, which borrowed for this purpose, on April 14, 1931, from the Chase National Bank \$6,916,250 on the group's demand note bearing interest at the coupon rate and secured by \$7,500,000 of debentures, representing the interest in the debentures at that time (without adjustment) of the following:

Bancamerica-Blair Corporation, 20 percent.....	\$1, 500, 000
Harris, Forbes & Co., 40 percent.....	3, 000, 000
Chatham-Phenix Corporation, 20 percent.....	1, 500, 000
Central Illinois Co., 20 percent.....	1, 500, 000
<b>Total</b> .....	<b>7, 500, 000</b>

The other members of the group took up for carrying purposes the remaining \$20,699,600 of debentures as follows:

Dillon, Read & Co.....	\$940, 000
First National-Old Colony Corporation.....	846, 000
The Chase National Bank.....	18, 913, 600
<b>Total</b> .....	<b>20, 699, 600</b>

In this connection it should be noted that the Chase National Bank had acquired the interest of Chase Securities Corporation in the group on April 14, 1931, and later the interest of Harris, Forbes & Co. in the group.

On December 31, 1932, the date the accounts were settled, the interest of the members of the group in the debentures and warrants was as follows:

	Debentures	Warrants
Chase National Bank.....	\$20,773,600	-----
Dillon, Read & Co.....	940,000	4,921
Haystone Securities Corporation.....	1,410,000	7,381
Chatham-Phenix Corporation.....	1,410,000	7,381
Bancamerica-Blair Corporation.....	1,410,000	7,381
Central Illinois Co.....	1,410,000	7,381
First National-Old Colony Corporation.....	846,000	4,429
Chase Securities Corporation.....	-----	93,982
Harris, Forbes & Co.....	-----	14,762
	28,199,600	147,613

The Chase National Bank subsequently acquired \$2,820,000 of the debentures from Central Illinois Co. and Chatham-Phenix Corporation. The bank then held a total of \$23,593,600 principal amount of debentures.

*Sale of 660,900 shares of Loew's, Incorporated Common Stock*

At the time of executing the debenture contract above referred to, Fox Film Corporation also entered into a further contract with Chase Securities Corporation providing for the sale of the 660,900 shares of common stock of Loew's Incorporated pledged as collateral security for the \$55,000,000 of secured 6 percent notes. Under the terms of such contract Chase Securities Corporation agreed that it would organize a new corporation (Film Securities Corporation) under the laws of Delaware with a capitalization of 655,000 shares without par value, divided into 100,000 shares of \$7 dividend preferred stock (nonvoting), 500,000 shares of class A stock (limited voting), and 55,000 shares of common stock (full voting), and that, upon organization of said corporation, Chase Securities Corporation would cause it to authorize an issue of \$20,000,000 principal amount of its 2-year 6 percent secured gold notes due April 1, 1933, secured by pledge of said 660,900 shares of common stock of Loew's, Incorporated and issued under an indenture to the Chase National Bank as trustee. Chase Securities Corporation further agreed to finance such new corporation by purchasing or procuring others to purchase

(a) The \$20,000,000 of 2-year notes and shares of the common stock of the new corporation to an amount equal to one-ninth of the number of shares of its class A stock to be issued as below stated, all for the sum (including accrued interest on the notes) of.....	\$19,268,333.33
(b) all of the preferred stock of the new corporation, at \$97 a share, or for the aggregate sum of.....	9,700,000.00
Total .....	28,968,333.33

Fox Film Corporation on its part agreed that it would transfer and deliver to the new corporation said 660,900 shares of common stock of Loew's, Incorporated at the cost of such shares as carried on its books, that is, \$75,000,000, and would accept in payment therefor

(a) An amount in cash equal to the entire net proceeds (after deducting organization and financing expenses) realized from the sale of the \$20,000,000 of 2-year notes and the common stock and the preferred stock of the new corporation as above provided, and

(b) Shares of the class A stock of the new corporation to such number as taken at \$100 per share would equal the balance of said \$75,000,000 after deducting the portion thereof paid in cash as aforesaid.

Before entering into the foregoing contract for the sale of the common stock of Loew's, Incorporated, Chase Securities Corporation entered into an agreement with General Theatres Equipment, Inc. whereby the latter requested Chase Securities Corporation to enter into said contract and, in consideration

of its doing so, agreed to purchase from Chase Securities Corporation or Film Securities Corporation the 100,000 shares of preferred stock at \$97 per share, or for \$9,700,000.

The closing under the above contracts took place on April 14, 1931, and in accordance therewith the following transactions were consummated:

1. Chase Securities Corporation purchased the \$20,000,000 of 2-year notes and 51,333 shares of the common stock of Film Securities Corporation, paying therefore \$19,268,333.33, the shares of common stock being one ninth of the number of class A shares issued as below stated, subject to adjustment.

2. General Theatres Equipment, pursuant to its agreement with Chase Securities Corporation, purchased the 100,000 shares of preferred stock of Film Securities Corporation, paying therefor \$9,700,000.

3. With the funds thus provided (less the sum of \$125,000 to cover estimated organization and financing expenses) Film Securities Corporation purchased the 660,900 shares of Loew's, Inc., from Fox Film Corporation, giving therefor \$28,800,000 in cash and 462,000 shares of its class A stock, the amounts of cash and stock being subject to adjustment as above provided. The shares of common stock of Loew's, Inc., were immediately pledged with the Chase National Bank as trustee for the 2-year notes.

Of the \$20,000,000 2-year notes of Film Securities Corporation, \$8,500,000 were sold to Western Electric Co. and the balance, namely, \$11,500,000 were taken up by a purchase group consisting of the following:

	<i>Percent</i>
Chase Securities Corporation.....	28½
Dillon, Read & Co.....	38½
Bancamerica-Blair Corporation.....	5
Harris, Forbes & Co.....	10
Chatham-Phenix Corporation.....	5
Haystone Securities Corporation.....	5
Central Illinois Co.....	5
First National-Old Colony Corporation.....	3
<b>Total.....</b>	<b>100</b>

At the time of paying for the notes on April 14, 1931, the following members of the group took up for carrying purposes \$9,200,000 of the notes allocable to their interests as follows:

Dillon, Read & Co.....	\$4, 427, 500
The Chase National Bank.....	3, 277, 500
Chatham-Phenix Corporation.....	575, 000
Haystone Securities Corporation.....	575, 000
First National-Old Colony Corporation.....	345, 000
<b>Total.....</b>	<b>9, 200, 000</b>

At the same time the group borrowed from the Chase National Bank \$2,212,983.33 on the group's demand note bearing interest at the coupon rate and secured by \$2,300,000 of notes, representing the interests in the notes at that time of the following:

Bancamerica-Blair Corporation, 25 percent.....	\$575, 000
Central Illinois Co., 25 percent.....	575, 000
Harris Forbes & Co., 50 percent.....	1, 150, 000
<b>Total.....</b>	<b>2, 300, 000</b>

In this connection it should be noted that the Chase National Bank acquired the interest of Chase Securities Corporation and later the interest of Harris, Forbes & Co. in these notes. This loan was paid on June 3, 1931, upon termination of the group.

No public offering of the notes was ever made, as the market situation had changed so that a successful offering was not possible. The purchase group therefore continued to hold the \$11,500,000 of notes until termination of the group on June 2, 1931, at which

time the accounts of the members were settled, their respective pro rata shares of the notes then being as follows:

	<i>Amount</i>
Chase National Bank, 38½ percent.....	\$4,427,500
Dillon, Read & Co., 38½ percent.....	4,427,500
Haystone Securities Corporation, 5 percent.....	575,000
Bancamerica-Blair Corporation, 5 percent.....	575,000
Chatham-Phenix Corporation, 5 percent.....	575,000
Central Illinois Co., 5 percent.....	575,000
First National-Old Colony Corporation, 3 percent.....	345,000
<b>Total.....</b>	<b>11,500,000</b>

The common stock of Film Securities Corporation was acquired and held by Chase Securities Corporation and its associates pursuant to the agreement with Fox Film Corporation. The interests of the members of this group in these shares, after adjustment, were as follows:

	<i>Shares</i>
Chase Securities Corporation, 28½ percent.....	14,621.64
Dillon, Read & Co., 38½ percent.....	19,752.04
Bancamerica-Blair Corporation, 5 percent.....	2,565.20
Harris Forbes & Co., 10 percent.....	5,130.40
Chatham-Phenix Corporation, 5 percent.....	2,565.20
Haystone Securities Corporation, 5 percent.....	2,565.20
Central Illinois Co., 5 percent.....	2,565.20
First National-Old Colony Corporation, 3 percent.....	1,539.12
<b>Total.....</b>	<b>51,304.00</b>

*Sale of \$15,000,000 of 2-year notes of Wesco Corporation*

Wesco Corporation, by action of its board of directors on April 6, 1931, created an issue of \$15,000,000 principal amount of its 2-year 6 percent gold notes, due April 1, 1933, and sold the same to Chase Securities Corporation at 96 and accrued interest, thus realizing the sum of \$14,432,500 above referred to. The obligations of Chase Securities Corporation under the purchase contract were conditioned upon consummation of the other arrangements already herein described in its contract with Fox Film Corporation.

On the closing date, that is, April 14, 1931, Chase Securities Corporation took up the \$15,000,000 principal amount of notes and paid Wesco Corporation therefor the amount above stated, and immediately thereafter sold the same to the Chase National Bank at the same price.